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

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

5 CFR Chapter VII

Removal of CFR Chapter

Effective November 15, 1995, the Advisory Commission on Intergovernmental Relations (ACIR) was terminated by the Treasury, Postal Service, and General Government Appropriations Act of 1996, Pub. L. 104–52, 109 Stat. 468. On October 19, 1996, in Pub. L. 104–328, 110 Stat. 4004, Congress provided for the continued existence of the ACIR solely for the purposes of performing any contract entered into pursuant to section 7(a) of the National Gambling Impact Study Commission Act (NGISCA) (Pub. L. 104–169, 110 Stat. 1487 (1996)). Under § 7(a) of the NGISCA the ACIR was required to submit a report to the National Gambling Impact Study Commission on the results of its efforts under the contract no later than 15 months after the first meeting of the National Gambling Impact Study Commission. Pursuant to Pub. L. 104–328, 110 Stat. 4004, the ACIR would terminate on the date of the completion of the contract. The final report of the National Gambling Impact Study Commission was published in 1999. Upon publication of the final report of the National Gambling Impact Study Commission, the statutory requirements of both the National Gambling Impact Study Commission and the ACIR were completed. Therefore, the **Office of the Federal Register** is removing ACIR regulations from the Code of Federal Regulations pursuant to its authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR Part 8.

Accordingly, 5 CFR is amended by removing parts 1700 through 1720 and vacating Chapter VII.

[FR Doc. 02–55514 Filed 5–7–02; 8:45 am]

BILLING CODE 1505–01–D

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Chapter XIII

Removal of CFR Chapter

Effective September 30, 2001, Congressional consent for the implementation of the Northeast Interstate Dairy Compact and the operations of the Northeast Interstate Dairy Compact Commission (NEDCC) was terminated under the provisions of 7 U.S.C. 7256. Therefore, the **Office of the Federal Register** is removing NEDCC regulations from the Code of Federal Regulations pursuant to its authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR Part 8.

Accordingly, 7 CFR is amended by removing parts 1300 through 1381 and vacating Chapter XIII.

[FR Doc. 02–55513 Filed 5–7–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–029–1]

Citrus Canker; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the citrus canker regulations by removing a portion of Manatee County, FL, from the list of quarantined areas. The regulations require that an area be free from citrus canker for a period of at least 2 years before it may be removed from the list of quarantined areas. Surveys have shown that the Duette area of Manatee County, FL, has been free of citrus canker since February 4, 2000. This action removes restrictions on the interstate movement of regulated articles from that portion of Manatee County, FL.

DATES: This interim rule is effective May 8, 2002. We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 8, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–029–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–029–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–029–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family *Rutaceae*). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable,

and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75–1 through 301.75–16 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide for the designation of survey areas around quarantined areas. Survey areas undergo close monitoring by Animal and Plant Health Inspection Service and State inspectors for citrus canker and serve as buffer zones against the disease.

Under § 301.75–4(c) of the regulations, any State or portion of a State where an infestation is detected will be designated as a quarantined area and will retain that designation until the area has been free from citrus canker for 2 years. A 41-square-mile area in the eastern part of Manatee County, FL, has been free of citrus canker since February 4, 2000, and has thus met the requirement for declaration of eradication—that an area be free from citrus canker for a period of at least 2 years. This area, which has been known as the Duette quarantined area, is described as, ''That portion of the county bounded by a line drawn as follows: Beginning at the northwest corner of sec. 8, 9, 10, 11, and 12, T. 33 S., R. 21 E.; then east along sec. 8, 9, 10, 11, and 12, T. 33 S., R. 21 E., to sec. 12, T. 33 S., R. 21 E.; then south along sec. 12, T. 33 S., R. 21 E., to sec. 18, 19, 30, and 31, T. 33 S., R. 22 E.; then east along sec. 18, 19, 30, and 31, T. 33 S., R. 22 E., to sec. 6, T. 34 S., R. 22 E.; then south along sec. 6, T. 34 S., R. 22 E., to sec. 7, T. 34 S., R. 22 E.; then west along sec. 7, T. 34 S., R. 22 E., to sec. 12, 11, 10, and 9, T. 34 S., R. 21 E.; then south along sec. 12, 11, 10, and 9, T. 34 S., R. 21 E., to sec. 8 and 5, T. 34 S., R. 21 E.; then north along sec. 8 and 5, T. 34 S., R. 21 E., to sec. 31, 29, 20, 17, and 8, T. 33 S., R. 21 E.; then north along sec. 31, 29, 20, 17, and 8, T. 33 S., R. 12 E., to the point of beginning.''

Regular and complete surveys have been conducted on an approximately monthly basis since the infestation was first detected, including that time from the destruction of the last infected tree on February 4, 2000, to the present. Surveys have been conducted of all citrus trees located in both commercial groves and at residential properties. In addition, any wild citrus that was observed in the area has also been surveyed.

Although not required as a condition of declaring eradication in an area, in this case all abandoned citrus orchards in the area have also been removed. Abandoned citrus groves present a challenge in conducting surveys, and thus the removal of these groves increases our confidence that citrus canker is no longer present in this area.

Therefore, we are amending the citrus canker regulations by removing the Duette area in Manatee County, FL, from the list of quarantined areas in § 301.75–4(a). This action removes restrictions on the interstate movement of regulated articles from and through the Duette area of Manatee County, FL.

Immediate Action

Immediate action is warranted to remove restrictions on the interstate movement of regulated articles from and through the portion of Manatee County, FL, that we are removing from the list of quarantined areas based on its freedom from citrus canker for a period of at least 2 years. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the citrus canker regulations by removing a portion of the quarantined area in Manatee County, FL, from the list of quarantined areas. The regulations require that an area be free from citrus canker for a period of at least 2 years before it may be removed from the list of quarantined areas. Surveys have shown that the 41-square-mile Duette quarantined area in eastern Manatee County, FL, has been free of citrus canker since February 4, 2000. This action removes restrictions on the interstate movement of regulated articles from the Duette area of Manatee County, FL.

The area to be removed from quarantine, totaling 41 square miles or 26,240 acres, represents a relatively small portion of citrus production in Manatee County. Even if the area consisted entirely of citrus acreage, which it does not, the 26,240 acres would be equivalent to approximately 3 percent of Florida's total citrus acreage. The table below shows statistics for Manatee County after trees were removed to limit the spread of citrus canker.

	Boxes of citrus produced in 2000–2001 season	Total acres January 2000	Total number of trees January 2000
All Round Oranges	7,791,000	21,236	2,631,200
All Grapefruit	400,000	1,197	111,900
Specialty Fruit	151,000	821	98,300
All Citrus	8,342,000	23,254	2,841,400

Source: Florida Agricultural Statistics Service, ''Citrus Summary 2000–01,'' January 2002.

Most of the citrus producers in and around the Duette quarantined area would qualify as small businesses under Small Business Administration (SBA) guidelines. The Regulatory Flexibility Act requires that the Agency specifically consider the economic impact on small entities associated with rule changes. The SBA defines a firm engaged in agriculture as ''small'' if it has less than $750,000 in annual receipts.

This interim rule will not impose any costs on affected citrus producers and should offer them some benefits. Citrus

producers in the Duette area will have the option of replanting trees in the previously quarantined area and have greater choice of where to market their fruit.

The benefits of releasing the Duette area from quarantine restrictions are likely to be small, however. How much of the newly unrestricted area will be replanted in citrus is unknown. In general, citrus prices have been soft, so it is uncertain whether a large portion of the acreage will be replanted in citrus in the short run. Of course, it takes several years for citrus trees to become productive, so any decision to replant will have to be based on the grower's perception of the market conditions for citrus several years in the future. Taking these factors into account, we anticipate that producer incomes or expenses are unlikely to be affected in a significant way.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.75–4 [Amended]

2. In § 301.75–4, paragraph (a), in the entry for Manatee County, the second paragraph is removed.

Done in Washington, DC, this 2nd day of May, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–11459 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–1001]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rules; delay of effective date.

SUMMARY: On February 15, 2002, the Board published in the Federal Register amendments to Regulation C effective for data collected beginning January 1, 2003, and solicited comment on several related issues with a comment period that closed on April 12. Financial institutions and their trade associations requested a postponement of the effective date until January 1, 2004, on the grounds that a 2003 deadline does not afford institutions adequate time to take the steps necessary to ensure full compliance with the new rules (including reprogramming their data systems and retraining their employees). Consumer and community organizations generally opposed postponement of the effective date. The Board has weighed the financial institutions' claims and underlying assumptions against public policy benefits of collecting the new data as soon as possible. The Board believes that some HMDA reporters, especially the largest ones, will not be able to fully implement the new rules by January 1, 2003, without jeopardizing the quality and usefulness of the data and incurring substantial additional implementation costs that could be avoided by a postponement. Accordingly, the Board is changing the effective date of the amendments from January 1, 2003, to January 1, 2004. The Board is, however, adopting an interim amendment to Appendix A, effective January 1, 2003, mandating the use of 2000 census data.

DATES: The effective date of the amendments to Regulation C (12 CFR part 203) published February 15, 2002, at 67 FR 7222 is delayed from January 1, 2003, to January 1, 2004. The interim amendment to Appendix A to part 203 contained herein is effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen C. Ryan, Senior Attorney, or Dan S. Sokolov, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3667 or (202) 452–2412. For users of Telecommunications Device for the Deaf (TDD) *only,* contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

On February 15, 2002, the Board published in the **Federal Register** significant changes to Regulation C that expanded its coverage, redefined key terms, and required the collection of additional categories of data, including loan pricing data (the spread between the annual percentage rate on a loan and the yield on comparable Treasury securities). (67 FR 7222) The Board made the changes effective for data collected beginning January 1, 2003, and reported in March 2004.

In a related action, the Board sought public comment on a proposed rule to require lenders to report lien status for applications and originated loans and to ask telephone applicants their ethnicity, race, and sex. The Board also sought comment on the appropriate percentage thresholds for the reporting of loan pricing data. The public comment period closed on April 12, 2002.

II. Postponement of the Effective Date

Some financial institutions and several major trade associations submitted letters indicating that the January 1, 2003, effective date does not give financial institutions adequate time to implement the amendments effectively and efficiently. These commenters explained that, to comply with the amendments, the typical institution must take multiple steps including reprogramming systems for data collection, processing, and reporting; testing the software changes; and retraining employees, which ideally awaits development and testing of the software they will use. Commenters stated that these steps are particularly

complex and time-consuming for large institutions with several interfacing data systems; employees in numerous locations and departments; and relationships with affiliates and with many third party brokers. Moreover, the commenters submit that the time available to them to accomplish these steps is even more limited than might appear given that they cannot get the changes fully under way until the Board acts on the proposed rule.

The Board also solicited input from consumer and community organizations. Their representatives generally oppose a postponement, and argue that forgoing even temporarily the anticipated public policy benefits of the amendments would be a substantial cost to the public. They believe that financial institutions are generally able to comply with a January 1, 2003, effective date without compromising the quality of the data.

There are significant public policy benefits to collecting the data as soon as possible, but those benefits will accrue only if the data are reliable and accurate. The Board believes that some HMDA reporters, especially the largest ones, will not be able to fully implement the new rule by January 1, 2003, without jeopardizing the quality and usefulness of the data and incurring substantial additional implementation costs that could be avoided by a postponement. Accordingly, the Board is changing the effective date of the revisions to Regulation C published on February 15, 2002, from January 1, 2003, to January 1, 2004.

III. Change That Will Take Effect on January 1, 2003: 2000 Census Data

The requirement to use 2000 census data rather than 1990 census data will become effective January 1, 2003, as previously scheduled. The change is implemented by an interim amendment to the current provisions in Appendix A concerning census data.

Changing to 2000 census tracts will make the HMDA data substantially more useful. Many of the output tables that comprise the individual institutions' HMDA disclosures and the aggregate disclosure statements for metropolitan areas rely on population and other characteristics for given census tracts (for example, the distribution of a census tract's residents by their income level). Given the many changes that have occurred since 1990, use of 2000 census tracts and demographics will produce more accurate and useful data in the HMDA disclosure statements and aggregate reports. Updated information will enhance evaluations under the Community Reinvestment Act, which rely on census data. The burden of changing to 2000 census tracts is mitigated by the availability of geocoding services from public and private sources, and should be about the same regardless of the effective date.

IV. Pending Item on Telephone Applications

The comment period on several items related to the final amendments to Regulation C closed on April 12. The Board has not yet taken final action. One item is a proposed amendment requiring lenders to ask telephone applicants for their race, ethnicity, and sex. This proposed amendment does not appear to require substantial changes to institutions' data systems. Accordingly, if the amendment is adopted, it may be made effective January 1, 2003, to reduce the risk of a further increase in the rate of missing data on race, ethnicity, and sex.

List of Subjects in 12 CFR Part 203

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

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Appendix A, paragraphs V.C.3.b. and V.C.4., are amended by removing ''1990'' and adding ''2000'' in its place wherever it appears.

By order of the Board of Governors of the Federal Reserve System, May 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–11343 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 609 and 620

RIN 3052–AC02

Electronic Commerce; Disclosure to Shareholders; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 609 and 620 on April 8, 2002 (67 FR 16627). This final rule creates a new part on Electronic Commerce (E-commerce) and amends another part to specifically allow electronic disclosures. These changes reflect emerging business approaches to E-commerce. The final rule removes regulatory barriers to E-commerce and creates a flexible regulatory environment that facilitates the safe and sound use of new technologies by Farm Credit System (System) institutions and their customers. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 8, 2002.

EFFECTIVE DATE: The regulation amending 12 CFR parts 609 and 620 published on April 8, 2002 (67 FR 16627) is effective May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Jane Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 3, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–11400 Filed 5–7–02; 8:45 am]

BILLING CODE 6705–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 790 and 792

Description of NCUA; Requests for Agency Action and Requests for Information under the Freedom Of Information Act and Privacy Act, and by Subpoena; Security Procedures for Classified Information

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) Board approved its fiscal year 2002 budget at its November 15, 2002, board meeting. The fiscal year 2002 budget includes several changes to NCUA's central office structure that will reduce costs and improve efficiency at the agency. The changes involve the elimination of some offices and a transfer of the duties of

those offices to either existing offices or the newly created Office of Strategic Program Support and Planning (OSPSP).

EFFECTIVE DATE: This rule is effective May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Staff Attorney, Division of Operations, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: NCUA in conjunction with its fiscal year 2002 budget is restructuring its central office. This restructuring consists of: establishing an OSPSP; transferring the functions of the Office of Investment Services (OIS) and the Director of Strategic Planning (DSP) into OSPSP; transferring the functions of the Office of Administration (OA) to the Office of Chief Information Officer (OCIO), the Office of Public and Congressional Affairs (PACA) and the Office of the Chief Financial Officer (OCFO); and integrating the Office of Training (OTD) into the Office of Human Resources (OHR). The NCUA Board is amending parts 790 and 792 of its regulations, to conform them to the restructured central office. 12 CFR parts 790 and 792.

Regulatory Procedures

Final Rule Under the Administrative Procedure Act

The revisions made to this part are not subject to the notice and comment provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* The final rule revisions relate only to matters relating to agency management and personnel, topics exempt from APA requirements. 5 U.S.C. 553(a)(2).

Effective Date

NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under sec. 553(d)(3) of the APA. The rule relates only to internal agency procedures and does not affect the public. The rule will, therefore, be effective immediately upon publication of this notice.

Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act is required only when an agency is required to publish a general notice of proposed rulemaking for any proposed rule. 5 U.S.C. 603. As noted previously, NCUA has determined that it is unnecessary to publish a notice of proposed rulemaking for this rule. Accordingly, an initial regulatory analysis is not required. Moreover, since this final rule imposes no new requirements and makes only housekeeping amendments, NCUA has determined and certifies that this rule will not have any significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets).

Small Business Regulatory Enforcement Fairness Act

Title II of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121) provides, generally, for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 it is not a major rule.

Paperwork Reduction Act

NCUA has determined that the final rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and regulations of the Office of Management and Budget.

Executive Order 13132 Statement

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

List of Subjects

12 CFR Parts 790 and 792

Credit unions.

By the National Credit Union Administration Board on April 29, 2002.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, NCUA amends 12 CFR chapter VII as set forth below:

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

1. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, 1795f.

2. Amend § 790.2 as follows:

a. Remove paragraphs (b)(3), and (b)(15);

b. Redesignate paragraphs (b)(4) through (b)(14) as paragraphs (b)(3) through (b)(13) and paragraph (b)(16) as paragraph (b)(14);

c. Add one new sentence to the end of redesignated paragraphs (b)(4), (b)(8), (b)(9) and (b)(11);

d. Add ''and carrying out the Board's responsibilities under the Privacy Act'' to the end of the last sentence of redesignated paragraph (b)(7); and

e. Revise redesignated paragraph (b)(13) as follows:

§ 790.2 Central and Regional Office Organization.

* * * * *

(b) * * *

(4) * * * The Director is also responsible for providing NCUA's executive offices and Regional Directors with administrative services, including: agency security; contracting and procurement; management of equipment and supplies; acquisition; printing; and warehousing and distribution.

* * * * *

(8) * * * The Director is also responsible for providing a comprehensive program for the training and development of NCUA's staff, including developing policy consistent with the Government Employees Training Act; providing training opportunities equitably so that all employees have the skills necessary to help meet the agency's mission; evaluating the agency's training and development efforts; and ensuring that the agencies training monies are spent in a cost efficient manner and in accordance with the law.

(9) * * * The Chief Information Officer is also responsible for carrying out the Board's responsibilities under the Paperwork Reduction Act and in directing NCUA responses to reporting requirements.

* * * * *

(11) * * *. The Director is also responsible for providing NCUA's executive offices and Regional Directors with graphics.

* * * * *

(13) *Office of Strategic Program Support and Planning.* This office is responsible for providing interest rate risk assessment, investment expertise and advice to the Board and agency staff and conducting research and development to assess risk areas of emerging products, delivery systems, infrastructure issues, and investments. The office provides leadership, vision and focus on the internal and external environment related to the development

of the agency's long range planning and implementation of the Government Performance Act of 1993. The office provides a macro view of the industry in a way that can be integrated into the day-to-day program functions. A working relationship is maintained with the financial marketplace to develop resources available to the NCUA and keep abreast of product initiatives. The NCUA Investment Hotline housed in this office is a toll-free number that is available to examiners, credit unions and financial product vendors to ask investment related questions. The Hotline provides NCUA an opportunity to be aware of current investment issues as they arise in credit unions and has permitted NCUA to become proactive, rather than reactive, to such issues. In addition, investment officers advise agency management on the purchase of authorized investments for the NCUSIF and the CLF.

* * * * *

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

3. The authority citation for part 792 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f, 5 U.S.C. 552b, Executive Orders 12600 and 12356.

§ 792.50 [Amended]

4. In 12 CFR 792.50(b) remove the last sentence.

§ 792.51 [Amended]

5. In 12 CFR 792.51(b) remove the words ''Administrative Office'' in the third sentence and add in their place, the words ''Office of Chief Financial Officer''.

§§ 792.50 and 792.51 [Amended]

6. In addition to the amendments set forth above, in 12 CFR part 792 remove the words ''Director of Office of Administration'' and add in their place, the words ''NCUA's Chief Financial Officer'' and remove the words ''Director'' and add in their place, the words ''Chief Financial Officer'' in the following places:

a. Section 792.50 (a) and (b); and
b. Section 792.51(a), (b), (c) and (d).

§ 792.54 [Amended]

7. In 12 CFR 792.54(a) remove the words ''Director of the Administrative Office'' in the second sentence and add in their place the words ''Privacy Act Officer, Office of General Counsel.''

§ 792.69 [Amended]

7. In 12 CFR 792.69(a) remove the words ''Director of the Office of Training and Development'' and add in their place the words ''Director of the Office of Human Resources.''

[FR Doc. 02–11220 Filed 5–7–02; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–04–AD; Amendment 39–12743; AD 2002–09–10]

RIN 2120–AA64

Airworthiness Directives; CFE Company Model CFE738–1–1B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to CFE Company Model CFE738–1–1B turbofan engines. This amendment requires replacing the high pressure turbine (HPT) stage 1 aft cooling plate and HPT stage 2 disk at or before they reach new reduced life cycle limits. This amendment is prompted by analysis of the existing life cycle limits by the engine manufacturer. The actions specified by this AD are intended to prevent failure of the HPT stage 1 aft cooling plate and HPT stage 2 disk, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date June 12, 2002.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to CFE Company Model CFE738–1–1B turbofan engines was published in the **Federal Register** on December 4, 2001 (66 FR 63008). That action proposed to require replacing the HPT stage 1 aft cooling plate and HPT stage 2 disk at or before they reach new reduced life cycle limits.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Create AD's for Limits

One commenter questions why the FAA has to create an AD for limits contained in maintenance manuals that are already FAA approved.

AD Issuance Not Required

Another commenter states that this AD is not necessary since all U.S operators must maintain these engines in accordance with Federal Aviation Regulations and manufacturers' recommendations. The commenter also points to section 91.409(e) of the Federal Aviation Regulations (14 CFR 91.409), which requires adherence to life limits established for the aircraft, engines, and other equipment, to say that the AD is not required.

The FAA disagrees with these comments. Life limits are established during the type certification process and initially published in the product's Airworthiness Limitation Section of the Instructions for Continued Airworthiness. The limits established at the time the type certificate is issued are the limits required to be followed by owners and operators until the FAA issues an AD to lower those limits. AD's that apply more restrictive life limits to products are issued when the original life limits contribute to an unsafe condition. Without an AD, unless owners and operators agree to lower life limits as part of a continuous airworthiness maintenance plan, owners and operators need not adhere to a reduction in a life limit appearing only in a revised manual, updated type certificate data sheet, or service document, even if those documents indicate they are FAA approved. After a product enters service the FAA oversees manufacturers, and, as in this instance, reviews analyses performed by the manufacturers of the life limits established at the time the type certificate was issued in order to determine if there is a need to make an adjustment to those limits. Therefore this AD is necessary.

Typographical Error

The FAA comments that a typographical error exists in paragraph (c) of the proposal. Part number (P/N) 6038T38P07 is incorrect, and therefore is changed in the final rule to read P/N 6083T38P07.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the indicated part number change.

Economic Analysis

There are approximately 331 CFE Company model CFE738–1–1B turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 247 engines installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 450 work hours per engine to accomplish the proposed actions (225 work hours to replace the HPT stage 1 aft cooling plate and 225 work hours to replace the HPT stage 2 disk), and that the average labor rate is $60 per work hour. Required parts would cost approximately $32,170 per engine ($11,775 for the HPT stage 1 aft cooling plate and $20,395 for the HPT stage 2 disk). Based on these figures, the total cost of the AD on U.S. operators is estimated to be $14,614,990.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (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) 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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–09–10 CFE Company: Amendment 39–12743. Docket No. 2001–NE–04–AD.

Applicability

This airworthiness directive (AD) is applicable to CFE Company model CFE738–1–1B turbofan engines with high pressure turbine (HPT) stage 1 aft cooling plates, part number (P/N) 6083T38P07, and HPT stage 2 disks, P/N's 6083T92P06, 6083T92P07, 6083T92P08, 6083T92P10, and 6083T92P11, installed. These engines are installed on, but not limited to Dassault-Breguet Falcon 2000 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent failure of the HPT stage 1 aft cooling plate and HPT stage 2 disk due to exceeding the life limit, do the following:

(a) Replace the HPT stage 1 aft cooling plate P/N 6083T38P07 at or before the cooling plate accumulates 3,500 cycles-since-new (CSN).

(b) Replace HPT stage 2 disks, P/N's 6083T92P06, 6083T92P07, 6083T92P08, 6083T92P10, and 6083T92P11; at or before the disk accumulates 2,700 CSN.

(c) After the effective date of this AD, do not install any HPT stage 1 aft cooling plate, P/N 6083T38P07, that exceeds 3,500 CSN.

(d) After the effective date of this AD, do not install any HPT stage 2 disk, P/N 6083T92P06, 6083T92P07, 6083T92P08, 6083T92P10, or 6083T92P11, that exceeds 2,700 CSN.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(g) This amendment becomes effective on June 12, 2002.

Issued in Burlington, Massachusetts, on April 30, 2002.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–11334 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–03]

Establishment of Class E Airspace; Lake Geneva, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Lake Geneva, WI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) has been developed for Grand Geneva Resort Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action establishes controlled airspace for Grand Geneva Resort Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East

Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Lake Geneva (67 FR 2148). The proposal was to establish controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, 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 Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Lake Geneva, WI, to accommodate aircraft executing instrument flight procedures into and out of Grand Geneva Resort Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore, this regulation—(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. Since this is anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 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 95665, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

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

* * * * *

AGL WI E5 Lake Geneva, WI [New]

Grand Geneva Airport, WI
(Lat. 42°36′54″ N., long. 88°23′23″ W.)

That airspace extending upward from 700 feet above the surface within a 8.4-mile radius of the Grand Geneva Resort Airport, excluding that airspace within the Chicago, IL, Burlington, WI, Delavan, WI, and East Troy, WI, Class E airspace areas.

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11503 Filed 5–07–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–14]

Modification of Class D Airspace; Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Columbus, OH. A cutout in the Bolton Field Class D airspace is currently in place between 060 degrees and 105 degrees, from a 1.30-mile radius of the airport. This cutout exists to protect South Columbus Airport which has since been closed. This action reverts the airspace contained in the cutout back to Bolton Field Class D airspace.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plains, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace at Columbus, OH (67 FR 2157). The proposal was to modify controlled airspace extending upward from the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace at Columbus, OH, to accommodate aircraft executing instrument flight procedures into and out of Bolton Field Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore, this regulation—(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. Since this is a routine, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 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 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace areas.

* * * * *

AGL OH D Columbus, OH [Revised]

Bolton Field Airprt, OH

(Lat; 30°54′03″ N., long. 83°08′14″ W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 3.9-mile radius of Bolton Field Airport, excluding that portion beyond a 1.8-mile radius of the Bolton Field Airport bearing 270° to 325°, excluding that airspace within the Port Columbus International Airport, OH Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advanced by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11501 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 01–AGL–10]

Modification of Class D Airspace; Mosinee, WI; Modification of Class E Airspace; Mosinee, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Mosinee, WI, and modifies Class E airspace at Mosinee, WI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP's) have been developed for Central Wisconsin Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action increases the radius of the existing Class D and Class E airspace for Central Wisconsin Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class D and Class E airspace at Mosinee, WI (67 FR 2152). The proposal was to modify controlled airspace extending upward from the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, Class E airspace areas extending upward from the surface of the earth in paragraph 6002, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1 The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D and Class E airpsace at Mosinee, WI, to accommodate aircraft executing instrument flight procedures into and out of Central Wisconsin Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore, this regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 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 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL WI D Mosinee, WI [Revised]

* * * * *

Central Wisconsin Airport, WI

(Lat. 44° 46′ 39″ N., long. 89° 40′ 00″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.5-mile radius of the Central Wisconsin Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas extending upward from the Surface of the earth.

* * * * *

AGL WI E2 Mosinee, WI [Revised]

Central Wisconsin Airport, WI

(Lat. 44° 46′ 39″ N., long. 89° 40′ 00″ W.)

That airspace extending upward from the surface within a 4.5-mile radius of the Central Wisconsin Airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AGL WI E5 Mosinee, WI [Revised]

Central Wisconsin Airport, WI

(Lat. 44° 46′ 39″ N., long. 89° 40′ 00″ W.)

Wausau VORTAC

(Lat. 44° 50′ 49″ N., long. 89° 35′ 12″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Central Wisconsin Airport, and within 4 miles each side of the Wausau VORTAC 039° radial extending from the 7.0-mile radius to 10.9 miles northeast of the airport, excluding the airspace within the Wausau, WI Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11497 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–06]

Modification of Class D Airspace Bloomington, IL; Modification of Class E Airspace; Bloomington, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Bloomington, IL, and modifies class E airspace at Bloomington, IL. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP's) have been developed for Monroe County Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the radius of the existing Class D and Class E airspace for Monroe County Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 7, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace and Class E airspace at Bloomington, IL (67 FR 702). The proposal was to modify controlled airspace extending upward from the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, and Class E airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace at Bloomington, IL, and Class E airspace at Bloomington, IL, to accommodate aircraft executing instrument flight procedures into and out of Monroe County Airport. The area will be depicted on appropriate aeroautical charts.

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. Therefore, this regulation—(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 perparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation. It is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 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 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace

* * * * *

AGL IL D Bloomington, IL [Revised]

Monroe County Airport, IL

(Lat. 39° 08′ 40″N., long. 86° 37′ 00″

That airspace extending upward from the surface of the earth to and including 3,300 feet MSL within a 4.3-mile radius of the Monroe County Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continously published in the Airport/Facility Directory.

* * * * *

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

AGL IL ES Bloomington, IL [Revised]

Monroe County Airport, IL
(Lat. 39° 08′ 40″N., long. 86° 37′ 00″W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Monroe County airport.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11495 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–02]

Modification of Class E Airspace; Greenville, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Greenville, MI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP's) have been developed for Greenville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain airspace executing these approaches. This action increases the radius of the existing controlled airspace for Greenville Municipal Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 7, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Greenville, MI (67 FR 706). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, 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 Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Greenville, MI, to accommodate airspace executing instrument flight procedures into and out of Greenville Municipal Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore, this regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, 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 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

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

* * * * *

AGL MI E5 Greenville, MI [Revised]

Greenville Municipal Airport, MI
(Lat. 43° 08′ 32″N., long 85° 15′ 14″W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Greenville Municipal Airport, Greenville, MI.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11505 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–05]

Modification of Class E Airspace; St. James, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modified Class E airspace at St. James, MN. Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP's) have been developed for St. James Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the radius of the existing controlled airspace for St. James Municipal Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, January 18, 2002, the FAA proposed to amend 14 CFR part 71 to

modify Class E airspace at St. James, MN (67 FR 2613). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, 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 Rule

This amendment to 14 CFR part 71 modifies Class E airspace at St. James, MN, to accommodate aircraft executing instrument flight procedures into and out of St. James Municipal Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore, this regulation—(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. Since this is a routine matter that will only affect air traffic procedure and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 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 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

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

* * * * *

AGL MN E5 St. James, MN [Revised]

St. James Municipal Airport, MN
(Lat. 43°59′11″ N., long. 94°33′29″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the St. James Municipal Airport, St. James, MN.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11504 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–04]

Modification of Class E Airspace; Winona, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Winona, MN. An Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) has been developed for Brainered-Crow Winona Municipal-Max Conrad Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action increases the radius of the existing controlled airspace for Winona Municipal-Max Conrad Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Winona, MN (67 FR 2149). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class B and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Winona, MN, to accommodate aircraft executing instrument flight procedures into an out of Winona Municipal-Max Conrad Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore, this regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the forgoing, 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 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 700.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

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

* * * * *

AGL MN E5 Winona, MN [Revised]

Winona Municipal-Max Conrad Airport, MN
(Lat. 40°04′ 38″ N., long. 91°42′30″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Winona Municipal-Max Conrad Airport, and within 2 miles each side of the 108° bearing extending from the 7-mile radius to 9.5 miles southeast of the airport excluding that airspace within the LaCrosse WI Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11502 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–13]

Establishment of Class E Airspace; Walhalla, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Walhalla, ND. An Area Navigation (RNAV) Standard instrument Approach Procedure (SIAP) has been developed for Walhalla Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action establishes controlled airspace for Walhalla Municipal Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Walhalla, ND (67 FR 2155). The proposal was to establish controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, 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 Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Walhalla, ND, to accommodate aircraft executing instrument flight procedures into and out of Walhalla Municipal Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore, this regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, 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 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

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

* * * * *

AGL ND E5 Walhalla, ND [New]

Walhalla Municipal Airport, ND
(Lat. 48°56′26″ N., long. 97°54′10″ W.)
Devils Lake VOR/DME
(Lat. 48°06′55″ N., long. 98°54′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Walhalla Municipal Airport,

excluding that airspace north of lat. 49°00′00″ N., and that airspace extending upward from 1200 feet above the surface bounded by a line beginning at Lat. 49°00′00″ N., long. 97°30′00″ W., to Lat. 48°48′00″ N., long. 97°30′00″ W., to Lat. 48°22′00″ N., long. 98°31′00″ W., via the Devils Lake VOR/DME 22 mile radius counter clockwise to long. 99°00′00″ W., to lat. 49°00′00″ N., long. 99°00′00″ W., to point of beginning.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11500 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–12]

Establishment of Class E Airspace; Boyceville, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Boyceville, WI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP's) have been developed for Boyceville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action establishes controlled airspace for Boyceville Municipal Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Boyceville, WI (67 FR 2154). The proposal was to establish controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, 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 Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Boyceville, WI, to accommodate aircraft executing instrument flight procedures into and out of Boyceville Municipal Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore, this regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 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 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

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

* * * * *

AGL WI E5 Boyceville, WI [New]

Boyceville Municipal Airport, WI
(Lat. 45°02′39″ N., long. 92;°01′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Boyceville Municipal Airport, excluding that airspace within the Menomonie, WI, Class E airspace area.

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11499 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–11]

Modification of Class E Airspace; Manistee, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Manistee, MI, VHF Omnidirectional (VOR) Standard Instrument Approach Procedures (SIAP's) have been developed for Manistee County-Blacker Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action modifies the extensions to the existing Class E airspace for Manistee County-Blacker Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 7, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Manistee, MI (67 FR 704). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Manistee, MI, to accommodate aircraft executing instrument flight procedures into and out of Manistee County-Blacker Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore, this regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 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. 10584, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

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

* * * * *

AGL MI E5 Manistee, MI [Revised]

Manistee County—Blacker Airport, MI
(Lat. 44°16′21″ N., long. 86°14′15″ W.)
(Lat. 44°16′21″ N., long. 86°14′ 49″ W.)

Manistee VOR/DME
(Lat. 44°16′14″ N., long. 86°15′ 15″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Manistee County-Blacker Airport and within 4 miles north and 8 miles south of the Manistee VOR/DME 385° radial extending from the 7 mile radius to 16 miles west of the VOR/DME, and within 4 miles south and 8 miles north of the Manistee VOR/DME 086° radial extending from the 7.0-mile radius to 16 miles east of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11498 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–09]

Modification of Class E Airspace; Green Bay, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Green Bay, WI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP's) have been developed for Austin-Straubel International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action adds an extension to existing Class E airspace for Austin-Straubel International Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Green Bay, WI, (67 FR 2151). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, 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 Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Green Bay,

WI, to accommodate aircraft executing instrument flight procedures into and out of Austin-Straubel International Airport. The area will be depicted on appropriate aeronautical charts.

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. Therefore, this regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 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 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

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

* * * * *

AGL WI E5 Green Bay, WI [Revised]

Austin-Straubel International Airport, WI
(Lat. 44° 29′ 06″N., long. 88° 07′ 47″W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Austin-Straubel International Airport and within 2 miles each side of the 180° bearing from the Airport extending from the 6.9-mile radius to 12 miles south of the Airport.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11496 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30308; Amdt. No. 435]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

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 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.,

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment 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 95

Airspace, Navigation (air).

Issued in Washington, DC on May 3, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC,

1. The authority citation for part 95 continues to read as follows:

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

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 435, Effective date: June 13, 2002]

From	To	MEA
Atlantic Routes—G026 is Amended to Delete		
Galveston, TX NDB	Rebaa, La FIX	3000
Rebaa, LA FIX	Grand Isle, LA NDB	6000
Grand Isle, LA NDB	Lefko, FL FIX	6000
Lefko, FL FIX	Picny, FL NDB	5000
&95.6001 Victor Routes—U.S.		
&95.6006 VOR Federal Airway 6 is Amended to Read in Part		
Empyr, NY FIX	Nanci, NY FIX	2700
Nanci, NY FIX	La Guardia, NY VOR/DME	5000
&95.6035 VOR Federal Airway 35 is Amended to Read in Part		
Cross City, FL VORTAC	Greenville, FL VORTAC	2000
&95.6123 VOR Federal Airway 123 is Amended to Read in Part		
Robbinsville, NJ VORTAC	Minks, NJ FIX	2000
Minks, NJ FIX	La Guardia, NY VOR/DME	5000
&95.6157 VOR Federal Airway 157 is Amended to Read in Part		
Robbinsville, NJ VORTAC	Minks, NJ FIX	2000
Minks, NJ FIX	La Guardia, NY VOR/DME	5,000
&95.6385 VOR Federal Airway 385 is Amended to Read in Part		
Lubbock, TX VORTAC *4600–MOCA	Wagun, TX FIX	*8500
Wagun, TX FIX *3800–MOCA	Abilene, TX VORTAC	*4900
&95.6433 VOR Federal Airway 433 is Amended to Read in Part		
Grity, NJ FIX	Tickl, NY FIX	4000
Tickl, NY FIX	La Guardia, NY VOR/DME	5000
&95.6445 VOR Federal Airway 445 is Amended to Read in Part		
Empyr, NY FIX	Nanci, NY FIX	2700
Nanci, NY FIX	La Guardia, NY VOR/DME	5000

[FR Doc. 02–11494 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is granting an exemption to designated members of Eurex Deutschland (''Eurex'') from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. By this Order, the Commission also confirms that members of Eurex that have received confirmation of the relief set forth herein may engage in limited marketing conduct from a non-permanent U.S. location with respect to the offer and sale to certain qualified customers located in the U.S. of foreign futures and foreign options, subject to the terms and conditions of prior Commission orders.

EFFECTIVE DATE: May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Esq., Associate Chief Counsel, Susan A. Elliott, Esq., Staff Attorney, or Andrew V. Chapin, Esq., Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Rule 30.10 Exempting Firms Designated by Eurex Deutschland (''Eurex'') From the Application of Certain of the Foreign Futures and Option Rules the Later of the Date of Publication of the Order Herein in the **Federal Register** or After Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein; and Confirming that Designated Members of Eurex May Engage in Limited Marketing Conduct With Respect to Qualified Customers Located in the U.S., as Set Forth in Prior Commission Orders

Commission rules governing the offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade to customers located in the U.S. are contained in Part 30 of the Commission's rules.[1] These rules include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures, that are generally comparable to those applicable to transactions on U.S. markets.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission determined to permit persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements under Part 30 of the Commission's rules based upon substituted compliance with the comparable regulatory requirements of the foreign jurisdiction.

Appendix A to Part 30, ''Interpretative Statement With Respect to the Commission's Exemptive Authority Under 30.10 of Its Rules'' (''Appendix A''), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Rule 30.10.[2] These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an ''as needed'' basis to information essential to maintaining standards of customer and market protection within the U.S.

Moreover, the Commission specifically stated in adopting Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for service of process in the U.S. with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association (''NFA''); (2) agree to provide access to their books and records in the U.S. to Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.[3]

By letter dated April 23, 2001 and subsequent correspondence through November 21, 2001, Eurex petitioned the Commission on behalf of certain firms located and doing business in Germany for an exemption from the application of the Commission's Part 30 rules to those firms. In support of its petition, Eurex states that granting such an exemption with respect to firms that it has authorized to conduct foreign futures and options transactions on behalf of customers located in the U.S. would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory framework comparable to that imposed by the Commodity Exchange Act (''Act'') and the rules thereunder.

Based upon a review of the petition, supporting materials filed by Eurex and the recommendation of the Commission's staff, the Commission has concluded that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with applicable German law and Eurex rules may be substituted for compliance with those sections of the Act and rules thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by Eurex as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;

—The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7;

—The requirement in Commission Rule 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Rule 1.55(b), 17 CFR 1.55(b) and Commission Rule 33.7, 17 CFR 33.7, or as otherwise approved under Commission Rule 1.55(c), 17 CFR 1.55(c);

—Those sections of Part 1 of the Commission's financial rules that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and

—Those sections of Part 1 of the Commission's rules relating to books and records that apply to transactions subject to Part 30, based upon substituted compliance by such persons with the applicable statutes and regulations in effect in Germany.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing persons in Germany who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement that all firms immediately notify Eurex if the firms' liable equity capital falls below a specified level and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets, augmented by a compensation program

[1] Commission rules referred to herein are found at 17 CFR Ch. I (2001).

[2] 52 FR 28980, 29001 (August 5, 1987).

[3] 52 FR 28980, 28981 and 29002.

designed to compensate customers whose assets are segregated and who have suffered a loss as a result of fraud and/or insolvency of a firm;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, a requirement that authorized persons know their customers, required disclosures to prospective customers and prohibitions on misleading advertising and improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, the Eurex, and the relevant German regulators on an ''as needed'' basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in Germany, position data, and data on firms' standing to do business and financial condition.

This Order does not provide an exemption from any provision of the Act or rules thereunder not specified herein, for example, without limitation, the santifraud provision in Rule 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions on or subject to the rules of Eurex for products that customers located in the U.S. may trade.[4] The relief also extends to otherwise permitted transactions on or subject to the rules of any other non-U.S. market where Eurex members are authorized by Germany law to conduct brokerage activities.[5] The relief, however, does not extend to rules relating to trading, directly or indirectly, on U.S. exchanges. For example, a firm trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[6] Similarly, if such a firm were carrying a position on a U.S. exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers.[7] The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firms with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Germany; such firm is engaged in business with customers in Germany as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12(a)(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) All transactions with respect to customers located in the U.S. will be made on or subject to the rules of Eurex and the Commission will receive prompt notice of all material changes to the relevant laws in Germany, any rules promulgated thereunder and Eurex rules;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than German customers under all relevant provisions of German law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A on an ''as needed'' basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions, and where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (e.g., banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Rule 30.5;

(c) Agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in Germany upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) Has no principal, or employee who solicits or accepts orders from customers located in the U.S., who would be disqualified from directly applying to do business in the U.S. under Section 8a(2) of the Act, 7 U.S.C. 12(a)(2);

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, even in circumstances where the claim involves a matter arising primarily out of delivery, clearing, settlement or floor practices, and consents to notify customers located in the U.S. of the availability of such a program;

[4] This Order granting exemptive relief does not authorize the offer or sale of any contract beyond the scope of the Part 30 rules or otherwise inconsistent with the CEA. Thus, for example, Eurex members may not offer or sell to U.S. customers any security futures product or any non-narrow-based stock index futures product. See, *e.g.,* Sections 2(a)(1)(c) and (d) of the Commodity Exchange Act.

[5] See, e.g., 64 FR 50248, 50251 (September 16, 1999)(permitting designated members of the Singapore Exchange Derivatives Trading Limited to solicit and accept from U.S. customers foreign futures and foreign options orders for otherwise permitted transactions on an exchange located outside Singapore).

[6] See, e.g., 17 CFR Part 18 (2001).

[7] See, e.g., 17 CFR Parts 17 and 21 (2001).

(f) Consents to refuse customers resident in the U.S. the option of not segregating funds notwithstanding relevant provisions of the German regulatory system and otherwise consents to provide all customers resident in the U.S. no less stringent regulatory protection than German customers under all relevant provisions of German law; and

(g) Undertakes to comply with the applicable provisions of German laws and Eurex rules that form the basis upon which this exemption from certain provisions of the Act and rules thereunder is granted.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.[8] Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

The Commission also confirms that Eurex members that receive confirmation of relief set forth herein may engage in limited marketing conduct with respect to certain qualified customers located in the U.S. from a non-permanent location in the U.S., subject to the terms and conditions set forth in prior Commission Orders.[9] The Commission notes that any firm and their employees or other representatives which engage in marketing conduct pursuant to this relief are deemed to have consented to the Commission's jurisdiction over such marketing activities by their filing of a valid and binding appointment of an agent in the U.S. for service of process.

This Order will become effective as to any designated Eurex member firm the later of the date of publication of the Order in the **Federal Register** or the filing of the consents set forth in paragraph (2). Upon filing of the notice required under paragraph (1)(b) as to any such firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and Eurex.

This Order is issued pursuant to Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A, have generally been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules and will make necessary adjustments if appropriate.

Issued in Washington, DC on April 29, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–11013 Filed 5–7–02; 8:45 am]

BILLING CODE 6351–01–P

[8] 62 FR 47792, 47793 (September 11, 1999). Among other duties, the Commission authorized NFA to receive requests for confirmation of Rule 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Rule 30.10 Order and to grant exemptive relief from registration to qualifying firms.

[9] See 57 FR 49644 (November 3, 1992)(permitted limited marketing of foreign futures and foreign options products to certain governmental and institutional customers located in the U.S.); 59 FR 42156 (August 17, 1994)(expanding the relief set forth in the 1992 release to conduct directed towards ''accredited investors'', as defined in the Securities and Exchange Commission's Regulation D issued pursuant to the Securities Act of 1933).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–020; Order No. 587–O]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued: May 1, 2002.

AGENCY: Federal Energy Regulatory Commission, DOT.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is adopting the most recent version, Version 1.5, of the consensus industry standards, promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB), formerly the Gas Industry Standards Board. The Commission also is removing its regulations dealing with pipeline Electronic Bulletin Boards (EBBs), since all pipelines are required under Commission regulations to provide all electronic communications and conduct all electronic transactions using the public Internet.

DATES: The rule will become effective June 7, 2002. Pipelines are required to make filings to comply with the regulations adopted in this rule by August 1, 2002, with an effective date of October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1283.

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0507.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell

1. The Federal Energy Regulatory Commission (Commission) is amending § 284.12 of its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is adopting the most recent version, Version 1.5, of the consensus industry standards, promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB), formerly the Gas Industry Standards Board. The Commission also is removing § 284.12(a) of its regulations dealing with pipeline Electronic Bulletin Boards (EBBs),[1] since all pipelines are required under

[1] Citations to § 284.12 refer to the section as redesignated after removal of § 284.12(a).

Commission regulations to provide all electronic communications and conduct all electronic transactions using the public Internet.[2] The rule is intended to benefit the public by adopting the most recent and up-to-date standards governing business practices and electronic communication that includes new shipper options such as title transfer tracking, as well as standards for imbalance netting and trading and uniform procedures for implementation of aspects of Order No. 637.[3]

I. Background

2. Since 1996, in the Order No. 587 series,[4] the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In this series of orders, the Commission incorporated by reference consensus standards developed by NAESB, a private consensus standards developer composed of members from all segments of the natural gas industry. NAESB is an accredited standards organization under the auspices of the American National Standards Institute (ANSI).

3. On October 19, 2001, NAESB filed with the Commission a report informing the Commission that it had adopted a new version of its standards, Version 1.5. On December 3, 2001, NAESB filed with the Commission a report listing errata to the Version 1.5 standards.

4. NAESB reported that its newest version contains some of the following highlights: modifications to the data set, data element, and code value tables to support Internet web page standards and the transition of EBBs to the Internet; business practice standards and data sets governing imbalance netting and trading (although standards for electronic data interchange of the imbalance netting and trading are still in process); standards for title transfer tracking (TTT), with a recommendation from the NAESB Executive Committee that these standards be implemented no earlier than eight months from publication of these standards on August 18, 2001; and standards to support the implementation of Order No. 637 (additional standards are still being considered at the subcommittee level). NAESB also reported that its electronic delivery mechanism standards include modifications related to the surety assessment performed by Sandia National Laboratories on the NAESB Electronic Delivery Mechanism (EDM) standards.

5. On December 20, 2001, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to incorporate Version 1.5 of the NAESB standards into the Commission's regulations. [5] The Commission specifically requested comment on whether it should adopt NAESB standard 5.3.2 dealing with the timeline for capacity release transactions. In pertinent part, standard 5.3.2 provides that shippers consummating pre-arranged non-biddable capacity release transactions must notify the pipeline one hour prior to the time at which the replacement shipper would nominate under the release transaction. The Commission requested comment on whether it should adopt the one-hour prior notice requirement since in orders implementing Order No. 637, the Commission required pipelines to permit notice of the capacity release transaction coincident with the nomination timeline.

6. Thirteen comments were filed on the NOPR.[6] All the comments supported adoption of Version 1.5 of the NAESB standards, and only comment challenged any of the provisions.

II. Discussion

7. The Commission is adopting Version 1.5 [7] of NAESB's consensus standards by incorporating these standards into its regulations.[8] Pipelines are required to make filings to comply with the regulations adopted in this rule by August 1, 2002, with an effective date of October 1, 2002.[9]

8. Version 1.5 of the NAESB standards includes standards implementing provisions of Order No. 637, provides added flexibility to shippers, standardizes additional business practices, and updates and improves the current standards.[10] The principal changes occur in the areas of capacity release scheduling, title transfer tracking, imbalance netting and trading, and improvement of the standards for conducting business transactions electronically over the Internet. Version 1.5 (Standard 5.3.2) revises the capacity release bidding and scheduling standard to provide for nomination equality as required by the Commission in Order No. 637.[11] Version 1.5 incorporates a series of standards (Standards 1.3.64 through 1.3.78) that provides for title transfer tracking at pooling points. These standards will provide shippers with greater flexibility in structuring business transactions, and will enhance the liquidity of the natural gas market by providing for accurate accounting of gas purchase and sale transactions and integrating such transactions into the pipeline scheduling process. Version 1.5 includes new standards (standards

[2] New 18 CFR 284.12(b)(3)(i)(A).

[3] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091 (Feb. 9, 2000).

[4] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,067 (Sept. 29, 1998), Order No. 587–K, 64 FR 17276 (Apr. 9, 1999), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,072 (Apr. 2, 1999); Order No. 587–M, 65 FR 77285 (Dec. 11, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,114 (Nov. 30, 2000); Order No. 587–N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles, ¶ 31,125 (Mar. 11, 2002).

[5] Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 67 FR 44 (Jan. 2, 2002), IV FERC Stats. & Regs. Proposed Regulations, ¶ 32,557 (Dec. 20, 2001).

[6] The commenters and the abbreviations used in this order are listed on the appendix.

[7] The incorporation includes the errata sheets published by NAESB.

[8] Pursuant to the regulations regarding incorporation by reference, copies of Version 1.5 of the standards are available from NAESB, and the standards can be viewed, but not copied, at the Office of the Federal Register and at the Commission's Public Reference Room. 5 U.S.C. 552 (a)(1); 1 CFR 51 (2001).

[9] NAESB standard 1.3.78 provides that implementation of TTT not take place until eight months after publication of the TTT standards in the NAESB standards manual (which took place on August 18, 2001). Since the Commission's implementation date of October 1, 2002, falls after April 18, 2002, pipelines will be required to implement the TTT standards at the same time as the other standards.

[10] In Version 1.5, NAESB made the following changes to its standards. It added Principles 1.1.20, 1.1.21 and 2.1.5; Definitions 1.2.13 through 1.2.19, 2.2.2, 2.2.3, and 4.2.20; Standards 1.3.64 through 1.3.78, 2.3.36 through 2.3.50, 3.3.26, 4.3.86, 4.3.87, and 5.3.43; and Data Sets 2.4.7 through 2.4.16. It revised Standards 1.3.2, 1.3.54, 1.3.61, 1.3.63, 2.3.30, 2.3.32, 2.3.34, 4.3.16, 4.3.23, 4.3.35, 5.3.2, 5.3.22, 5.3.24, 5.3.31, 5.3.32, and 5.3.33, and Data Sets 1.4.1 through 1.4.7, 2.4.1, 2.4.3 through 2.4.6, 3.4.1, 3.4.2, 3.4.4, 5.4.1 through 5.4.10, 5.4.12, 5.4.13, and 5.4.16 through 5.4.19. It deleted Principles 4.1.5 and 4.1.8, and Standard 4.3.77.

[11] New 18 CFR 284.12 (b)(1)(ii) (2001); Order No. 637, 65 FR at 10191, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091, at 31,297.

2.3.36 through 2.3.50) for transmitting statements of allocation and implementing imbalance netting and trading as required by the Commission's regulations.[12] Version 1.5 also updates and improves the standards by modifying the electronic communication standards to better support Internet web page standards and the transition of EBBs to the Internet and by effectuating changes related to the assessment provided by Sandia National Laboratories. Commission adoption of these standards will keep the Commission regulations current.[13]

9. NAESB approved the standards under its consensus procedures.[14] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as means to carry out policy objectives or activities.[15]

10. The Commission will address the comments on the NOPR below.

A. Capacity Release Timeline

11. In the NOPR, the Commission requested comment on whether to adopt in full Standard 5.3.2 of the NAESB standards which provides a timeline for pipelines to process capacity release transactions (biddable and non-biddable pre-arranged deals), and the resulting nominations submitted by replacement shippers. The NAESB standards provide for four nomination cycles.[16]

Nomination cycle	Time nomination due (CCT)[17]	Time nomination takes effect (CCT)
Timely Nomination.	11:30 a.m	9 a.m. next gas day
Evening Nomination.	6 p.m	9 a.m. next gas day
Intra-Day 1	10 a.m	5 p.m. same gas day
Intra-Day 2	5 p.m	9 p.m. same gas day

[17] CCT refers to Central Clock Time, which includes an adjustment for day light savings time. See New 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.1 (2001). Under the NAESB standards, a gas day runs from 9 a.m. central clock time (CCT) on Day 1 to 9 a.m. CCT the next day (Day 2). New 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.1 (2001).

The pertinent section of Standard 5.3.2 provides that for pre-arranged non-biddable capacity release transactions the pipeline must be informed of the transaction one hour prior to each of the nomination opportunities in order for the replacement shipper to nominate at that opportunity.[18]

12. In Order No. 637, the Commission adopted new § 284.12(b)(1)(ii) of its regulations in order to provide scheduling equality between capacity release transactions and pipeline transportation services.[19] In implementing this provision of Order No. 637, the Commission had required pipelines to provide that notice of the capacity release transaction could be provided coincident with nomination by the replacement shipper.[20] In the NOPR, the Commission requested comment on whether it should adopt the NAESB one-hour notification period or continue to require pipelines to permit notification coincident with nomination.

13. The comments (except for Atmos) support adoption of the NAESB one-hour notification standard. Those supporting the standard maintain that the one-hour standard was a product of NAESB's consensus process, and that the Commission should defer to the consensus of the industry. The pipelines contend that the one-hour notification requirement is necessary for them to complete internal verification of contract data, such as updating their contract data base to reflect the assignment of capacity rights, so that nominations can be validated and the nomination process can proceed seamlessly. Without accurate data bases, the pipelines assert that nominations may be incorrectly rejected, because the contract data base does not reflect the assignment of capacity rights. While supporting the NAESB standard, AGA states that NAESB standards are minimums and that pipelines should be encouraged to exceed the minimum standard. In this regard, AGA contends the Commission should not disturb individual Order No. 637 compliance proceedings in which pipelines have already implemented scheduling systems with less than the one-hour notice.

14. Atmos maintains the Commission should reject the one-hour notice requirement as contrary to Commission policy. It argues that NAESB has failed to provide any justification for the departure from the Order No. 637 scheduling policy, and maintains pipelines that cannot meet the requirement for coincident notification and nomination should seek waivers.

15. The Commission is incorporating Standard 5.3.2 into its regulation and finds that compliance with this standard satisfies the scheduling equality requirements of new § 284.12(b)(1)(ii) of its regulations.[21] Standard 5.3.2 reflects the consensus of all facets of the natural gas industry. The Commission's general policy has been to accept such standards when they reflect the broad consensus of the industry.[22] The industry has determined that the one-hour notification requirement reflects a balance between the need for speed in consummating capacity release transactions and the need to update and verify contract data bases to ensure that

[12] New 18 CFR 284.12(b)(2)(ii) (2001).

[13] The Commission also is continuing its previous practice of excluding standards 2.3.29 dealing with operational balancing agreements (OBAs), 2.3.30 dealing with netting and trading of imbalances, and 4.3.4 dealing with retention of electronic data. The Commission has issued its own regulations in these areas (New 18 CFR 284.12(b)(2)(i) (OBAs), (c)(2)(ii) (netting and trading of imbalances), and (c)(3)(v) (record retention)), so that incorporation of the NAESB standards is unnecessary and may cause confusion as to the applicable Commission requirements.

[14] This process first requires a super-majority vote of 17 out of 25 members of NAESB's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of NAESB's general membership must ratify the standards.

[15] Pub L. No. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[16] New 18 CFR 284.12(a)(1)(i) (2001), Nominations Related Standard 1.3.2.

[18] For example, for the Timely Nomination cycle, the pipeline must be informed of the capacity release transaction by 10:30 a.m. CCT, one hour prior to the nomination deadline at 11:30 a.m.

[19] New 18 CFR 284.12(b)(1)(ii). This regulation provides that pipelines ''must permit shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity. If the pipeline requires the replacement shipper to enter into a contract, the contract must be issued within one hour after the pipeline has been notified of the release, but the requirement for contracting must not inhibit the ability of the replacement shipper to submit a nomination at the earliest available nomination opportunity.''

[20] *See* Colorado Interstate Gas Company, 95 FERC ¶ 61,321, at 62,111–12 (2001), 97 FERC ¶ 61,011 (2001).

[21] Some pipelines will be required to implement Standard 5.3.2 (Version 1.5) as part of their Order No. 637 compliance proceedings. But, in any event, a pipeline must file to comply with this standard by no later than August 1, 2002.

[22] Order No. 587, 61 FR at 39056–57, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038, at 30,059–60.

nominations are accurate and can be processed efficiently, and the Commission finds the standard has struck a reasonable balance between the interests of all parties.

16. As AGA points out, the NAESB standards are generally considered minimum requirements that do not preclude pipelines from offering enhanced services, so long as the enhancement provides increased flexibility, does not compromise the uniformity sought to be achieved through standardization, does not affect shippers' ability to utilize the standard procedure, and does not adversely affect the rights of other parties.[23] In this case, the Commission agrees with AGA that pipelines can provide for shorter prior notice periods for prearranged, non-biddable deals without having adverse effects on shippers or limiting the benefits sought to be achieved by standardization. In order to provide shippers with the utmost flexibility in scheduling, the Commission encourages pipelines to reduce or eliminate prior notice provisions for pre-arranged non-biddable deals, as their scheduling systems currently permit or as these systems are improved in the future.

17. With respect to Atmos's comment that NAESB failed to justify the one-hour prior notice requirement, the comments in this proceeding have shown that this time period is a reasonable period for pipelines to update their contract data bases and provide for accurate verification of nominations. Atmos's suggestion to adopt a more stringent notification requirement and require pipelines to seek individual waivers would unnecessarily involve the Commission in attempting to evaluate the capabilities of individual pipeline computer operations. Given the industry consensus supporting the NAESB standard, the Commission finds little to be gained from entering into such an inquiry on an individual pipeline basis.

B. Title Transfer Tracking Standards

18. EPPG seeks clarification that the Version 1.5 NAESB standards do not require pipelines to provide title transfer tracking (TTT), and that pipelines need not provide TTT services beyond those contemplated by the Version 1.5 NAESB standards.

19. To ensure consistent implementation, the Commission will provide its interpretation of the pipelines' responsibilities with respect to TTT. Title transfer, under the standards, is defined as ''the change of title to gas between parties at a location.'' [24] Title Transfer Tracking (TTT) is defined as ''the process of accounting for the progression of title changes from party to party that does not effect a physical transfer of the gas.'' [25] The two standards defining the pipelines' responsibility are Standards 1.3.64 and 1.3.65. In pertinent part, Standard 1.3.64 provides: ''At a minimum, the Transportation Service Providers (TSP) should be responsible for accommodating Title Transfer Tracking (TTT) services at all points identified by the TSP as pooling points, where TTT services are requested.'' Standard 1.3.65 provides that ''the Title Transfer Tracking services should be supported by means of the nominations, quick responses and scheduled quantities processes.''

20. The Commission interprets these standards as requiring pipelines to permit and process, on a non-discriminatory basis, transportation nominations (along with required responsive scheduling information) effecting transfers of title at pooling points by any party including shippers, poolers, or third party account administrators.[26] As a simple example, Producer A aggregates 1000 Dth of gas from three receipt points at its pool at Pool 1, sells 1000 Dth to Marketer B at Marketer B's pool at Pool 1, and Marketer B sells 1000 Dth to Shipper C at the pooling point for transportation to Shipper C's delivery point under Shipper C's firm transportation contract.

Under the NAESB standards, the pipeline would have to process a transportation nomination from Producer A, including provision of the required scheduling responses, to reflect the transfer of gas from Producer A's pool to Marketer B's pool. Other than processing the transportation nomination to reflect the in-place transfer of gas, the pipeline would be required to provide no other ''accounting services'' [27] respecting the transfer of title. If EPPG requires more specific clarification as to its specific responsibilities for processing such nominations, it should request such a clarification from NAESB pursuant to NAESB's procedures for seeking interpretations of standards.[28]

[23] Order No. 587, 61 FR at 39062, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038, at 30,069–70.

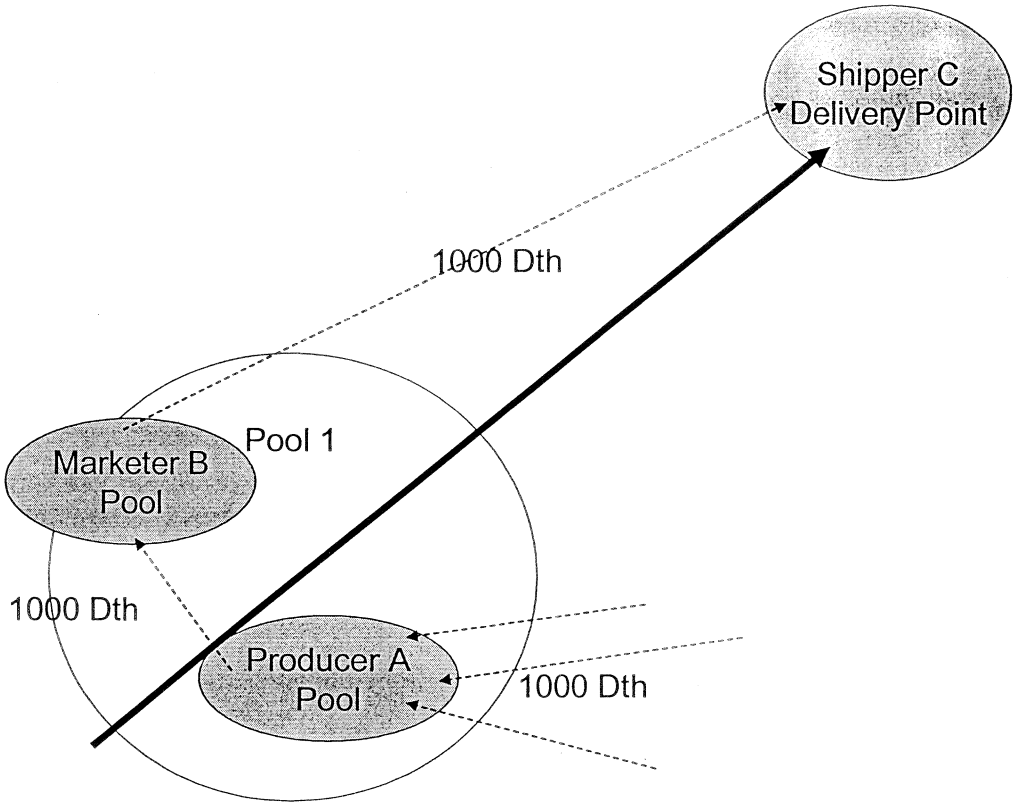
[24] Standard 1.2.14 (Version 1.5).

[25] Standard 1.2.15 (Version 1.5).

[26] A Third Party Account Administrator is defined as a Title Transfer Tracking Service Provider other than the Transportation Service Provider. Standard 1.2.17 (Version 1.5).

[27] Standard 1.2.15 defines title transfer tracking as the ''process of accounting for the progression of title changes from party to party.''

[28] NAESB PROCEDURES FOR ADOPTING STANDARDS, § 5.1 (*http://www.naesb.org/gov.htm*).



21. Williston maintains that it does not anticipate receiving requests for title transfer services and that it would take three months for it to implement a request for such services. It requests an extension of time to implement the TTT standards until three months after receiving a request to accommodate such services.

22. Such a specific request will not be granted in a rulemaking proceeding where potentially affected parties do not have the opportunity to protest the request. Further, since the NAESB standards envision that the pipelines are to accommodate title transfers using their existing nomination and scheduling processes, it is not clear why additional time is needed to permit title transfers.[29] Williston is free to file for an individual waiver of compliance with the regulation if it can show good cause.

C. Implementation

23. A number of comments request that the Commission implement the standards on the first day of the month falling 90 days after the issuance of the final rule, because first-of-the-month implementation facilitates administration. They further request that the TTT standards be implemented at the same time.[30] The Commission is granting these requests by providing for implementation on October 1, 2002, which is more than three months from adoption of the regulations, and is requiring implementation of the TTT standards at the same time.

24. KM Pipelines and Williston request that for those pipelines that have not yet implemented Order No. 637, implementation of the standards should be delayed until 90 days after the pipeline's implementation of Order No. 637. They maintain that such a delay is needed because of the extensive changes required by Order No. 637 and because implementation of the standards before implementation of Order No. 637 might result in conflicting tariff language.

25. The Commission denies the requests to delay implementation. The pipelines have not demonstrated that the changes in the NAESB standards relating to Order No. 637 create any conflict with requirements of Order No. 637 or will significantly delay the ability of a pipeline to comply with Order No. 637.

26. Nisource Pipelines requests a waiver of the requirement to implement the Electronic Data Interchange (EDI) requirements in the standards if a pipeline has no electronic trading partners or, in the alternative, requests a longer amount of time in which to implement such standards. Nisource Pipelines maintains that three months is not sufficient time to implement the EDI requirements. The Commission will not grant a generic waiver of EDI requirements in this rulemaking. Requests for waiver or extension of time to implement the EDI requirements must be handled on an individual basis depending on the circumstances facing the pipeline.

D. Sandia National Laboratories Recommendations

27. In its transmittal letter, NAESB reported that its electronic delivery mechanism standards include modifications related to the surety assessment performed by Sandia National Laboratories on the NAESB Electronic Delivery Mechanism (EDM) standards. Dominion and INGAA request clarification that the Commission is not adopting or endorsing the Sandia National Laboratories recommendations. INGAA maintains the Executive Committee sent the Sandia recommendations to a NAESB subcommittee for further review. The Commission clarifies that it is adopting here only the standards

[29] Standard 1.3.65 (title transfer tracking services should be supported by means of the nominations, quick responses and scheduled quantities processes); Standard 1.3.70 (title transfer tracking should be conducted using existing applicable data sets).

[30] Comments by INGAA, Dominion, EIP, Gulf South, Northern Natural, Williston.

adopted by NAESB (to the extent these standards reflect the Sandia recommendations), and is not independently adopting or endorsing the Sandia report.

III. Notice of Use of Voluntary Consensus Standards

28. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that when a federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the final rule identifying whether a voluntary consensus standard or a government-unique standard is being adopted. In this rulemaking, the Commission is incorporating by reference standards issued by the North American Energy Standards Board.

IV. Information Collection Statement

29. The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

30. The final rule will affect the following existing data collections: FERC–545 ''Gas Pipeline Rates: Rate Change (Non-Formal)'' (OMB Control No. 1902–0154) and FERC–549C ''Standards for Business Practices of Interstate Natural Gas Pipelines'' (OMB Control No. 1902–0174). The following burden estimates are related only to this rule and include the costs of complying with NAESB's version 1.5 standards. The burden estimates for the FERC–545 data collection are related to the tariff filings required to implement NAESB's version 1.5 standards. The burden estimates for the FERC–549C data collection are related to implementing the latest version of the business practice standards and related data sets. The costs for both of these data collections are primarily related to start-up and will not be on-going costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total annual hours
FERC–545	93	1	38	3,534
FERC–549C	93	1	4,526	420,918

The total annual hours for collection is 424,452 hours.

	FERC–545	FERC–549C
Annualized capital/startup costs	$198,857	$23,684,934
Annualized costs (operations & maintenance)	0	0
Total annualized costs	198,857	23,684,934

The cost per respondent is $256,815 (rounded off).

31. The Commission sought comments to comply with these requirements. Comments were received from thirteen entities. No comments addressed the reporting burden imposed by these requirements. The substantive issues raised by the commenters are addressed in this preamble.

32. The Commission's regulations adopted in this rule are necessary to further the process begun in Order No. 587 of creating a more efficient and integrated pipeline grid by standardizing the business practices and electronic communication of interstate pipelines. Adoption of these regulations will update the Commission's regulations relating to business practices and communication protocols to conform to the latest version, Version 1.5, approved by NAESB.

33. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in this Final Rule will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

34. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, CI–1, (202) 208–1415, or *mike.miller@ferc.gov*] or the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW, Washington, DC 20503. The Desk Officer can also be reached at (202) 395–7318, or fax: (202) 395–7285.

V. Environmental Analysis

35. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[31] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[32] The regulations adopted in this rule fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[33] Therefore, an environmental assessment

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

[32] 18 CFR 380.4.

[33] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

is unnecessary and has not been prepared.

VI. Regulatory Flexibility Act Certification

36. The Regulatory Flexibility Act of 1980 (RFA) [34] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations adopted herein will not have a significant adverse impact on a substantial number of small entities.

VII. Document Availability

37. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

38. From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Documents & Filing link. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Documents & Filing link. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

[34] 5 U.S.C. 601–612.

39. User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to WebMaster@ferc.gov) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.gov*).

40. During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

VIII. Implementation Dates

Pipelines are required to make filings to comply with the regulations adopted in this rule by August 1, 2002, with an effective date of October 1, 2002. Pipelines must file revised tariff sheets to incorporate Version 1.5 of the standards into their tariffs since their tariffs incorporate by reference an older version number. [35] To the extent pipelines have individual tariff provisions based on these standards, pipelines also will have to conform their tariffs to the new standards.[36]

IX. Effective Date

41. These regulations are effective June 7, 2002. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in Section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 284, chapter I, Title 18, *Code of Federal Regulations*, as follows:

[35] *See* Texas Eastern Transmission Corporation, 77 FERC ¶ 61,175, at 61,646 (1996) (pipelines incorporating standards by reference in their tariffs must include number and version).

[36] In filing to implement Version 1.5 of the NAESB standards, pipelines need to change all references to the standards in their tariffs to Version 1.5. The version number applies to all standards contained in NAESB's Version 1.5 Standards Manuals, including standards that have not changed from prior versions.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

§ 284.12 [Amended]

2. Section 284.12 is amended as follows:

a. Paragraph 284.12(a) is removed and paragraphs 284.12(b) and (c) are redesignated 284.12(a) and (b) respectively.

b. In newly redesignated paragraphs (a)(1)(i), (ii), (iii), and (v), revise all references to ''Version 1.4, August 31, 1999'' to read ''Version 1.5, August 18, 2001, including errata dated October 1, 2001, and November 30, 2001.''

c. In newly redesignated paragraph (a)(1)(iv), revise all references to ''Version 1.4, November 15, 1999'' to read ''Version 1.5, August 18, 2001, including errata dated October 1, 2001, and November 30, 2001.''

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Comments Filed

Docket No. RM96–1–020

Commenter	Abbreviation
American Gas Association ..	AGA.
Atmos Energy Corporation ..	Atmos.
Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Crossroads Pipeline Company, and Granite State Gas Transmission, Inc.	Nisource Pipelines.
Dominion Transmission, Inc	Dominion.
El Paso Pipeline Group	EPPG.
Enron Interstate Pipelines ...	EIP.
Great Lakes Gas Transmission Limited Partnership.	Great Lakes.
Gulf South Pipeline Company, LP.	Gulf South.
Interstate Natural Gas Association of America.	INGAA.
Natural Gas Pipeline Company of America, Kinder Morgan Interstate Gas Transmission LLC.	KM Pipelines.
Northern Natural Gas Company.	Northern Natural.
Williams Gas Pipeline Company.	Williams.
Williston Basin Interstate Pipeline Company.	Williston.

[FR Doc. 02–11346 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 91N–384H and 96P–0500]

RIN 0910–AA19

Food Labeling; Nutrient Content Claims, Definition of Sodium Levels for the Term ''Healthy;'' Extension of Partial Stay

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; extension of partial stay.

SUMMARY: The Food and Drug Administration (FDA) is extending until January 1, 2006, the partial stay of certain provisions of the nutrient content claim regulations pertaining to the use of the term ''healthy.'' This action is being taken to allow the agency to conduct rulemaking to consider amending the sodium content requirements for foods labeled ''healthy.'' A stay also will provide industry time to implement any changes resulting from the rulemaking.

DATES: Effective May 8, 2002, 21 CFR 101.65(d)(2)(ii)(C), (d)(3)(ii)(C), and (d)(4)(ii)(B) are stayed until January 1, 2006. Submit written or electronic comments by June 7, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–822), Harvey W. Wiley Federal Bldg., 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1798.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 10, 1994 (59 FR 24232), FDA published a final rule defining the term ''healthy'' under section 403(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)). The final rule set up criteria for individual foods and for meal and main dish products to be able to use the nutrient content claim ''healthy.'' Among other things, the final rule defined sequential timeframes (before January 1, 1998, and after January 1, 1998) in which different criteria for sodium content would be effective for foods labeled ''healthy'' or bearing another related term.

The final rule provided that before January 1, 1998, individual foods (including raw, single-ingredient seafood or game meat) could be labeled as ''healthy'' only if they contained no more than 480 milligrams (mg) of sodium: (1) Per reference amount customarily consumed per eating occasion (reference amount); (2) per serving size listed on the product label; and (3) per 50 grams (g) for products with small reference amounts (i.e., less than or equal to 30 g or less than or equal to 2 tablespoons) (§ 101.65(d)(2)(ii)(A) through (d)(2)(ii)(B) and (d)(3)(ii)(A) through (d)(3)(ii)(B)). Meal and main dish products could be labeled as ''healthy'' only if they contained no more than 600 mg of sodium per reference amount (§ 101.65(d)(4)(ii)(A)). After January 1, 1998, however, the sodium criteria for ''healthy'' foods were to become more stringent. For individual foods, the limit to qualify for a ''healthy'' claim was to become 360 mg sodium: (1) Per reference amount; (2) per serving size listed on the product label; and (3) per 50 g for products with small reference amounts (§ 101.65(d)(2)(ii)(C)(1) through (d)(2)(ii)(C)(2) and (d)(3)(ii)(C)(1) through (d)(3)(ii)(C)(2)). For meal and main dish products, the limit was to become 480 mg of sodium per reference amount (§ 101.65(d)(4)(ii)(B)). In the remainder of this document, the original, higher sodium levels will be referred to as the ''first-tier sodium levels''; the lower levels that were to go into effect on January 1, 1998, will be referred to as the ''second-tier sodium levels.''

On December 13, 1996, FDA received a petition from ConAgra, Inc. (the petitioner), requesting that the agency amend § 101.65(d) to ''eliminate the sliding scale sodium requirement for foods labeled 'healthy' by eliminating the entire second tier levels of 360 mg sodium for individual foods and 480 mg sodium for meals and main dishes.'' As an alternative, the petitioner requested that the January 1, 1998, effective date for the second-tier sodium levels be delayed until such time as food technology ''catches up'' with FDA's goal to reduce the sodium content of foods, and there is a better understanding of the relationship between sodium and hypertension.

FDA responded to ConAgra's petition by announcing a stay of the second-tier sodium levels until January 1, 2000 (62 FR 15390, April 1, 1997). This stay was intended to allow time for FDA to: (1) Reevaluate the second-tier sodium levels based on data contained in the petition and any additional data that the agency might receive; (2) conduct any necessary rulemaking; and (3) give industry an opportunity to respond to the rule or to any change in the rule that may result from the agency's reevaluation.

In the **Federal Register** of December 30, 1997 (62 FR 67771), FDA published an advance notice of proposed rulemaking (ANPRM) announcing that it was considering whether to initiate rulemaking to reevaluate and possibly amend the nutrient content claim regulations pertaining to use of the term ''healthy.'' In the ANPRM, FDA requested comments on whether it should propose to amend the definition of the term ''healthy'' relative to sodium requirements. Persons who supported changing the ''healthy'' definition were asked to address what the new definition should require to ensure that the term could appear on a significant number of foods, without being so broadly defined as to lose its value in highlighting foods that are useful in constructing a diet consistent with dietary guidelines. Those who supported allowing the second-tier sodium levels to take effect were asked to provide data to demonstrate that those levels were not so restrictive as to effectively prevent use of the term (62 FR 67771 at 67772).

FDA received 22 responses to the ANPRM. The comments presented a variety of views on whether FDA should allow the second-tier sodium levels to take effect. They also contained a significant amount of data relating to the use of the term ''healthy'' in the marketplace.

In the **Federal Register** of March 16, 1999 (64 FR 12886), FDA further extended the stay of the second-tier sodium requirement for individual foods (§ 101.65(d)(2)(ii)(C)), for meal and main dish products (§ 101.65(d)(4)(ii)(B)), and for raw, single-ingredient seafood or game meat (§ 101.65(d)(3)(ii)(C)) until January 1, 2003.

FDA has decided that it is appropriate to further stay the second-tier sodium provisions of the final rule for the term ''healthy'' until January 1, 2006. Agency regulations at 21 CFR 10.35(a) provide that the Commissioner of Food and Drugs may at any time stay the effective date of an action. The agency finds that a further extension of the stay of the second-tier sodium provisions is in the public interest.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment,

effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(3)(B), (d)(3), and 21 CFR 10.40(e)(1). Under these provisions, FDA may issue a regulation without notice and comment when the agency determines that such procedures are impracticable, unnecessary, or contrary to the public interest. Seeking public comment before implementing this stay would be contrary to the public interest.

The current, second-tier sodium provisions are scheduled to take effect on January 1, 2003. To comply with this effective date, manufacturers would have to reformulate and/or relabel their products within a short timeframe, a process that could involve significant expense. As FDA is currently preparing to issue a proposed rule concerning ''healthy'' sodium levels, it would be contrary to the public interest to require manufacturers to comply with the second-tier sodium levels, even as the agency considers whether alternative levels may be more appropriate. Accordingly, a further stay of the second-tier sodium levels is warranted. This stay will give the agency time to issue its proposed rule, consider comments, and complete the rulemaking. The stay also will allow time for manufacturers to make changes necessitated by the rulemaking (e.g., reformulating or relabeling products and using up old label stock). Finally, the January 1, 2006, effective date should coincide with the uniform compliance dates for food labeling regulations. The next uniform compliance date is scheduled for January 1, 2004, and FDA typically sets these dates to occur every 2 years (see 65 FR 69666).

Although FDA has determined that it is in the public interest to issue this rule without prior public comment, interested persons are invited to submit comments on whether this extension of the stay of the second-tier sodium levels should be modified or revoked (see 21 CFR 10.40(e)(1)). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FDA encourages manufacturers who can meet the second-tier sodium levels for particular foods and still produce an acceptable product to do so, even as the agency proceeds with rulemaking.

For the reasons set forth in the preamble, 21 CFR 101.65(d)(2)(ii)(C), (d)(3)(ii)(C), and (d)(4)(ii)(B) are stayed until January 1, 2006.

Dated: April 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11378 Filed 5–7–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, 19, 20, 22, 24, 25, 26, 27, 70, and 251

[T.D. ATF—479]

RIN 1512–AC47

Importation of Distilled Spirits, Wines, and Beer; Recodification of Regulations (2000R–247P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is recodifying the regulations pertaining to the importation of distilled spirits, wines, and beer. The purpose of this recodification is to reissue the regulations in part 251 of title 27 of the Code of Federal Regulations (27 CFR part 251) as 27 CFR part 27. This change improves the organization of title 27.

DATES: This rule is effective on May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, New York, (716) 434–8039.

SUPPLEMENTARY INFORMATION:

Background

As a part of continuing efforts to reorganize the part numbering system of title 27 CFR, ATF is removing part 251, Importation of Distilled Spirits, Wines, and Beers, in its entirety, and is recodifying the regulations as 27 CFR part 27. This change improves the organization of title 27 CFR. ATF intends to update and clarify the regulations in this part, but believes that such revisions would be best undertaken at a later time through a notice of proposed rulemaking with public comment.

DERIVATION TABLE FOR PART 27

The requirements of sec.	Are derived from sec.
Subpart A	
27.1	251.1
27.2	251.2
27.3	251.3
Subpart B	
27.11	251.11
Subpart C	
27.30	251.30
27.31	251.31
Subpart D	
27.40	251.40
27.41	251.41
27.42	251.42
27.42a	251.42a
27.43	251.43
27.44	251.44
27.45	251.45
27.46	251.46
27.48	251.48
27.48a	251.48a
27.49	251.49
Subpart E	
27.55	251.55
27.56	251.56
27.57	251.57
27.58	251.58
27.59	251.59
27.60	251.60
27.61	251.61
27.62	251.62
27.74	251.74
27.75	251.75
27.76	251.76
27.77	251.77
Subparts F–G [Reserved]	
Subpart H	
27.120	251.120
27.121	251.121
Subpart I	
27.133	251.133
27.134	251.134
27.136	251.136
27.137	251.137
27.138	251.138
27.139	251.139
Subparts J–K [Reserved]	
Subpart L	
27.171	251.171
27.172	251.172
27.173	251.173
27.174	251.174
27.175	251.175
Subpart M	
27.181	251.181
27.182	251.182

DERIVATION TABLE FOR PART 27—Continued

The requirements of sec.	Are derived from sec.
27.183	251.183
27.184	251.184
27.185	251.185
Subpart N	
27.201	251.201
27.202	251.202
27.204	251.204
27.206	251.206
27.207	251.207
27.208	251.208
27.209	251.209
Subpart O	
27.221	251.221

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We sent a copy of this final rule to the Chief Counsel for Advocacy of the Small Business Administration for comment in accordance with 26 U.S.C. 7805(f); we received no comments.

Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Administrative Procedure Act

Because this final rule merely makes technical amendments to improve the clarity and organization of the regulations, it is unnecessary to issue this final rule with notice and public comment procedure under 5 U.S.C. 553(b). Similarly, because this final rule makes no substantial changes and is merely the recodification of existing regulations, good cause is found that it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

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

27 CFR Part 19

Caribbean Basin initiative, Claims, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Surety bonds, Vinegar, Virgin Islands, Warehouses.

27 CFR Part 20

Alcohol and alcoholic beverages, Claims, Cosmetics, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 22

Administrative practice and procedure, Alcohol and alcoholic beverages, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

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

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 251

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

Authority and Issuance

For the reasons set forth in the preamble, ATF is amending chapter 1 of title 27 of the Code of Federal Regulations as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph. 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Par. 2. Under ''CROSS REFERENCES,'' remove the reference to ''27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer'' and add, in part number order, a reference to—27 CFR Part 27—Importation of Distilled Spirits, Wines and Beer''.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 3. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

§ 5.2 [Amended]

Par. 4. Amend § 5.2 by removing the reference to ''27 CFR Part 251—Importation of Distilled Spirits, Wines

and Beer'' and adding, in part number order, a reference to ''27 CFR Part 27—Importation of Distilled Spirits, Wines and Beer''.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 5. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 7.4 [Amended]

Par. 6. Amend § 7.4 by removing the reference to ''27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer'' and adding, in part number order, a reference to ''27 CFR Part 27—Importation of Distilled Spirits, Wines and Beer''.

PART 19—DISTILLED SPIRITS PLANTS

Par. 7. The authority citation for 27 CFR part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.3 [Amended]

Par. 8. Amend § 19.3 by removing the reference to ''27 CFR Part 251—Importation of Distilled Spirits, Wine, and Beer'' and adding, in part number order, a reference to ''27 CFR Part 27—Importation of Distilled Spirits, Wine, and Beer''.

§ 19.524 [Amended]

Par. 9. Amend paragraphs (a)(1), (b)(1) and (b)(3) of § 19.524 by removing the reference to ''parts 26 and 251'' and adding, in its place, a reference to ''parts 26 and 27''.

§ 19.538 [Amended]

Par. 10. Amend § 19.538(a)(1)(iii) by removing the reference to ''part 251'' and adding, in its place, a reference to ''part 27''.

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Par. 11. The authority citation for 27 CFR part 20 continues to read as follows:

Authority: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6065, 7805.

§ 20.3 [Amended]

Par. 12. Amend § 20.3 by removing the reference to ''27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer'' and adding, in part number order, a reference to ''27 CFR Part 27—Importation of Distilled Spirits, Wines and Beer''.

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

Par. 13. The authority citation for 27 CFR part 22 continues to read as follows:

Authority: 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

§ 22.3 [Amended]

Par. 14. Amend § 22.3 by removing the reference to ''27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer'' and adding, in part number order, a reference to ''27 CFR Part 27—Importation of Distilled Spirits, Wines and Beer''.

§ 22.171 [Amended]

Par. 15. Amend § 22.171(b) by removing the reference to ''part 251'' and adding, in its place, a reference to ''part 27''.

PART 24—WINE

Par. 16. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.4 [Amended]

Par. 17. Amend § 24.4 by removing the reference to ''27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer'' and adding, in part number order, a reference to ''27 CFR Part 27—Importation of Distilled Spirits, Wines and Beer''.

§ 24.272 [Amended]

Par. 18. Amend paragraphs (a)(1), (b)(1), and (b)(3) in § 24.272, by removing the reference to ''parts 26 and 251'' and adding, in its place, a reference to ''parts 26 and 27''.

PART 25—BEER

Par. 19. The authority citation for 27 CFR part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

§ 25.165 [Amended]

Par. 20. Amend paragraphs (a)(1), (b)(1), and (b)(3) of § 25.165 by removing the reference to ''parts 26 and 251'' and adding, in its place, a reference to ''parts 26 and 27''.

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 21. The authority citation for 27 CFR part 26 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 26.112a [Amended]

Par. 22. Amend § 26.112a as follows:

a. In paragraphs (a)(1), (b)(1) and (b)(3), remove the reference to ''parts 19 and 251'' and add, in its place, a reference to ''parts 19 and 27''.

b. In paragraphs (a)(1), (b)(1) and (b)(3), remove the reference to ''parts 240 and 251'' and add, in its place, a reference to ''parts 24 and 27''.

c. In paragraph (b)(1) and (b)(3), remove the reference to ''parts 245 and 251'' and add, in its place, a reference to ''parts 25 and 27''.

d. In paragraph (a)(1), remove the reference to ''parts 25 and 251'' and add, in its place, a reference to ''parts 25 and 27''.

§ 26.267 [Amended]

Par. 23. Amend paragraph (a) of § 26.267 as follows:

a. Remove the reference to ''parts 19 and 251'' and add, in its place, a reference to ''parts 19 and 27''.

b. Remove the reference to ''parts 240 and 251'' and add, in its place, a reference to ''parts 24 and 27''.

c. Remove the reference to ''parts 25 and 251'' and add, in its place, a reference to ''parts 25 and 27''.

PART 70—PROCEDURE AND ADMINISTRATION

Par. 24. The authority citation for 27 CFR part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

§ 70.411 [Amended]

Par. 25. Amend § 70.411(c)(27) by removing the reference to ''part 251'' and adding, in its place, a reference to ''part 27''.

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Par. 26. The authority citation for 27 CFR part 251 continues to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

PART 251—[REDESIGNATED AS PART 27]

Par. 27. Transfer 27 CFR part 251 from subchapter M to subchapter A and redesignate as 27 CFR part 27.

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Par. 28. The authority citation for the newly redesignated 27 CFR part 27 continues to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

Par. 29. Amend the newly redesignated part 27 as follows:

AMENDMENT TABLE FOR PART 27

Amend section	By removing the reference to	And adding in its place
27.3	Part 251	Part 27.
27.11, definition of Appropriate ATF Officer	Part 251	Part 27.
27.31	251.30	27.30.
27.40(c)	251.40a	27.41.
27.44	251.43	27.43.
27.74 (three times)	251.49	27.49.
27.74	251.75	27.75.
27.76(c)(3)	251.40a	27.41.
27.77(a)	251.76(c)	27.76(c).
27.77(b)(1)	251.76(b)(1)	27.76(b)(1).
27.77(b)(2)	251.76(b)(2)	27.76(b)(2).
27.77(b)(3)(iii)	251.40a	27.41.
27.77(d)	251.76(d)	27.76(d).
27.120	251.133	27.133.
27.120	251.134	27.134.
27.133	251.134	27.134.
27.138 (Introductory text)	251.172	27.172.
27.172	251.138	27.138.
27.172	251.139	27.139.
27.185(b)	251.139	27.139.
27.208	251.206	27.206.

Signed: February 2, 2002.

Bradley A. Buckles,

Director.

Approved: April 9, 2002.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 02–11257 Filed 5–7–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 44

[T.D. ATF—480]

RIN 1512—AC36

Delegation of Authority

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule places most ATF authorities contained in its Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax regulations with the ''appropriate ATF officer''. Consequently, this final rule removes the definitions of, and references to, specific officers subordinate to the Director and the word ''region.'' This final rule also requires that persons file documents required by these regulations with the ''appropriate ATF officer'' or in accordance with the instructions on the ATF form. Concurrently with this Treasury Decision, ATF Order 1130.31 is being issued and will be made available as specified in this rule. Through this order, the Director has delegated most of the authorities to the appropriate ATF officers and specified the ATF officers with whom applications, notices and other reports, which are not ATF forms, are filed. In addition, this final rule makes a few corrections and miscellaneous changes.

EFFECTIVE DATE: This rule is effective May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (telephone 202–927–8210 or e-mail to *alctob@atfhq.atf.treas.gov*).

SUPPLEMENTARY INFORMATION:

Background

Delegations of Authority

Pursuant to Treasury Order 120–01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of chapter 52 of the Internal Revenue Code of 1986 (IRC). The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives, or similar delegation documents. As a result, to ascertain what particular officer is authorized to perform a particular function under such provisions, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all authorities of the Director in part 44 that were previously delegated and places those authorities with the ''appropriate ATF officer.'' Most of the authorities of the Director that were not previously delegated are also placed with the ''appropriate ATF officer.'' Along with this final rule, ATF is publishing ATF Order 1130.31, Delegation of the Director's Authorities in 27 CFR part 44, which delegates certain of these authorities to the appropriate organizational level. The effect of these changes is to consolidate all delegations of authority in part 44 into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition, this final rule also eliminates all references in the regulations that identify the ATF officer with whom an ATF form is filed. This is because ATF forms will indicate the officer with whom they must be filed. Similarly, this final rule also amends part 44 to provide that the submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the ''appropriate ATF officer'' identified in ATF Order 1130.31. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed.

This final rule also makes various technical amendments to Subpart A—Scope of Regulations of 27 CFR part 44. Specifically, § 44.3 is added to recognize the authority of the Director to delegate regulatory authorities for all of part 44 and identifies ATF Order 1130.31 as the instrument reflecting such delegations. Also, § 44.2 is amended to provide that the instructions for an ATF form identify the ATF officer with whom it must be filed.

ATF has made or will make similar changes in delegations to all other parts of Title 27 of the Code of Federal Regulations through separate rulemakings.

Inventory Provisions

This final rule eliminates all references to an ATF region, which were comprised of certain States for ATF administrative purposes. As a result, we have eliminated § 44.110 and part of § 44.146 which required an export warehouse proprietor to take an inventory of tobacco products when a factory moves from one region to another. Besides the fact that ATF is no longer organized by regions, ATF may require a manufacturer to take an inventory of tobacco products at any time under the provisions of § 44.145. Such times may include any change in the location of a factory. Consequently, ATF does not believe that such a specific requirement is presently needed to protect the revenue.

Corrections And Miscellaneous Changes

Throughout 27 CFR part 44, we have revised the numbers relating to ATF forms to reflect the correct numbers as shown on the following table:

Form No.	Revised form No.
1534	5000.8
2093	2093 (5200.3)
2098	2098 (5200.16)
2103	2103 (5220.5)
2104	2104 (5200.15)
2105	2105 (5000.7)
2148	2148 (5200.17)
2149	5200.14

In § 44.143(a) we have removed what an export warehouse proprietor must report on ATF Form 5220.3 and with whom it must be filed. This ATF form specifies what an export warehouse proprietor must report and contains instructions for filing.

In § 44.243 we have removed the last sentence. This sentence referred to bond form 2100 which no longer exists and to a regulation that was eliminated over 40 years ago.

We have amended §§ 44.222 and 44.224 to remove references to stamps denoting the payment of tax. Since 1959 (Treasury Decision 6832, 24 FR 4225), we have not required the use of such stamps on tobacco products. In the past, the use of such stamps on tobacco products evidenced the payment of Federal excise tax under section 5701 Title 26 of the United States Code. These two sections involved the destruction of the stamps when a claim for allowance of drawback was filed.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create

a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 44

Administrative practice and procedure, Aircraft, Armed forces, Authority delegations, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco, Transportation, Vessels, Warehouses.

Authority and Issuance

For the reasons set forth in the preamble, title 27, Code of Federal Regulations is amended as follows:

PART 44—[AMENDED]

Paragraph 1. The authority citation for part 44 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Amend § 44.2 by:

a. Removing the word ''Director'' and adding, in substitution, the words ''appropriate ATF officer'' in the first sentence of paragraph (a).

b. Adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

§ 44.2 Forms prescribed.

(a) * * * The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (*http://www.atf.treas.gov/*).

* * * * *

Par. 3. Add § 44.3 to read as follows:

§ 44.3 Delegations of the Director.

Most of the authorities of the Director contained in this part are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.31, Delegation of the Director's Authorities in Part 44. ATF delegation orders, such as ATF Order 1130.31, are available from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or from the ATF web site (*http://www.atf.treas.gov*).

Par. 4. Amend § 44.11 by:

a. Removing the definitions of ''Associate Director (Compliance Operations)'', ''ATF officer'', ''Region'', and ''Regional Director (compliance)''; and

b. Adding the definition of ''Appropriate ATF officer'' to read as follows:

§ 44.11 Meaning of Terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.31, Delegation of the Director's Authorities in 27 CFR Part 44, Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax.

* * * * *

§§ 44.35, 44.70, 44.71, 44.142, 44.143, 44.145, 44.147, 44.150, 44.199, 44.201, 44.225, 44.257, 44.266 and 44.267 [Amended]

Par. 5. Add the word ''appropriate'' before the words ''ATF officer'' or ''ATF officers'' each place they appear in the following places:

a. Section 44.35(c);
b. The heading and text of § 44.70;
c. Section 44.71;
d. The last sentence of § 44.142(e);
e. Section 44.143(b);
f. Section 44.145;
g. The last sentence of § 44.147;
h. Section 44.150;
i. The second sentence of § 44.199;
j. The last sentence of § 44.201;
k. Section 44.225;
l. The second sentence of § 44.257;
m. The last sentence of § 44.266; and
n. The last sentence of § 44.267.

Par. 6. In the sixth sentence of § 44.62 remove the words ''regional director (compliance) for the region from which the articles were shipped'' and add, in substitution, the words ''appropriate ATF officer''.

Par. 7. Remove the first sentence of § 44.66 and add, in substitution, two sentences to read as follows:

§ 44.66 Relief from liability for tax.

A manufacturer of tobacco products or cigarette papers and tubes or an export warehouse proprietor is relieved of the liability for tax on tobacco products, or cigarette papers or tubes upon providing evidence satisfactory to the appropriate ATF officer of exportation or proper delivery. The evidence must comply with this part. * * *

* * * * *

§§ 44.72, 44.73 and 44.184 [Amended]

Par. 8. Remove the words ''Director'' and add, in substitution, the words ''appropriate ATF officer'' each place they appear in the following places:

a. The introductory text of § 44.72 and the fifth, sixth and seventh sentences of § 44.72(c);

b. The introductory text of § 44.73 and the fourth and last sentence of § 44.73(c); and

c. Section 44.184.

§§ 44.72 and 44.73 [Amended]

Par. 9. Remove the words ''do so, in triplicate, to the regional director (compliance) for transmittal to the Director'' and add, in substitution, the words ''the appropriate ATF officer'' in the following places:

a. The third sentence of § 44.72(c); and

b. The fifth sentence of § 44.73(c).

Par. 10. Revise the first sentence of § 44.82 to read as follows:

§ 44.82 Application for permit.

Every person, before commencing business as an export warehouse proprietor, must apply on ATF Form 2093 (5200.3) and obtain the permit provided for in § 44.93. * * *

* * * * *

§§ 44.83 and 44.84 [Amended]

Par. 11. Remove the words ''same regional director (compliance)'' each place they appear and add, in substitution, the words ''appropriate ATF officer'' in the following places:

a. The last sentence of § 44.83; and

b. The last sentence of § 44.84.

§ 44.86 [Amended]

Par. 12. In the first sentence of § 44.86 add the numbers and parentheses ''(5220.5)'' after the numbers ''2103''.

§ 44.87 [Amended]

Par. 13. In the last sentence of § 44.87 remove the number and the words ''1534 and furnished to the regional director (compliance) and add, in substitution, the number and words ''5000.8 in accordance with its instructions.''

§§ 44.91, 44.92, 40.104, 44.105, 44.106, 44.112, 44.121, 44.123, 44.124, 44.125, 44.127, 44.129, 44.153, 44.154, 44.161, 44.162, 44.210, 44.213, 44.223, 44.226, 44.228, 44.230, 44.231, 44.232, 44.242, 44.244, 44.245 and 44.246 [Amended]

Par. 14. Remove the words ''regional director (compliance)'' and add, in substitution, the words ''appropriate ATF officer'' each place they appear in the following places:

a. Section 44.91;
b. Section 44.92;
c. The last sentence of § 40.104;
d. Section 44.105;
e. Section 44.106;
f. Section 44.112;
g. Section 44.121(b);
h. Section 44.123;
i. Section 44.124;
j. Section 44.125;
k. Section 44.127;
l. Section 44.129(a);
m. The second sentence of § 44.153;
n. The first sentence of § 44.154;
o. Section 44.161;
p. Section 44.162;
q. Section 44.210;
r. The first sentence of § 44.213;
s. Section 44.223;
t. The last sentence of § 44.226;
u. Section 44.228;
v. The last sentence of § 44.230;
w. Section 44.231;
x. Section 44.232;
y. Section 44.242;
z. Section 44.244;
aa. Section 44.245; and
bb. Section 44.246.

Par. 15. Revise § 44.93 to read as follows:

§ 44.93 Issuance of permit.

After the application for permit, bond, and supporting documents, as required under this part, has been approved, the appropriate ATF officer will issue a permit to the export warehouse proprietor. The proprietor must keep such permit at the export warehouse and make it available for inspection by an appropriate ATF officer.

§§ 44.101, 44.102, 44.103, 44.108, 44.109 and 44.111. [Amended]

Par. 16. Add the numbers and parentheses ''(5200.16)'' after the number ''2098'' each place they appear in the following places:

a. Section 44.101;
b. Section 44.102;
c. Section 44.103;
d. Section 44.108;
e. Section 44.109; and
f. Section 44.111.

§ 44.108 Change in location.

Par. 17. Section 44.108 is amended by:

a. Revising the heading to read as set forth above; and

b. Removing the words ''within the same region'' and the words and punctuation '', to the regional director (compliance)''.

§ 44.110 [Removed and reserved]

Par. 18. Remove and reserve § 44.110.

§ 44.124 [Amended]

Par. 19. In the first sentence of § 44.124 remove the word ''administrator''.

§ 44.126 [Amended]

Par. 20. In § 44.126, add the numbers and parentheses ''(5000.7)'' after the number ''2105''.

§ 44.143 [Amended]

Par. 21. In § 44.143, remove the last sentence of paragraph (a) and remove paragraphs (a)(1) and (2).

§ 44.144 [Amended]

Par. 22. In § 44.144, remove the words ''as indicated thereon by the regional director (compliance)''.

§ 44.146 [Amended]

Par. 23. In § 44.146, remove the words and punctuation '', changes his location to another region,''.

§ 44.147 [Amended]

Par. 24. In the first sentence of § 44.147, remove the words and punctuation '', to the regional director (compliance),''.

Par. 25. Amend § 44.152 by:

a. In the second sentence removing the words ''regional director (compliance) for the region in which the warehouse is located'' and adding, in substitution, the words ''appropriate ATF officer''; and

b. Revising the third and remaining sentences to read as follows:

§ 44.152 Claim for remission of tax liability.

* * * If the proprietor wishes to be relieved of the tax liability, the proprietor must prepare and file a claim on ATF Form 5620.8. The nature, date, place, and extent of the loss or destruction must be stated in such claim. The claim must be accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate ATF officer that the claim is valid. When the appropriate ATF officer has acted on the claim, such officer will return a copy of ATF Form 5620.8 to the proprietor as notice of such action. The proprietor must keep the copy of ATF Form 5620.8 for 3 years following the close of the calendar year in which the claim is filed.

* * * * *

§§ 44.153 and 44.243 [Amended]

Par. 26. Remove the words ''with the regional director (compliance)'' in each of the following places:

a.The first sentence of § 44.153; and
b.The first sentence of § 44.243.

Par. 27. Revise the third sentence of § 44.154 to read as follows:

§ 44.154 Claim for refund of tax.

* * * The claim must be filed on ATF Form 5620.8 and supported by such evidence as is necessary to establish to the satisfaction of the appropriate ATF officer that the claim is valid. * * *

* * * * *

§ 44.199 [Amended]

Par. 28. In the first sentence of § 44.199 remove the words ''regional director (compliance) for the region in which is located the factory or warehouse from which the shipment is removed'' and add, in substitution, the words ''appropriate ATF officer''.

§§ 44.200, 44.201, 44.202, 44.203, 44.204, 44.205, 44.206, 44.207, 44.207a, 44.208, 44.212 and 44.213 [Amended]

Par. 29. Remove the words ''his regional director (compliance)'' and add, in substitution, the words ''the appropriate ATF officer'' each place it occurs in the following places:

a. The second sentence of § 44.200;
b. The second sentence of § 44.201;
c. The last sentence of § 44.202;
d. The last sentence of § 44.203;
e. The last sentence of § 44.204;
f. Section 44.205(b)(3);
g. The last sentence of § 44.206;
h. The third sentence of § 44.207;
i. The last sentence of § 44.207a;
j. The last sentence of § 44.208;
k. The first sentence of § 44.209;
l. The last sentence of § 44.212; and
m. The last sentence of § 44.213.

§ 44.212 [Amended]

Par. 30. In the last sentence of § 44.212 remove the word ''he'' and add, in substitution, the words ''such officer''.

§§ 44.213 and 44.226 [Amended]

Par. 31. Remove the words ''an ATF officer'' or ''the ATF officer'' and add,

in substitution, the words ''an appropriate ATF officer'' or ''the appropriate ATF officer'', respectively, each place they appear in the following places:

a. In the first and third sentences of § 44.213;

b. In the second sentence of § 44.226.

Par. 32. Revise § 44.222 to read as follows:

§ 44.222 Claim.

Claim for allowance of drawback of tax, under this subpart, must be filed on Form 5620.7. Such claim must be filed in sufficient time to permit the appropriate ATF officer to detail an appropriate ATF officer to inspect the articles and supervise the affixture of a label or notice bearing the legend ''For Export With Drawback of Tax.'' Upon receipt of a claim supported by satisfactory bond, as required by this subpart, an appropriate ATF officer will proceed to the place where the articles involved are held and there perform the functions required in § 44.224.

* * * * *

§ 44.223 [Amended]

Par. 33. In the first sentence of § 44.223 add the numbers and parentheses ''(5200.17)'' after the numbers ''2148''.

Par. 34. Revise § 40.224 to read as follows:

§ 44.224 Inspection by an appropriate ATF officer.

(a) *Examination.* An appropriate ATF officer will examine the tobacco products, and cigarette papers and tubes listed on ATF Form 5620.7. Such officer will verify the accuracy of the schedule of such articles on ATF Form 5620.7.

(b) *Label or notice.* If the tax on such articles has been paid by return, the appropriate ATF officer must be satisfied that the articles have in fact been taxpaid and each package bears the label or notice required by § 44.222.

(c) *Shipping containers.* The appropriate officer will supervise the packing of such articles in shipping containers. Each container must be numbered and have affixed to it the notice:

Drawback of tax claimed on contents. Sale, consumption, or use in U.S. prohibited.

(d) *Disposition of ATF Form 5620.7.* After the appropriate ATF officer completes the report of inspection on ATF Form 5620.7, such officer will return two copies to the claimant and send a copy to the ATF office listed on the form.

(e) *Release.* After executing the report of inspection on ATF Form 5620.7, the appropriate ATF office will release the shipment to the claimant for delivery to the port of exportation.

* * * * *

§ 44.227 [Amended]

Par. 35. In the last sentence of § 44.227 remove the words ''regional director (compliance) for the region from which the articles were shipped'' and add, in substitution, the words ''appropriate ATF officer''.

§ 44.229 [Amended]

Par. 36. In the first sentence of § 44.229 remove the words ''regional director (compliance) with whom the drawback claim and bond were filed'' and add, in substitution, the words ''appropriate ATF officer''.

§ 44.242 [Amended]

Par. 37. In the first sentence of § 44.242 remove the words and punctuation '', for the region in which is located the customs warehouse from which the cigars were withdrawn,''.

§ 44.243 [Amended]

Par. 38. Amend § 44.243 by:

a. In the first sentence of § 44.243 add the numbers and parentheses ''(5200.15) after the numbers ''2104''; and

b. Removing the last sentence.

§ 44.257 [Amended]

Par. 39. In the first sentence of § 44.257 remove the words ''regional director (compliance) for the region in which is located the customs warehouse from which the shipment is withdrawn'' and add, in substitution, the words ''appropriate ATF officer''.

§ 44.258, 44.259, 44.260, 44.261, 44.262, 44.263, 44.264, 44.264a, 44.265 and 44.267 [Amended]

Par. 40. Remove the words ''regional director (compliance)'' and add, in substitution, the words ''ATF officer'' in each of the following places:

a. The last sentence of § 44.258;

b. The last sentence of § 44.259;

c. The last sentence of § 44.260;

d. The last sentence of § 44.261;

e. The last sentence of § 44.262;

f. The third sentence of § 44.263;

g. The last sentence of § 44.264;

h. The last sentence of § 44.264a;

i. The last sentence of § 44.265; and

j. The first sentence of § 44.267.

Par. 41. In the last sentence of § 44.264 remove the number ''2149'' and add, in substitution, the number ''5200.14''.

Signed: February 25, 2002.

Bradley A. Buckles,

Director.

Approved: March 28, 2002.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 02–11258 Filed 5–7–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Bureau of Mines

30 CFR Chapter VI

Removal of CFR Chapter

Effective April 26, 1996, the Bureau of Mines was terminated by Public Law 104–99, 110 Stat. 32. Therefore, the **Office of the Federal Register** is removing the Bureau of Mines regulations pursuant to its authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR part 8.

Accordingly, 30 CFR is amended by removing parts 601–652 and vacating Chapter VI.

[FR Doc. 02–55512 Filed 5–7–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 8, 2002.

FOR FURTHER INFORMATION CONTACT: Captain Richard T. Evans, JAGC, U.S.

Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, and Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 16 of § 706.2 is amended by revising the following entry for *USS PORTER*:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * *	*	* *
USS PORTER	DDG 78	108.43 thru 112.50°.
* * *	*	* *

3. Table Five of § 706.2 is amended by revising the following entry for USS *PORTER*:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained.
* * *	*	*	*	*	
USS PORTER	DDG 78	X	X	X	14.4
* * *	*	*	*	*	

Dated: February 8, 2002.

Richard T. Evans,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 02–11357 Filed 5–7–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS STETHEM (DDG 63) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 8, 2002.

FOR FURTHER INFORMATION CONTACT: Captain Richard T. Evans, JAGC, U.S.

Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS STETHEM (DDG 63) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 3(a) pertaining to the horizontal distance between the forward and after masthead lights; and Annex I paragraph 2(f)(i) pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 16 of § 706.2 is amended by revising the following entry for *USS STETHEM*:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
*	*	*
USS STETHEM	DDG 63	108.5 thru 112.50°
*	*	*

3. Table Five of § 706.2 is amended by revising the entry for *USS STETHEM* to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS STETHEM	DDG 63	X	X	X	20.9
*	*	*	*	*	*

Dated: February 8, 2002.

Richard T. Evans,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 02–11356 Filed 5–7–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–015]

RIN 2115–AA97

Safety Zone; Maumee River, Lake Erie, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Maumee River, Toledo, Ohio. This zone is intended to restrict vessels from a portion of the Maumee River during the City of Toledo's May 25th Memorial Day 2002, fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 10 p.m., May 25th, 2002, until 11 p.m. May 25th, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of

docket [CGD09–02–015] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700 Toledo, Ohio, 43604 between 9:30 A.M. and 2 P.M., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Herb Oertli, Chief of Port Operations, at (419) 418–6050.

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), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the City of Toledo's May 25th Fireworks. The fireworks display will occur between 10 p.m. until 11 p.m. on May 25, 2002.

Discussion of Rule

This safety zone will encompass all waters and the adjacent shoreline of the Maumee River, Toledo, Ohio, Extending from the bow of the museum ship SS WILLIS B. BOYER at 41° 38′ 35″ N, 083° 31′ 54″ W, then north north-east to the south end of the City of Toledo Street at 41° 38′ 51″ N, 083° 31′ 50″ W, then south-west to Maumee River Buoy #64 (LLNR 6361) at approximate position 41° 38′ 48″ N, 083° 31′ 58″ W, then returning south south-east to the museum ship SS WILLIS B. BOYER. These coordinates are based upon North American Datum 1983 (NAD 1983).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated on scene patrol personnel. The designated on-scene representative will be the patrol commander. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Toledo or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

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 Transportation (DOT) (44 FR 11040, February 26, 1979). This finding is based on the historical lack of vessel traffic at this time of year.

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 and operators of vessels intending to transit or anchor in a portion of the Maumee River off Toledo, Ohio.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for only a few hours for one event and vessel traffic can pass safely around the safety zone. In the event that shipping is affected by this temporary safety zone, commercial vessels may request permission from the Captain of the Port Toledo to transit through the safety zone.

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. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Toledo (*see* **ADDRESSESS.**)

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

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

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

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. 1231; 50 U.S.C. 191, and 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–007 is added to read as follows:

§ 165.T09–007 Safety zone; Maumee River, Lake Erie, Ohio

(a) *Location.* All waters and adjacent shoreline of the Maumee River, Toledo, Ohio, extending from the bow of the museum ship SS WILLIS B. BOYER at 41° 38′ 35″ N, 083° 31′ 54″ W; then north north-east to the south end of the City of Toledo Street at 41° 38′ 51″ N, 083° 31′ 50″ W; then south-west to the Maumee River Buoy #64 (LLNR 6361) at approximate position 41° 38′ 48″ N, 083° 31′ 58″ W; then returning south south-east to the original starting position on the bow of the Museum ship SS WILLIS B. BOYER (NAD 1983).

(b) *Effective time and date.* This section is effective from 10 p.m. until 11 p.m. on May 25th 2002.

(c) *Regulations.* In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: April 26, 2002.

David L. Scott,

Commander, U.S. Coast Guard, Captain of the Port, Toledo.

[FR Doc. 02–11462 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–207]

RIN 2115–AA97

Security Zone; Seabrook Nuclear Power Plant, Seabrook, New Hampshire

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is extending the effective period for the Seabrook Nuclear Power Plant, Seabrook, New Hampshire security zone. This change will extend the effective period of this temporary final rule until August 15, 2002, allowing adequate time for a proposed permanent rule to be developed through informal rulemaking. This temporary rule will continue to close certain land and water areas in the vicinity of the Seabrook Nuclear Power Plant.

DATES: The amendment to § 165.T01–207 is effective May 8, 2002. Section 165.T01–207, added at 66 FR 67488, December 31, 2001, effective December 7, 2001, until June 15, 2002, is extended in effect until August 15, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Waterways Safety Branch, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 31, 2001, the Coast Guard published a temporary final rule (TFR) entitled ''Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire'' in the **Federal Register** (66 FR 67487). The effective period for this rule was from December 7, 2001 until June 15, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The original temporary final rule was urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from waters surrounding the plant. It was anticipated that the Coast Guard would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, to propose regulations responsive to existing conditions. We have determined the need for continued security regulations does exist. The Coast Guard will utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Portland, Maine zone.

The Coast Guard will be publishing a NPRM to establish a permanent security zone that is temporarily effective under this rule. There is no indication that the present rule has been burdensome on the maritime public; users of the areas surrounding the plant are able to pass safely outside the zone. No letters commenting on the present rule have been received from the public.

Background and Purpose

Due to the terrorist attacks on New York City, New York, and Washington DC, on September 11, 2001 and continued warnings from national security and intelligence officials that future terrorist attacks are possible, heightened security measures are necessary surrounding the Seabrook Nuclear Power Plant. A temporary security zone was implemented around the Seabrook Nuclear Power Plant to protect against possible damage to the

facility from subversive activity, sabotage or terrorist attacks initiated from the surrounding waters. The rule was also implemented to protect persons at the facility, the public and surrounding communities from the catastrophic impact release of nuclear radiation would have on the surrounding area, and to provide the Captain of the Port, Portland, Maine with enforcement options to deal with potential threats to the security of the plant.

There is a continuing need for the protection of the plant. The temporary security zone surrounding the plant is only effective until June 15, 2002. The Coast Guard intends to implement a permanent security zone surrounding the facility. In order to provide continuous protection to the plant until the permanent zone is promulgated, the Coast Guard is extending the effective date of the rule until August 15, 2002. This extension will permit sufficient time to implement a permanent zone through notice and comment rulemaking, while ensuring that there is no lapse in coverage of the facility.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port, Portland, Maine. The Captain of the Port, Portland, Maine may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port, Portland, Maine. These regulations were issued under authority contained in 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This temporary final 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 Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant for several reasons: there is ample room for vessels to navigate around the zone, notifications will be made to the local maritime community and signs will be posted informing the public of the boundaries of the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard 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. For the reasons enumerated in the Regulatory Evaluation section above, this security zone will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104–121], the Coast Guard offered to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business, organization or governmental jurisdiction would be affected by this rule, and you have questions concerning its provisions or options for compliance, please call Lieutenant (Junior Grade) R. F. Pigeon, Marine Safety Office Portland, Maine, at (207) 780–3251.

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 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 action. In particular, the Act addresses actions that may require expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in section 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.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph 34(g) of Commandant

Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise temporary § 165.T01–207, (b) to read as follows:

§ 165.T01–207; Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire.

* * * * *

(b) *Effective dates.* This rule is effective from December 7, 2001 until August 15, 2002.

* * * * *

Dated: April 29, 2002.

M. P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 02–11490 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–192]

RIN 2115–AA97

Safety and Security Zones; Portsmouth Harbor, Portsmouth, New Hampshire

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is extending the effective period of a temporary final rule establishing safety and security zones around vessels capable of carrying Liquefied Petroleum Gas (LPG) within the Captain of the Port, Portland, Maine zone. This change will extend the effective date of the temporary final rule until August 15, 2002, allowing time to develop a permanent rule.

DATES: Section 165.T01–192, added at 66 FR 58064 effective from November 9, 2001 through June 21, 2002 is extended in effect to August 15, 2002, and is amended effective May 8, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Waterways Safety Branch, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

On November 20, 2001, the Coast Guard published a temporary final rule (TFR) entitled ''Safety and Security Zones: LPG transits, Portland, Maine Marine Inspection Zone and Captain of the Port Zone'' in the **Federal Register** (66 FR 58064). This rule was effective from November 9, 2001 through June 21, 2002. The Coast Guard did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (d) (3), the Coast Guard finds that good cause exists for not publishing a NPRM. This original temporary rule was urgently required to facilitate the safe passage of Liquefied Petroleum Gas (LPG) vessels into the Port of Portsmouth, NH, and to protect the port from the inherent dangers posed by the flammable nature of LPG and the potential impact the explosion of a LPG vessel could have on Portsmouth Harbor and the surrounding area. It was anticipated that the Coast Guard would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, to propose regulations responsive to existing conditions. We have determined the need for continued security regulations does exist. The Coast Guard will utilize the extended effective period of this temporary rule to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Portland, Maine zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by this rule are intended to prevent possible terrorist attacks against LPG vessels, and to protect other vessels, waterfront facilities, the public, Portsmouth Harbor and surrounding areas on the Piscataqua River from potential sabotage or other subversive acts, accidents or other causes of a similar nature. In addition, the zones are intended to protect persons, vessels and others in the maritime community from the hazards associated with the transit and limited maneuverability of a large tank vessel.

The Coast Guard will be publishing a NPRM to establish permanent safety and security zones that are temporarily effective under this rule. This revision preserves the status quo within the port while permanent rules are developed. The present temporary rule has not been burdensome on the maritime public as LPG vessel transits are infrequent. No letters commenting on the present temporary rule have been received from the public.

Background and Purpose

The September 11, 2001 terrorist attacks on New York and Washington D.C. inflicted catastrophic human casualties and property damage. National security and intelligence officials continue to warn that future terrorist attacks are possible. Due to these heightened security concerns, safety and security zones are prudent for LPG tank vessels, which may be likely targets of terrorist attacks due to the flammable nature of LPG and the serious impact on the Port of Portsmouth, New Hampshire and surrounding areas that may be incurred if a LPG vessel was subjected to a terrorist attack.

The original temporary rule established safety and security zones in

a 500-yard radius around LPG vessels while the vessels were moored at the LPG receiving facility on the Piscataqua River in Newington, New Hampshire. It also created moving safety and security zones any time a LPG vessel was within Captain of the Port, Portland, Maine zone, as defined in 33 CFR 3.05–15, including the internal waters and out to 12 nautical miles from the baseline of the United States.

The original temporary rule also temporarily suspended a safety zone, defined in 33 CFR 165.103, for transits of tank vessels carrying LPG in Portsmouth Harbor, Portsmouth, New Hampshire. 33 CFR 165.103 recognized the safety concerns with transits of large tank vessels, but was inadequate to protect LPG vessels from possible terrorist attack, sabotage or other subversive acts. The original temporary rule provided increased protection for LPG vessels by establishing 500-yard safety and security zones around LPG vessels while moored at the LPG receiving facility on the Piscataqua River, Newington, New Hampshire; and by providing continuous protection for LPG vessels anytime a vessel was within the waters of the Captain of the Port, Portland, Maine zone, including the internal waters and out to 12 nautical miles from the baseline of the United States. 33 CFR 165.103 limited protection to vessels carrying LPG that were transiting to and from the facility. The original temporary rule also extended the zones to 1000 yards on either side of the vessel rather than limiting the zone to the limits of the Piscataqua River Channel. The original temporary rule also recognized the continued need for a safety zone around LPG vessels, which is necessary to protect persons, facilities, vessels and others in the maritime community, from the hazards associated with the transit and limited maneuverability of a large tank vessel.

This rulemaking will extend the effective date of the original temporary rule until August 15, 2002, to allow the establishment of permanent safety and security zones by notice and comment rulemaking, while retaining the added protections implemented in the temporary rulemaking. Due to the infrequent arrivals of LPG vessels in the Port of Portsmouth, this rulemaking will not have a significant effect on the maritime community. Nevertheless, the flexibility to utilize the measures permitted by the temporary rule is vital to ensure port security in the present environment.

Regulatory Evaluation

This temporary 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 Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary for the following reasons: (1) These safety and security zones encompass only a portion of the Captain of the Port, Portland, Maine zone around the transiting LPG vessel, allowing vessels to safely navigate around the zones without delay, and (2) maritime advisories will be made in advance to advise the maritime community of the safety and security zones when in effect.

The Coast Guard will be publishing a NPRM to establish permanent safety and security zones that are temporarily effective under this rule.

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.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this rule to be minimal and certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (Junior Grade) R. F. Pigeon, Waterways Safety Branch, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

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 Agricultural 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 requirements 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 or 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 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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This 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

The Coast Guard has 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.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulation

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. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

[§ 165.103 Suspended]

2. Suspend § 165.103 from June 21, 2002 through August 15, 2002.

3. In temporary § 165.T01–192 revise the section heading and add a new paragraph (c) to read as follows:

§ 165.T01–192 Safety and Security Zones; LPG Transits, Portland, Maine Marine Inspection Zone and Captain of the Port Zone

* * * * *

(c) *Effective dates.* This section is effective from November 9, 2001 through August 15, 2002.

Dated: April 29, 2002.

M.P. O'Malley,

Commander, Coast Guard, Captain of the Port, Portland, ME.

[FR Doc. 02–11491 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 124

Procedures for Decisionmaking

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 100 to 135, revised as of July 1, 2001, in § 124.15, on page 266, the third sentence of paragraph (a) is revised, and in § 124.56, on page 276, paragraph (b)(1)(vi) is revised, as follows:

§ 124.15 Issuance and effective date of permit.

(a)* * * This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, PSD, or NPDES permit under § 124.19 of this part. * * *

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§ 124.56 Fact sheets (applicable to State programs, see § 123.25 (NPDES).)

* * * * *

(b)* * *

(1)* * *

(vi) Waivers from monitoring requirements granted under § 122.44(a) of this chapter.

[FR Doc. 02–55511 Filed 5–7–02; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH–FRL–7208–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Spent Catalysts From Dual-Purpose Petroleum Hydroprocessing Reactors

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of response to comments on the scope of petroleum hazardous waste listings.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to maintain its interpretation that under RCRA regulations, spent catalyst wastes removed from dual purpose hydroprocessing reactors at petroleum refining facilities are listed hazardous wastes. This interpretation was previously announced in Agency memoranda dated November 29, 1999 and June 1, 2000. In a **Federal Register** notice published July 5, 2001 (66 FR 35379), EPA announced that it was providing the public an opportunity to comment on the interpretation set forth in these memoranda and that the Agency would issue a second **Federal Register** notice that would announce EPA's decision and provide responses to those comments received. EPA's responses are provided in today's document and in a background document, ''Response to Comments: July 5, 2001 FR Notice on Spent Catalysts from Dual-Purpose Petroleum Hydroprocessing Reactors.'' The regulations addressed in the memoranda and again in today's document were promulgated under the Resource Conservation and Recovery Act (RCRA) on August 6, 1998 (63 FR 42110).

ADDRESSES: Supporting materials to this notice are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–2002–PR2F–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review file materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any file maintained at the RCRA Docket at no charge. Additional copies cost $0.15/per page. The docket index and some supporting materials are available electronically. See the beginning of the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–3323. For information on specific aspects of the information contained in the memoranda discussed below, contact Patricia Overmeyer or Max Diaz of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency Ariel Rios, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. [E-mail addresses and telephone numbers: *Overmeyer.Patricia@epa.gov*, (703) 605–0708; *Diaz.Max@epa.gov*, (703) 308–0439.]

SUPPLEMENTARY INFORMATION: The docket index and some supporting documents, including the Response to Comments document, that are in the docket for today's notice also are available in electronic format on the Internet at URL: *http://www.epa.gov/epaoswer/hazwaste/id/petroleum/catalyst.htm*

EPA will keep the official record for this action in paper form. The official record is the paper file maintained at the RCRA Docket, the address of which is in **ADDRESSES** at the beginning of this document.

I. Background

A. What is the Reason for Today's Publication?

Today's notice fulfills the terms of a settlement agreement between EPA and the American Petroleum Institute (API), in which the Agency agreed to solicit comment on its interpretation, described in two Agency memoranda, regarding the regulatory status of spent catalysts removed from dual purpose reactors at petroleum facilities and provide the public with responses to comments received. Today's notice provides an overview of the response to comments and announces the availability of a separate, more detailed, response to comments document. In addition, today's notice announces that the Agency is maintaining its interpretation provided in the memoranda dated November 29, 1999 and June 1, 2000 with regard to the hazardous waste listing determinations issued on August 6, 1998. The interpretation is that spent catalysts removed from dual purpose petroleum hydroprocessing reactors are included within the scope of the hazardous waste listings for spent hydrotreating catalysts (K171) or spent hydrorefining catalysts (K172).

B. Overview of Past Agency Actions

On August 6, 1998, EPA listed as hazardous wastes spent hydrotreating catalysts (K171) and spent hydrorefining catalysts (K172) generated in petroleum refining operations (63 FR 42110). These regulations were promulgated under RCRA, 42 USC 6901, *et seq.* EPA took no action with regard to a third type of spent hydroprocessing catalyst generated by petroleum refineries, hydrocracking catalysts.

Subsequent to the promulgation of the hazardous waste listing determination, a number of industry and environmental groups filed lawsuits challenging the validity of the listings. These cases were consolidated in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *American Petroleum Institute* v. *EPA,* Docket No. 94–1683.

Among the petitioners was Gulf Chemical and Metallurgical Corporation. Gulf asserted that the final rulemaking did not provide adequate definitions of the spent catalysts covered within the scope of the hazardous waste listing descriptions for K171 and K172. In particular, Gulf stated that the scope of the final listing descriptions did not adequately address the regulatory status of spent catalysts from petroleum hydroprocessing reactors that perform both hydrotreating and hydrocracking functions (*i.e.,* spent catalysts from dual purpose reactors). Gulf pointed out that such dual purpose reactors perform functions meeting both the definitions of ''hydrotreating'' and ''hydrocracking'' provided in the Department of Energy's (DOE's) Petroleum Supply Annual (PSA) and presented in the preamble to the August 6, 1998 final petroleum refining listing determination.

After reviewing the issues raised by Gulf in its petition, we concluded that the Agency had no dispute with the petitioner with regard to the regulatory status of spent catalysts removed from dual purpose reactors. In fact, we saw no grounds for Gulf's challenge to the August 1998 rulemaking given that our interpretation of the final listing descriptions for K171 and K172 is that spent catalysts from petroleum hydroprocessing units that perform hydrorefining and hydrotreatment functions are captured by the listing.

Gulf's challenge did, however, serve to highlight the potential for confusion regarding the regulatory status of spent catalysts removed from dual purpose reactors. Although a straight reading of the regulatory language promulgated in the final rule should result in a conclusion that spent catalysts from units or reactors that perform hydrotreatment or hydrorefining functions are listed hazardous wastes, EPA's Office of Solid Waste decided to issue a memorandum clarifying the regulatory status of spent catalysts from dual purpose petroleum hydroprocessing operations. The memorandum was issued on November 29, 1999, and was distributed to industry trade associations and posted on EPA's ''RCRA On-line'' website (*http://www.epa.gov/rcraonline*). After the memorandum was issued, Gulf dismissed its lawsuit on the hazardous waste listings (K171 and K172).

The Agency's policy with regard to spent catalysts from dual purpose reactors, as originally expressed in the November 29, 1999 memorandum, is based on the fact that catalysts used in dual purpose reactors enhance the hydrotreatment or hydrorefining of petroleum feedstock. Dual purpose reactors are hydroprocessing reactors that perform hydrotreatment or hydrorefining functions while simultaneously hydrocracking petroleum feedstock. As explained in the memorandum, the fact that such reactors hydrocrack petroleum feedstocks does not exclude the spent catalysts from the hazardous waste listing. It was never the Agency's intent to exclude a spent catalyst from the listings for K171 and K172 on the basis that a spent catalyst is removed from a unit or reactor that hydrocracks petroleum feedstock, when the same unit or reactor also performs a hydrotreating or hydrorefining function.

In February 2000, API filed a lawsuit in the D.C. Circuit challenging the validity of the November 29, 1999 memorandum. *API* v. *EPA,* Docket No. 00–1069. API, however, agreed to hold this lawsuit in abeyance until the court decided the challenge to the original hazardous waste listing determinations.

While awaiting the opinion of the court in the first API lawsuit, and while the second suit was being held in abeyance, EPA received further inquiries on the regulatory coverage of spent catalysts from dual purpose hydroprocessing reactors. In response to these additional inquiries, EPA distributed a second memorandum on June 1, 2000 further clarifying the scope of the K171 and K172 hazardous waste listings with regard to spent catalysts removed from dual purpose reactors. EPA also responded to two letters from individual petroleum refineries that requested information on the regulatory status of spent catalysts from two specific types of hydroprocessing reactors. These letters are discussed in more detail below, and both letters and

EPA's responses to each are in the docket for this notice.

On June 27, 2000, the D.C. Circuit issued an opinion in the first lawsuit that upheld EPA's hazardous waste listing determinations. *API* v. *EPA,* 216 F.3d 50. Following the announcement of the court's decision with regard to its petition filed in response to the August 6, 1998 listing determinations, API reactivated its lawsuit on the November 29, 1999 memorandum.

In June 2001, API and EPA entered into an agreement settling the second lawsuit. Under the terms of the settlement agreement, EPA agreed to publish a **Federal Register** notice announcing the opportunity for the public to comment on the Agency's memoranda regarding the regulatory status of spent catalysts removed from dual purpose reactors. We published this notice in the **Federal Register** on July 5, 2001.

In the settlement agreement, EPA also agreed to publish a second notice, after evaluating the public comments received in response to the first notice. In the July 5, 2001 notice, we explained that the second **Federal Register** notice would serve as an announcement of EPA's decision either to maintain, and possibly clarify, the positions expressed in the memoranda or to change them. Today's notice serves as the second notice that EPA agreed to publish and completes the activities that EPA agreed to undertake in our settlement agreement with API.

C. What Are Dual Purpose Reactors?

Petroleum refineries use hydroprocessing units to prepare residual stream feedstocks for cracking and coking units and to polish final products (*e.g.,* diesel fuels). Hydroprocessing reduces the boiling range of petroleum feedstock and removes substantial amounts of impurities from the feed.[1] During hydroprocessing, molecules in petroleum feedstock are split or saturated in the presence of hydrogen. Hydroprocessing is a broad term encompassing the more specific processes of hydrotreating, hydrorefining, and hydrocracking. Hydroprocessing reactors that hydrotreat petroleum feedstock stabilize the feed and remove impurities catalytically and react the feed with hydrogen. Hydrotreating includes the removal of sulfur, nitrogen, metals, and other impurities from petroleum feedstocks. Spent catalysts removed from hydrotreating reactors are listed hazardous wastes (K171). Hydrorefining also removes impurities, but uses more severe operating conditions than hydrotreating, and treats heavier molecular weight petroleum fractions (e.g., residual fuel oil and heavy gas oil). Spent catalysts removed from hydrorefining reactors also are listed hazardous wastes (K172). Hydrocracking is a process in which the primary purpose is to reduce the boiling range of petroleum feedstocks. Hydrocracking involves the breaking down of higher molecular weight hydrocarbons to lighter components with an infusion of hydrogen and in the presence of heat. In the August 6, 1998 final rule, EPA did not make a listing determination for spent catalysts from petroleum hydrocracking reactors and these spent catalysts are not currently listed as hazardous wastes.

Dual purpose hydroprocessing reactors are designed to process petroleum feedstocks by both hydrotreating (or hydrorefining) the feedstock (*i.e.,* removing sulfur, nitrogen, metals, and/or other impurities) and hydrocracking the feedstock (*i.e.,* reducing boiling points). The impurities are removed from the feedstock and become deposited on the spent catalyst. Given that the catalysts in dual purpose reactors are used to promote a hydrotreating or hydrorefining function, as well as a hydrocracking function, such catalysts when spent, are listed hazardous wastes under the plain language of the regulation. Although some commenters argue that dual purpose reactors fall within the definition of ''hydrocracking'' provided in DOE's Petroleum Supply Annual (see 63 FR 42110, at 42155), we point out that these units also clearly fall within the definition of ''hydrotreating'' included in the Petroleum Supply Annual. We include spent catalysts removed from dual purpose units within the scope of the hazardous waste listings based on the fact that these units perform hydrotreating or hydrorefining functions. We disagree with API's apparent view that the definitions are mutually exclusive and that a unit that can be described legitimately as a hydrocracking unit cannot also be described legitimately as a hydrotreating or hydrorefining unit. We also disagree with API's suggestion that the hydrotreating definition should be limited to the activities that do not also fall within the hydrocracking definition.

The Agency knows of three specific types of dual purpose hydroprocessing reactors currently in use at petroleum refineries. The Agency is clarifying that spent catalysts removed from these three types of dual purpose units are listed hazardous wastes. All are expanded-or ebullating-bed processes. These are the H-Oil, the LC-Fining, and the T-Star reactors. These reactors are designed to process heavy feeds such as atmospheric tower bottoms or vacuum reduced crude and use a single moving-bed catalyst to perform hydrotreating (i.e., metals removal, desulfurization) and hydrocracking functions.[2] Ebullating bed hydroprocessing is a process that takes place in a reactor bed that is not fixed. In such a process, hydrocarbon feed streams enter the bottom of the reactor and flow upwards passing through the catalyst which is kept in suspension by the pressure of the fluid feed.

LC-Fining and H-Oil both use similar technologies but offer different mechanical designs. The purpose of an ebullating bed reactor is to convert the most problematic feeds, such as atmospheric residuum, vacuum residues, and heavy oils having a high content of asphaltenes, metals, sulfur, and sediments, to lighter, more valuable products while simultaneously removing contaminants. The function of the catalyst is to remove contaminants such as sulfur and nitrogen heteroatoms, which accelerate the deactivation of the catalyst, while cracking (converting) the feed to lighter products.

The H-Oil reactor is used to process residue and heavy oils to produce upgraded petroleum products such as liquefied petroleum gas (LPG), gasoline, middle distillates, gas oil, and desulfurized fuel oil. Stable operation is achieved through a high operating pressure. The reactor achieves a very high level of treatment, as well as a very high conversion rate. The H-Oil process can achieve conversion rates of 45 to 90 percent, desulfurization of 55 to 92 percent, and demetallization of 65 to 90 percent.[3]

The LC-Fining process serves the purposes of desulfurization, demetallization, Conradson Carbon Residue (CCR) reduction,[4] and hydrocracking of atmospheric and vacuum residuum. The LC-Fining process can be used to yield a full range

[1] Gary, James H. and Handwerk, Glenn E., ''Petroleum Refining Technology and Economics,'' Third Edition, Marcel Dekker, Inc., New York, 1994, p. 174.

[2] Gary, James H., Handwerk, Glenn E., *Petroleum Refining Technology and Economics,* fourth edition. 2001. p. 165.

[3] See ''Background Document Clarifying the Scope of Petroleum Hazardous Waste Listings: Supplemental Information Regarding Petroleum Hydroprocessing Units.''

[4] Carbon residue is roughly related to the asphalt content of crude and to the quantity of lubricating oil fraction that can be recovered from it. It often is expressed in terms of weight percent carbon residue by the Conradson ASTM test procedure.

of high quality distillates, including residuals that may be used as fuel oil, and synthetic crude or feedstock for a residuum FCC, coker, visbreaker, or solvent deasphalter. The LC-Fining process can achieve conversion rates of 40 to 97 percent, desulfurization of 60 to 90 percent, and a demetallization rate of 50 to 98 percent. These conversion and treatment percentages are high, relative to other types of hydroprocessing units.

The T-Star Process also is an ebullated bed hydrotreating/hydrocracking process designed to process very difficult feedstocks (e.g., atmospheric residuum, vacuum residues, and heavy oils with high levels of sulfur and/or metals) and achieve both a high level of treatment and high conversion. T-Star units can maintain conversion rates in the range of 20 to 60 percent and hydrodesulfurization rates in the range of 93 to 99 percent.[5] Additional information on each of the dual-purpose technologies is provided in ''Background Document Clarifying the Scope of Petroleum Hazardous Waste Listings: Supplemental Information Regarding Petroleum Hydroprocessing Units' which can be found in the docket for today's notice.

At this time, EPA is aware of only three specific types of dual purpose hydroprocessing units. In addition to the technologies identified in today's notice and in the accompanying background document, other dual purpose units may be under development or made commercially available in the future. Therefore, we point out that the scope of the spent catalyst listings, as it applies to dual purpose units, is not limited to the three units named here. In naming these three specific units we do not mean to imply that spent catalysts from other types of dual purpose units that are designed to both hydrocrack petroleum feedstock and hydrotreat or hydrorefine the feedstock are not included within the scope of the listings. Our intention is to clarify that the scope of the hazardous waste listings includes spent catalysts removed from petroleum hydroprocessing units that perform both a hydrotreating or hydrorefining function, as well as a hydrocracking function. The scope of the hazardous waste listing is based upon the function performed by the reactor and is not specific to the name or brand of the reactor.

[5] Hydrocarbon Processing. ''Refining Processes 2000.'' Process descriptions of hydroprocessing units. November 2000.

II. Summary of the Agency's Views Regarding Spent Catalysts From Dual Purpose Reactors

EPA is retaining its determination that spent catalysts removed from dual purpose reactors (i.e., those hydroprocessing reactors that perform both hydrotreating, or hydrorefining, and hydrocracking functions) are listed hazardous wastes. In the November 29, 1999 memorandum, the Agency clarified that these spent catalysts meet the listing descriptions for K171 or K172. Such materials include spent catalysts removed from expanded-or ebullated-bed reactors (e.g., H-Oil, T-Star, and LC-fining processes).

As explained in the preamble to the August 6, 1998, final rule, definitions for petroleum hydrotreating, hydrorefining, and hydrocracking operations are not universally established. We explained in the final rule preamble that classifying petroleum refining processes on the basis of conversion rates is problematic. Although the preamble introduced the concept of classifying hydroprocessing units on the basis of conversion rates, we decided not to rely upon specific conversion rates to define hydrotreating and hydrocracking. Our reasons for rejecting the use of specific conversion rates included the fact that the ability to vary the operating conditions for some reactors, or changes to the manner in which feedstock conversion is calculated or accounted for, may allow refineries to classify particular reactors as hydrocracking units despite the amount of hydrotreatment or hydrorefining conducted in the reactor. After considering all relevant information in the rulemaking record, as well as commenter suggestions, we decided that the simplest way to differentiate between hydrocracking and hydrotreating units was to rely on categorizations provided in the Department of Energy's (DOE) Petroleum Supply Annual (PSA).

We, however, did not foresee the confusion that arose after the final rule was promulgated over how to classify hydroprocessing units that meet more than one PSA definition. When we wrote the section of the final rule preamble discussing the definitions of hydrotreating, hydrorefining, and hydrocracking, we did not have dual purpose hydroprocessing units in mind. As a result, the discussion did not address the uncommon situation of petroleum hydroprocessing units or reactors that are designed to both hydrotreat or hydrorefine and hydrocrack feedstock and that legitimately meet both the PSA definition of hydrotreating and the PSA definition of hydrocracking. Inquiries received after promulgation of the 1998 final listing determination made us recognize that dual purpose hydroprocessing units that achieve high conversation rates and that are designed to and in fact do perform a high level of treatment were not specifically addressed in the preamble discussion. Due to the high level of treatment obtained in the units, the units meet the definition of a hydrotreater and the spent catalysts generated by the units become contaminated with the same contaminants for which spent hydrotreating catalysts were listed as hazardous wastes.

Dual purpose units are not widely used in the petroleum refining industry. The discussion provided in the 1998 final rule preamble addressed the more common situation where hydrotreatment and hydrocracking are done in succession and in separate units or in separate reactors within a given unit (e.g., a two-staged hydrocracker, where a guard bed performs treatment prior to hydrocracking). Most hydrocracking units, with the exception of the dual purpose units addressed in today's notice, are not designed to convert or crack untreated petroleum feedstock. Most hydrocracking units contain catalysts that promote hydrocarbon conversion but will become poisoned by the sulfur, metal and other heteroatom content of untreated feedstock. This is not the case with dual purpose units where the unit and catalyst can handle untreated petroleum feedstock and perform both hydrotreating and hydrocracking in the same unit. The 1998 preamble discussion addresses the most prevalent case, and did not address the unusual or limited situation of a dual purpose unit.

Our intention in the November 29, 1999 and June 1, 2000 memoranda was to address this situation and clarify that spent catalysts removed from hydroprocessing units that meet the PSA definition of hydrotreating are listed hazardous wastes, even in cases where the unit also meets the PSA definition of hydrocracking. We also clarified that we do not consider spent catalysts from a petroleum hydroprocessing reactor to be a listed hazardous waste solely because some incidental and minimal amount of hydrotreatment (or hydrorefining) of feeds occurs in a hydrocracking unit.

In addition, the Agency, in the November 1999 memorandum, clarified that the listing should not be interpreted as providing that spent catalysts from any hydrocracking process-regardless of whether or not hydrotreatment (or

hydrorefining) also occurs—are, by definition, outside the scope of the K171 and K172 listings (i.e., if a spent catalyst otherwise meets the K171 or K172 listings because it comes from a unit that performs a hydrotreating or hydrorefining function, the fact that the spent catalyst is removed from a unit that also hydrocracks does not exclude the spent catalyst from the hazardous waste listing). In the August 1998 final rule, we did not define hydrocracking and then indicate that hydrotreating and hydrorefining are ''not hydrocracking.'' It was never our intent to allow the scope of the hazardous waste listing determination to be defined or superseded when a catalyst performs a hydrocracking function, and that same catalyst also, by design, facilitates a hydrotreatment or hydrorefining function in the same unit or reactor. The final listing determinations were meant to include spent catalysts removed from reactors that perform hydrotreating and hydrorefining functions, even if the reactors also perform a hydrocracking function. This is consistent with EPA's decision in the final rulemaking to rely on the PSA definitions in determining the function or functions performed by a reactor. The PSA definitions of hydroprocessing take into account the function or operation performed by a reactor when defining hydroprocessing operations. We, therefore, clarified in the November 1999 memorandum that it was based on these functions, hydrotreating and hydrorefining, that we determine the regulatory status of the spent catalysts from dual purpose reactors. The presence of hydrocracking within a reactor does not exclude a spent catalyst from the scope of the hazardous waste listing when the reactor also functions as a hydrotreating or a hydrorefining unit.

We further clarify that spent catalysts generated by refineries that classify dual purpose reactors as hydrocracking units when reporting to DOE will nonetheless be K171 or K172 listed wastes if the unit performs a hydrotreatment or hydrorefining function. Today's notice retains the clarification that the 1998 final rule should not be interpreted as allowing petroleum refineries to classify dual purpose reactors as hydrocracking reactors and in doing so claim that the spent catalysts removed from these reactors are spent hydrocracking catalysts (which are not listed hazardous wastes). Catalysts removed from reactors that perform a hydrotreating or hydrorefining function, regardless of whether hydrocracking is performed in the same unit, are listed hazardous wastes, when spent.

We acknowledge that the preamble is confusing in that it indicated that units that previously have been classified as hydrocrackers are not covered by the listing. Again, at the time EPA wrote the final rule preamble, it did not have dual purpose reactors in mind. The preamble did specifically address guard beds, in which a separate bed treats feed in advance of feeding the petroleum stream to a hydrocracker. But, EPA did not (in the 1998 preamble) address the situation where a single reactor preforms both a hydrotreating (or hydrorefining) and a hydrocracking function. (Indeed, EPA's treatment of guard beds supports the interpretation retained today, in that it reflects EPA's clear intention to capture within the scope of the listings catalyst wastes from units that are intended to, and do, hydrotreat or hydrorefine petroleum feedstock). In any event, the indication that self-classification as a hydrocracker avoids listing coverage is inconsistent with EPA's stated intent to rely on the PSA definitions, in that it would allow spent catalysts from units that are designed to, and in fact do, perform hydrotreating or hydrorefining functions to escape the listing, despite the fact that they are generating precisely the wastes EPA intended to capture in the listing. It was because of the potential inconsistency in the preamble that EPA saw the need to issue its interpretive memoranda in the first place. EPA believes that its interpretation presented in these memoranda and retained today is most consistent with the preamble and rulemaking overall-it captures wastes from units that are designed to hydrotreat or hydrorefine waste under the PSA definitions.

After EPA distributed the November 29, 1999 memorandum, it was brought to the Agency's attention that the memorandum could be interpreted as indicating that spent catalysts from petroleum hydrocracking reactors are captured by the hazardous waste listings, even though such reactors may conduct only minimal and incidental hydrotreatment or hydrorefining of previously treated feedstock. For example, some reactors that hydrocrack petroleum feedstock treated previously to remove sulfur, metals and other impurities, may also in practice perform incidental and minimal hydrotreating or hydrorefining due to the operating parameters employed and the nature of the pre-treated feed entering the reactor.

The Agency did not intend, when issuing the November 29, 1999 memorandum, to include within the scope of the hazardous waste listings spent catalysts from hydrocracking reactors, if such reactors are designed to hydrocrack feedstock and perform only a minimal and incidental amount of hydrotreatment or hydrorefining. Rather, EPA intended to address only the status of dual purpose units that are designed to perform hydrotreatment or hydrorefining as well as hydrocracking functions. Therefore, we issued a memorandum dated June 1, 2000, clarifying that spent catalysts removed from reactors that hydrocrack petroleum feedstocks and perform only ''minimal and incidental'' hydrotreatment or hydrorefining are not within the scope of the hazardous waste listing descriptions for K171 or K172. This is consistent with the regulatory language, and with the intention stated in the preamble and the November 1999 memorandum, to adopt a functional approach to defining catalysts removed from hydroprocessing units.

Today, the Agency reiterates that a spent catalyst removed from a unit that performs hydrotreating or hydrorefining functions is a ''spent hydrotreating catalyst'' or a ''spent hydrorefining catalyst'' within the meaning of the regulation, even if the unit also performs a hydrocracking function. However, a spent catalyst removed from a reactor that hydrocracks and performs only minimal and incidental hydrotreatment or hydrorefining does not fall within the scope of the hazardous waste listings K171 and K172. Spent catalysts removed from such hydrocracking reactors are not captured by the listings simply because some hydrotreating or hydrorefining unavoidably occurs in the reactor. A copy of the Agency's June 1, 2000 memorandum clarifying this conclusion is included in the docket.

Following distribution of the November 29, 1999 memorandum, EPA also received requests from members of the petroleum refining industry for clarification of the regulatory status of two specific types of spent catalysts. In response to these requests, we issued two letters to the requesting parties on June 1, 2000. In a letter to Motiva Enterprises LLC, we explained that we determined that the spent catalyst removed from the Motiva refinery's H-Oil unit is a listed hazardous wastes. Based on our determination that the H-Oil unit is a dual purpose hydroprocessing reactor designed to both hydrotreat and hydrocrack petroleum feedstock in a single reactor using a single, ebullating bed catalyst, we found that the spent catalyst from the H-Oil unit falls within the scope of the hazardous waste listings.

In a second letter, to Chevron Research and Technology Company, we addressed the regulatory status of spent

catalyst removed from Chevron's two-stage ISOCRACKING hydroprocessing unit. In this letter, we determined that spent catalyst removed from the first stage of the ISOCRACKING unit, which serves as a guard bed reactor and performs a predominant treatment function, is a listed hazardous waste (K171). The resulting K171 designation of spent catalyst from the first stage reactor of this unit follows from our determination that spent catalysts from guard bed reactors are within the scope of the listing descriptions for K171 and K172 as clarified in the preamble to the August 6, 1998 final rule. Also, the final listing descriptions for K171 and K172 clearly designate spent catalysts from guard bed reactors as included within the scope of the listings (see 40 CFR 261.32). In addition, we also stated in our letter to Chevron that spent catalysts removed from the second stage reactor of Chevron's ISOCRACKING unit are not spent hydrotreating or hydrorefining catalysts and are not captured by the listing descriptions for K171 and K172. The second stage reactor within the ISOCRACKING unit receives pretreated feed and performs a predominant hydrocracking function; we concluded that any hydrotreatment that occurs in the second stage of the reactor is minimal and incidental.

III. Overview of Public Comments

In the July 5, 2001 **Federal Register** notice, we reiterated our explanation that spent catalysts removed from dual purpose reactors are listed hazardous wastes. We explained in that notice that it was our finding that this conclusion, as expressed in the two EPA memoranda, is consistent with the plain language of the listing description. However, we acknowledged that the memoranda were controversial within the regulated community and we believed that providing an opportunity for public comment was in the interest of good government because it provides interested parties with a chance to influence the Agency's thinking and could avoid potentially unnecessary litigation. We, therefore, solicited comment on the regulatory interpretation presented in the November 29, 1999 and the June 1, 2000 memoranda which explained the Agency's position that spent catalysts removed from petroleum hydroprocessing reactors that perform both a hydrotreatment (or hydrorefining) function and a hydrocracking function are captured by the hazardous waste listings K171 or K172.

We also solicited comments as to whether there are specific situations where it is not clear whether, or relatively how much, hydrotreatment or hydrorefining is either occurring or intended in a particular unit or reactor. We noted especially that we were interested in comment on whether there is a better test for generally describing dual purpose units that are not H-Oil, LC-Fining, or T-Star reactors (the dual purpose reactors that, as noted above, EPA knows about) but perform hydrocracking and more than ''minimal and incidental'' hydrotreating or hydrorefining, or whether decisions regarding the regulatory status of these other reactors must be made on a case-by-case basis. We requested that any improvements suggested by commenters be consistent with our focus on determining when a catalyst is used in a reactor that performs a hydrotreatment or hydrorefining function, regardless of whether it also is performing a hydrocracking function.

We explained in the July 5, 2001 notice that we were not reopening comment on any substantive or procedural issues affecting the August 6, 1998 hazardous waste listing rule. Comments were requested solely on the issues addressed within the context of the two memoranda.

We received comments in response to the July 5, 2001 notice from one petroleum refinery, as well as from the American Petroleum Institute and the National Petrochemical and Refiners Association (NPRA). We also received comments from the Ferroalloys Association, a trade association representing the catalyst recycling industry.

We did not receive any comments on determining a clear test for describing dual purpose reactors that are not the three types EPA knows about, nor did any comments identify any other units that should be considered dual purpose reactors. However, we understand that we may in the future have to make case-by-case determinations of the status of spent catalysts from other dual purpose reactors under the general principles discussed in the record for the August 1998 rulemaking, as clarified by the record accompanying this **Federal Register** notice.

A. Comments Received From the Petroleum Refining Industry

Comments received from parties representing the petroleum refining industry argued that the memoranda developed by EPA clarifying the status of spent catalysts removed from dual purpose petroleum refining reactors contradict the preamble language included in the August 6, 1998 final rulemaking and substantially expand the listing definitions. The commenters stated that the preamble to the final rule did not mention dual purpose reactors and stated that, with the exception of guard beds, if a refinery had been classifying hydroprocessing units as hydrocrackers for the purpose of the DOE form EIA–820, spent catalyst from such a unit would not be covered by K171 or K172. These commenters also argued that since EPA promulgated source-specific listings (or ''K'' listings), the listings were clearly based on specific processes or units from which the catalysts are removed and not based on the function performed by the catalysts. In addition, these commenters suggested that EPA define the scope of the hazardous waste listings on the percentage of feedstock conversion (*i.e.,* the amount of hydrocracking performed) in the unit from which a spent catalyst is removed.

We admit that confusion may have been created by the sentence in the preamble to the August 1998 final rule that states that ''if a refinery has been classifying its hydroprocessor as a catalytic hydrocracker for the purposes of DOE's Form EIA–820, spent catalysts from this unit would not be covered by K171 or K172 (with the exception of guard beds * * *).'' As stated above, when we wrote the section of the final rule preamble discussing the definitions of hydrotreating, hydrorefining, and hydrocracking, we did not have dual purpose hydroprocessing units in mind. As a result, the discussion did not address the unusual situation of petroleum hydroprocessing units or reactors that legitimately meet both the PSA definition of hydrotreating and the PSA definition of hydrocracking.

Our intention in the November 29, 1999 and June 1, 2000 memoranda was to address this confusion and clarify that spent catalysts removed from hydroprocessing units that meet the PSA definition of hydrotreating are listed hazardous wastes, even in cases where the unit also meets the PSA definition of hydrocracking. We also clarified that we do not consider spent catalysts from a petroleum hydroprocessing reactor to be a listed hazardous waste solely because some incidental and minimal amount of hydrotreatment of feeds occurs in a hydrocracking unit. In addition, the Agency, in the November 1999 memorandum, clarified that the listing should not be interpreted as providing that spent catalysts from any hydrocracking process—regardless of whether or not hydrotreatment also occurs—are, by definition, outside the scope of the K171 and K172 listings.

Therefore, we disagree with the underlying premise of the commenter's argument that the PSA definitions of hydrotreatment and hydrocracking are mutually exclusive. The definitions clearly overlap. Individual hydroprocessing units may meet both definitions. The fact that any unit can legitimately be classified as a hydrocracker does not preclude the unit from meeting the definition of a hydrotreater or a hydrorefiner.

Based on guidance provided in the preamble to the final rule, including our use of definitions that categorize hydroprocessing units based on the function performed by the unit, and our rejection in the final rule of general refining process definitions (*e.g.,* definitions provided by the Oil and Gas Journal, that base hydroprocessor definitions on the percent of conversion obtained within a unit), we believe the preamble to the August 1998 rule reflects our intent to base the scope of the final listings on the function performed by the units or reactors in which spent catalysts are generated. Therefore, when we clarified in our November 29, 1999 and June 1, 2001 memoranda that spent catalysts removed from dual purpose reactors are included within the scope of the hazardous waste listings based on the function performed by dual purpose reactors, we were consistent with the overall thrust of the discussion provided in the preamble to the final rule.

As we explained in the July 5, 2001 **Federal Register** notice, we acknowledge that the scope of the hazardous waste listings, as explained in the memoranda, is controversial. Therefore, although we believe that the policy explained in the memoranda is a correct reading of the final regulatory language, we decided to take the unusual step of soliciting public comment on the memoranda in which we explained our policy, due to concerns raised by the regulatory community. In today's notice, and after considering public comments received in response to the July 5, 2001 notice, we are providing public notification that we are retaining our policy with regard to the regulatory status of spent catalysts removed from dual purpose hydroprocessing units, as it is explained in our memoranda of November 29, 1999 and June 1, 2000.

We also disagree with the commenters' assertion that, because we promulgated the final listings as ''K'' listings, this limits the scope of the listings to specific units. Neither the listing descriptions codified in the regulatory language nor the preamble to the final rule limits the listings to specific units. Both the final listing descriptions and the preamble language describe the scope of the listing based on the function performed by the units or reactors from which the spent catalysts have been removed. In addition, while the commenter is correct that some K-listings are unit specific (such as K051—API separator sludge from the petroleum refining industry), many K-listings are not unit specific, but process-specific from a particular industry. For example, there are 16 separate listings within the K-listings that specify ''wastewater treatment sludge'' from a particular industry (*e.g.,* from the production of toxaphene (K041)). The wastewater treatment sludge listings are not necessarily from a particular type of unit. Instead, the listings can be derived from any wastewater treatment process involved in the production of a certain product. In fact, very few of the K-listings actually specify a specific unit. The major difference between the F- and K-listings is that the K-listings generally identify wastes generated by a particular industry and are often more specific with regard to where the waste is formed. Therefore, the Agency's interpretation that spent catalyst from dual-purpose reactors is included in the listing is consistent with the Agency's designation of other K-listings.

We also do not agree with arguments that we should redefine the scope of the hazardous waste listings for spent hydrotreating catalysts and spent hydrorefining catalysts based on the amount of hydrocracking performed in the units or reactors from which the catalysts are removed. We find it is more appropriate to base the scope of the listings on the basis of the hydrotreating and hydrorefining functions performed by the units. As we explained in the preamble to the August 6, 1998 final rule and in our responses to comments received on the proposed listing determinations (60 FR 57747), we continue to reject the notion of defining these wastes on the basis of the degree of hydrocracking that is performed in the units or reactors from which they are removed. As we stated in the preamble to the final rule, reliance on specific conversion rates allows that slight changes in operating and accounting practices may result in reclassification of units or reactors that otherwise would be considered hydrorefiners or hydrotreaters. In addition, the mere presence of hydrocracking does not preclude a unit or reactor from performing a significant hydrotreating or hydrorefining function. Hydrotreating and hydrorefining of petroleum feedstock results in the demetalization and desulfurization of petroleum feedstock as well as the removal of other impurities and heteroatoms. The performance of these functions results in the contamination of the catalyst, such that it eventually becomes spent. We found that the degree of contamination of the catalyst has a direct correlation to the risk potential of the spent catalyst.

B. Comments Received From the Catalyst Recycling Industry

We also received comments from the Ferroalloys Association, a trade association representing companies that recycle spent hydroprocessing catalysts. The catalyst recycling industry generally supports the policy articulated in the November 29, 1999 and June 1, 2001 memoranda. As stated in its comments, the commenter agrees that spent catalysts that perform hydrotreating or hydrorefining functions should be regulated as hazardous wastes, even when the catalysts are removed from units that also perform conversion of heavy fractions to lighter fractions. The commenter points out, however, that in the July 5, 2001 **Federal Register** notice, we identified only three types of dual purpose hydroprocessing units. The commenter argues that other types of hydroprocessing units, including some fixed bed units also perform both hydrotreating and hydrocracking functions. As pointed out above, our interpretation of the final spent catalyst listings, as described in the final rule preamble, the two memoranda, and in this notice, is that the listings include spent catalysts from dual purpose hydroprocessing units. At present, we are aware of three types of specific dual purpose units (H-oil, L–C fining, and T-star units), that both hydrocrack petroleum feedstock and perform hydrotreatment or hydrorefining functions. We are aware that more such units could become available in the future and that others could now exist of which we are unaware. Although we do not anticipate that many other such units exist, other dual purpose units could exist, and the spent catalysts from such units would be captured by the listings.

The July 5, 2001 notice established that the Agency's policy, as described in the November 29, 1999 and June 1, 2000 memoranda, is that spent catalysts from hydroprocessing units that perform both a hydrotreating (or hydrorefining) function and a hydrocracking function are listed hazardous wastes. However, spent catalysts from reactors that perform a hydrocracking function and

only some incidental and minimal amount of hydrotreatment of feeds (*e.g.,* the second stage of a two-staged ISOCRACKING unit) are not listed hazardous wastes. As explained above, the scope of the hazardous waste listings for K171 and K172 includes spent catalysts removed from a reactor that performs a hydrotreating or hydrorefining function, including a spent catalyst from any dual purpose reactor designed and operated to hydrotreat or hydrorefine petroleum feedstock, as well as hydrocrack the feed in the same reactor. The scope of the listing is not limited to the specific units named above or in the background document to this notice, or to units with specific brand names.

The catalyst recyclers also commented that, when EPA promulgated the final hazardous waste listings for spent catalysts, EPA designated the listings as ''specific source'' listings, or ''K'' listings. The recyclers suggested that the Agency amend the listings by combining both listings into one ''F,'' or non-specific source listing. In its comments, the catalyst recycling industry also encouraged EPA to undertake a listing investigation to determine whether or not spent hydrocracking catalysts should be listed as hazardous waste. The commenter points out that data previously collected by the Agency may support such a hazardous waste listing.

The issue regarding the designation of a ''specific source'' listing versus ''non-specific source'' listing (i.e., a ''F-listing'' versus a ''K-listing'') is addressed above. The request regarding a listing determination for spent hydrocracking catalyst is beyond the scope of today's notice.

C. Comments Related to Encouraging Recycling

Commenters representing petroleum refineries argued that EPA should promulgate a conditional exemption from the hazardous waste listings for spent hydrotreating catalysts and spent hydrorefining catalysts that are recycled. Commenters argued that a conditional exemption from the hazardous waste listing would encourage more recycling of spent catalysts.

The consideration of a conditional exemption from the hazardous waste listing for spent catalysts that are recycled is beyond the scope of today's notice. A commenter representing the petroleum refining industry argued that the final listing determination resulted in significant increases in the cost of recycling spent catalysts. The commenter stated, that ''the predicted result of EPA's refusal to tailor the listings was that the costs related to reclamation rose substantially (up to $500–800/ton) after the listings took effect in early 1999, while landfilling of the listed catalysts—in compliance with Subtitle C of RCRA—became relatively more practical and economical (about $200/ton) than reclamation.'' The commenter provided no additional documentation of its claim.

Information available to EPA does not support this conclusion. Available information indicates that management costs for catalyst recyclers increased only slightly as a result of the 1998 final rulemaking due to the need to manage wastes generated as a result of the reclamation process as hazardous wastes. Almost all of the catalyst reclaimers had Subtitle C storage permits prior to the 1998 final rule because many catalysts exhibit one or more of the hazardous waste characteristics and, therefore, had to be managed as hazardous wastes prior to the final listing determination. Although we do not dispute that there is a significant cost differential between the costs associated with reclamation and disposal of spent catalysts, the cost differential is not a result of the final listing determination. In addition, we do not expect a regulatory amendment changing the listing status of spent catalysts that are reclaimed or recycled to have any significant effect upon the future costs of waste management practices.

In its comments, the association representing the catalyst reclaimers did not address the issue of a conditional exemption from the hazardous waste listing for spent catalysts that are recycled. However, the association has petitioned the Agency to amend the land disposal restrictions treatment standards promulgated as part of the final listing determination to require similar treatment requirements for both spent hydrotreating catalysts and spent hydrorefining catalysts. The catalyst reclaimers argue that the difference in treatment standards for spent hydrorefining catalysts discourage recycling of these wastes and result in significant levels of hazardous constituents being land disposed.

We believe it is important to encourage recycling and reclamation of hazardous wastes, as well as the conservation of resources. It is a particularly important goal for the Agency to encourage the reclamation of hazardous wastes containing significant quantities of recoverable metals. As commenters to the July 5, 2001 notice pointed out, spent petroleum hydroprocessing catalyst can contain recoverable quantities of vanadium and other metals. Therefore, we continue to encourage all parties to identify ways in which the recycling of spent catalysts may be encouraged.

Dated: April 30, 2002.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 02–11451 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–975, MM Docket No. 01–128, RM–10133]

Digital Television Broadcast Service; Charleston, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WCSC, Inc., licensee of WCSC–TV, NTSC channel 5, substitutes DTV channel 47 for DTV channel 52 at Charleston. See 66 FR 34400, June 28, 2001. DTV channel 47 can be allotted to Charleston, South Carolina, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 32–55–28 N. and 79–41–58 W. with a power of 1000, HAAT of 597 meters and with a DTV service population of 851 thousand.

With is action, this proceeding is terminated.

DATES: Effective June 17, 2002.

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. 01–128, adopted April 26, 2002, and released May 2, 2002. 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

Television, Digital television broadcasting.

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

47 CFR 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 South Carolina, is amended by removing DTV channel 52 and adding DTV channel 47 at Charleston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11389 Filed 5–7–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2001–10426]

RIN 2130–AA48

Railroad Workplace Safety; Correction

AGENCY: Federal Railroad Administration (FRA), (DOT).

ACTION: Interim final rule; correction.

SUMMARY: In the **Federal Register** of Tuesday, January 15, 2002, (67 FR 1903), the FRA published an interim final rule prohibiting the use of body belts as permissible components of personal fall arrest systems and making technical changes. In the **Federal Register** of Tuesday, March 12, 2002, (67 FR 11055), the FRA published a correction to the interim final rule. Sections 214.105(b)(14) and 214.117(a) were incorrectly modified. This document corrects those modifications.

DATES: Effective on May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, Bridge Engineer, Office of Safety, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6320; or Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6027.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 15, 2002, (67 FR 1903), in an interim final rule, FRA incorrectly modified §§ 214.105(b)(14) and 214.117(a). In the **Federal Register** of March 12, 2002, (67 FR 11055), FRA published a correction to the interim final rule. Sections 214.105(b)(14) and 214.117(a) were incorrectly modified. This document corrects those modifications. In rule FR Doc. 02–723 published on January 15, 2002 (67 FR 1903), amend the following sections.

§ 214.105 [Corrected]

1. On page 1907, in the second column, in § 214.105, correct paragraph (b)(14) to read as follows:

(b)(14) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 3,600 pounds without cracking, breaking, or taking permanent deformation.

§ 214.117 [Corrected]

2. On page 1908, in the second column, in § 214.117, correct paragraph (a) to read as follows:

(a) Railroad bridge workers shall be provided and shall wear eye and face protection equipment when potential eye or face injury may result from physical, chemical, or radiant agents.

Dated: May 2, 2002.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 02–11489 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–06–U

Proposed Rules

Federal Register
Vol. 67, No. 89
Wednesday, May 8, 2002

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule.

SUMMARY: The Small Business Administration (SBA) is considering a waiver of the Nonmanufacturer Rule for bearings, plain, unmounted and bearings mounted. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and source information from interested parties.

DATES: Comments and sources must be submitted on or before May 23, 2002.

ADDRESSES: Submit comments to: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416, Tel: (202) 619–0422.

SUPPLEMENTARY INFORMATION:

Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on two coding systems. The first is the Office of Management and Budget *Standard Industrial Classification Manual.* The second is the Product and Service Code established by the Federal Procurement Data System.

This notice proposes to waive the Nonmanufacturer Rule for bearings, plain, unmounted and bearings mounted, SIC code 3562 and North American Industry Classification System (NAICS) 333613 public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for bearings, plain, unmounted and bearings mounted.

Luz A. Hopewell,

Associate Administrator for Government Contracting.

[FR Doc. 02–11244 Filed 5–7–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2002–12244; Notice No. 02–08]

RIN 2120–AH65

Powerplant Controls on Transport Category Airplanes, General

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes concerning design requirements for powerplant valves controlled from the flight deck. The proposed rule would clarify the requirements for a means to select the intended position of the valve, to indicate the selected position, and to indicate if the valve has not attained the selected position. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Send your comments on or before July 8, 2002.

ADDRESSES:

Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12244 at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. ____.'' We will date-stamp the postcard and mail it back to you.

You also may submit comments through the Internet to: *http://dms.dot.gov*. You may review the public docket containing comments to this proposed regulation in person in the Dockets Office, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review the public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael McRae, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–2123; facsimile 425–227–1320, e-mail *mike.mcrae@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any

recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page *(http://dms.dot.gov/search)*.

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Any person interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular 11–2A, ''Notice of Proposed Rulemaking Distribution System,'' which describes the application procedure.

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is ''Harmonization'' and How Did It Start?

Although part 25 and JAR–25 are similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial added costs to manufacturers and operators. These added costs, however, often do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to ''harmonize'' their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider ''harmonization'' of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures were neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working

groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language ''recommended'' by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry [including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)] proposed an accelerated process to reach harmonization.

What Is the ''Fast Track Harmonization Program''?

In light of a general agreement among the affected industries and authorities to expedite the harmonization program, the FAA and JAA in March 1999 agreed upon a method to achieve these goals. This method, which the FAA has titled ''The Fast Track Harmonization Program,'' is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522). This program involves grouping all of the standards needing harmonization into three categories:

Category 1: Envelope—For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would be ''enveloped'' into the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

Category 2: Completed or near complete—For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize—For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be ''enveloped'' (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JAA, with a consistent means of compliance.

Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC recommended a number of changes to the NPRM. The FAA agrees with the intent of some of those recommendations, but we disagree with others. Those recommendations, and our reasons for disagreeing, are described below in the section entitled ''What Comments Did ARAC Have Concerning the Proposed Action?''

Discussion of the Proposal

How Does This Proposed Regulation Relate to ''Fast Track''?

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. In this action, the FAA proposes to amend § 25.1141, concerning general design requirements for power plant controls. This action was designated a Category 1 project under the Fast Track program.

What Is the Underlying Safety Issue Addressed by the Current Standards?

The intent of this standard is to mitigate the potential for flightcrews to select an inappropriate position for, or be unaware of the position of, powerplant valves that are controlled from the flight deck.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1141(f) [amendment 25–72 (55 FR 29785, July 20, 1990)] is:

''(f) Powerplant valve controls located in the cockpit must have—

(1) For manual valves, positive stops or in the case of fuel valves suitable index provisions, in the open and closed position; and

(2) For power-assisted valves, a means to indicate to the flight crew when the valve—

(i) Is in the fully open or fully closed position; or

(ii) Is moving between the fully open and fully closed position.''

The current text of JAR–25.1141(f) (Change 15, October 2000) is:

''(f) Powerplant valve controls located in the cockpit must have—

(1) For manual valves, positive stops or in the case of fuel valves suitable index provisions, in the open and closed positions; and

(2) In the case of valves controlled from the cockpit other than by mechanical means, where the correct functioning of such a valve is essential for the safe operation of the aeroplane, a valve position indicator operated by a system which senses directly that the valve has attained the position selected, unless other indications in the cockpit give the flight crew a clear indication that the valve has moved to the selected position.

(See Advisory Circular Joint (ACJ) 25.1141(f).)''

The JAA also has issued ACJ 25.1141(f), which serves as interpretative material that supplements JAR 25.1141(f). The text of the ACJ is:

''A continuous indicator need not be provided.''

What Are the Differences in the Standards and What Do Those Differences Result In?

There are four differences between the two standards in paragraph (f)(2). These differences are:

1. To describe the applicable valves, part 25 uses the term ''power-assisted.'' The JAR uses the phrase ''other than by mechanical means.''

2. The JAR uses the phrase ''where the correct functioning of such a valve is essential for the safe operation of the aeroplane'' to reduce the applicability to be more consistent with the requirements of JAR 25.1309(c) relating to indications. Part 25 does not use such a phrase.

3. For the basic indicating requirement, the JAR uses the phrase ''a valve position indicator operated by a

system which senses directly that the valve has attained the position selected.'' Part 25 uses the phrase ''a means to indicate to the flight crew when the valve is in the fully open or fully closed position, or is moving between the fully open and fully closed position.''

4. By including the phrase ''unless other indications in the flight deck give the flightcrew a clear indication that the valve has moved to the selected position,'' the JAR specifically acknowledges that a dedicated indication is not required. Part 25 does not.

What, if Any, Are the Differences in the Means of Compliance?

The only significant differences in the means of compliance are those associated with the differences in the scope of the applicability of the standards.

What Is the Proposed Action?

The FAA proposes to revise the current standard to include the more stringent requirements of the parallel JAR. The text of the rule would be updated, however, so that it more clearly reflects the existing practices that have been found to achieve an acceptable level of safety. Specifically, the proposed revision would require that powerplant valve controls located in the flight deck must provide the crew with means to:

- Select each intended position of the valve;
- Indicate the selected position of the valve; and
- Indicate when the valve has not responded as intended to the selected position or function.

As used in the proposed rule, the ''means to indicate'' can be:

- Provided either by a dedicated ''indicator'' or through the inherent response of the airplane, system, or valve control;
- Provided by either the presence or lack of indication; or
- Provided either continuously or on an ''as required'' basis.

In any case, however, the means to indicate must be clearly evident to the crew.

As used in the proposed rule, the ''means to indicate'' must comply with all other relevant regulations such as §§ 25.1309(c), 25.1321, 25.1322, etc.

What Comments Did ARAC Have Concerning the Proposed Action?

During its review of this proposed rule, ARAC suggested changes to certain parts of the proposed action. Those suggestions and the FAA's response are as follows:

Suggestion 1. The powerplant valve controls should provide the crew with means to ''determine''—rather than ''indicate''—the selected position of the valve and when the valve has not responded as intended to the selected position or function.

FAA Response to Suggestion 1: The FAA does not agree with this change in wording because such a change would change the purpose of the rule in a way that is not intended or desired, and would go ''beyond the scope'' of harmonizing this part 25 rule with that of the parallel JAR–25. The intent is for there to be a means that directly or inherently indicates to the flightcrew the position of the valve and any incorrect response of the valve. The intent is not for the flightcrew to have to deliberate and determine these things.

Suggestion 2. The requirement for the powerplant valve controls to provide a means to indicate when the valve has not responded as intended should be accomplished in accordance with the provisions of an upcoming revision to § 25.1322 (Warning, caution, and advisory lights).

FAA Response to Suggestion 2: The FAA agrees with the intent of this suggestion, but considers it inappropriate to (1) refer to rules in transition, and (2) single out one indication requirement (§ 25.1322) when there are other rules that are just as relevant, such as § 25.1321 (Instruments: Installations, Arrangements and visibility). As an alternative, we have added a clarification in the preamble to indicate that the ''means to indicate'' must necessarily comply with all other relevant regulations, such as §§ 25.1309(c), 25.1321, 25.1322, etc.

Suggestion 3. The ARAC questioned what was meant by the phrase ''the means to indicate must be provided * * * through the inherent response of the airplane * * *'' The ARAC asked if it meant, for example, when the stick force lightens because of inappropriate fuel transfer to give the airplane an aft center of gravity, or when an engine quits for lack of fuel.

FAA Response to Suggestion 3: The FAA intends for that phrase to potentially include such examples and any others that the applicant claims and the FAA Aircraft Certification Office can substantiate as effective.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard continues to address the identified safety issue. It continues to ensure that flight crews will not select an inappropriate position for, or be unaware of the position of, powerplant valves that are controlled from the flight deck. The proposed standard also clarifies the current industry practices that have been found to achieve an acceptable level of safety.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard specifically requires a means to indicate when the valve has not responded as intended to the selected position or function, while the current standard only implies this is a requirement for ''manual valves.''

Since the proposed rule takes the more ''stringent'' parts of both part 25 and JAR–25, it may be viewed as increasing the current level of safety. However, the intent of the proposed standard is not to increase the level of safety, but to help standardize current design practices.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

In effect, the proposed standard duplicates the current requirements for those applicants who certify their designs to both 14 CFR and the JAR. Since these standards are what have resulted in the existing practices, this ''enveloped'' standard should also be considered capable of achieving an acceptable level of safety.

What Other Options Have Been Considered and Why Were They Not Selected?

One option considered was to delete § 25.1141(f) altogether and rely on § 25.1309(c). However, this would reduce the overall level of safety provided by part 25. Additionally, it would not fulfill the objectives of the FAA's tasking to harmonize standards.

Another option was to revise the text of § 25.1141(f) to state:

''(f) Powerplant valve controls located in the flight deck must have—

(1) For manual valves, positive stops or in the case of fuel valves suitable index provisions, in the open and closed positions; and

(2) For power-assisted valves, a valve position indicator operated by a system which senses directly that the valve has attained the position selected, unless other indications in the flight deck give the flight crew a clear indication that the valve has moved to the selected position.''

While this, like the proposal, represents an ''enveloped'' standard, it does not reflect the existing practices as clearly and effectively as the proposed standard. Consequently, additional

interpretive and guidance material probably would be needed to make this somewhat dated and narrow iteration of the rule more relevant for modern designs.

Who Would Be Affected by the Proposed Change?

The proposed standard would affect manufacturers of transport category airplanes and components. However, manufacturers are either already complying, or fully intend to comply with the more stringent standards as a means of obtaining joint certification.

Is Existing FAA Advisory Material Adequate?

With the change in the proposed standard, the FAA does not consider that additional advisory material is necessary.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

The FAA has determined that this proposal would result in a cost-savings by a reduction in duplicative testing, and that it is not ''a significant regulatory action'' as defined in Executive Order 12866, nor ''significant'' as defined in DOT's Regulatory Policies and Procedures. Further, this proposed rule would not have a significant economic impact on a substantial number of small entities, would reduce barriers to international trade, and would not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

The DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposed rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. Accordingly, the FAA has determined that the expected impact of this proposed rule is so minimal that the proposed rule does not warrant a full evaluation. We provide the basis for this determination as follows:

Currently, airplane manufacturers must satisfy both part 25 and the European JAR–25 standards to certificate transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. As explained in detail previously, these efforts are referred to as harmonization.

This proposal would replace some requirements of existing § 25.1141(f) with the ''more stringent'' requirements in JAR 25.1141(f) . It also would revise the wording of the section to reflect common industry terminology. This proposed rule results from the FAA's acceptance of recommendations made by ARAC. We have concluded that, for the reasons previously discussed in the preamble, the adoption of the proposed requirements in 14 CFR part 25 is the most efficient way to harmonize these sections and, in so doing, the existing level of safety will be preserved.

There was consensus within the ARAC members, comprised of representatives of the affected industry, that the requirements of the proposed rule will not impose additional costs on U.S. manufacturers of part 25 airplanes. In fact, manufacturers are expected to receive cost-savings by a reduction in the FAA/JAA certification requirements for new airplanes. The cost-savings from this proposed rule would be a reduction in duplicative testing to generate data to demonstrate compliance with each standard. We have reviewed the cost analysis provided by industry through the ARAC process. Based on this analysis, we consider that a full regulatory evaluation is not necessary.

We invite comments with supporting documentation regarding the regulatory evaluation statements based on ARAC's proposal.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 50 U.S.C. 601–612, as amended, establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons:

First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule would require that new transport category aircraft manufacturers meet just one certification requirement, rather than different standards for the United States and Europe. Airplane manufacturers already meet or expect to meet this standard as well as the existing 14 CFR part 25 requirement.

Second, all U.S. transport-aircraft category manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for aircraft manufacturers. The current U.S. part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream

Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

Given that this proposed rule is minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of the proposed rule and has determined that it complies with the Act because this rule would use European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1532–1538, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action 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. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in 14 CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, and 44704

2. Amend section 25.1141 by revising paragraph (f) to read as follows:

§ 25.1141 Powerplant controls: general.

* * * * *

(f) Powerplant valve controls located in the flight deck must provide the flightcrew with means to:

(1) Select each intended position or function of the valve;

(2) Indicate the selected position or function of the valve; and

(3) Indicate when the valve has not responded as intended to the selected position or function.

Issued in Renton, Washington, on April 26, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–11493 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105885–99]

RIN 1545–AX52

Compensation Deferred Under Eligible Deferred Compensation Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would provide guidance on compensation deferred under eligible section 457(b) deferred compensation plans of state and local governmental and tax-exempt entities. The regulations reflect the changes made to section 457 by the Tax Reform Act of 1986, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Economic Growth and Tax Relief Reconciliation Act of 2001, the Job Creation and Worker Assistance Act of 2002, and other legislation. The regulations would also make various technical changes and clarifications to the existing final regulations on many discrete issues. These regulations provide the public with guidance necessary to comply with the law and will affect plan sponsors, administrators, participants, and beneficiaries. The document also provides a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by August 6, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for August 28, 2002, must be received no later than August 7, 2002.

ADDRESSES: Send submissions to CC:ITA:RU (REG–105885–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–105885–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs.* The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, please contact Cheryl Press, (202) 622–6060 (not a toll-free number). To be placed on the attendance list for the hearing, please contact LaNita Van Dyke at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this notice of proposed rulemaking has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1580.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On September 23, 1982, final regulations (TD 7836) under section 457 of the Internal Revenue Code of 1954 (Code) were published in the **Federal Register** (47 FR 42335) (September 27, 1982) (final regulations). The final regulations provide guidance for complying with the changes to the applicable tax law made by the Revenue Act of 1978 (92 Stat. 2779) relating to deferred compensation plans maintained by state and local governments and rural electric cooperatives. These proposed regulations would amend the final regulations to conform them to the many amendments made to section 457 by subsequent legislation, including section 1107 of the Tax Reform Act of 1986 (TRA '86) (100 Stat. 2494), section 1404 of the Small Business Job Protection Act of 1996 (SBJPA) (110 Stat. 1755) (1996), section 1071 of the Taxpayer Relief Act of 1997 (TRA '97) (111 Stat. 788) (1997), sections 615, 631, 632, 634, 635, 641, 647, 649, and other sections of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (115 Stat. 38) (2001), and paragraphs (o)(8) and (p)(5) of section 411 of the Job Creation and Worker Assistance Act of 2002 (116 Stat. 21) (2002). These proposed regulations would also amend the final regulations to provide additional guidance on section 457 issues raised since the final regulations were published in 1982. This document also incorporates the guidance provided in Notice 98–8 (1998–1 C.B. 355), with respect to amendments made to section 457 by the SBJPA and TRA '97, including the section 457(g) trust requirement for eligible plans of state and local governments (eligible governmental plans).

Explanation of Provisions

Overview

The proposed regulations would provide broad guidance regarding the rules applicable to eligible deferred compensation plans described in section 457(b) (eligible plans) and, in particular, provide clear standards for the administration and operation of eligible plans. The proposed regulations would amend the existing final regulations to update them for changes in the law, including the many changes made by EGTRRA, and respond to the comments and inquiries received from state and local governments and tax-exempt employers that sponsor eligible plans, from participants and beneficiaries, and from service providers and other advisors.

The proposed regulations at §§ 1.457–1 through 1.457–3 include a general overview of section 457, as applicable to both eligible plans and ineligible plans that are subject to section 457(f), and general definitional provisions. Specific rules applicable to eligible plans are contained in proposed §§ 1.457–4 through 1.457–10, while rules applicable to those deferred compensation plans that fail to satisfy the requirements applicable to eligible plans (ineligible plans) are contained in proposed § 1.457–11.

1. General Provisions and Establishment of Eligible Plans

Section 457, as amended by TRA '86, applies to tax-exempt employers as well as to state and local governments. Eligible employers may maintain eligible plans, which must satisfy the requirements of section 457(b) in both form and operation, or may maintain ineligible plans. Benefits under eligible plans are excludable from income of plan participants until paid, in the case of an eligible governmental plan, or, in the case of an eligible plan of a tax-exempt employer, until paid or made available. Benefits under ineligible plans are, under section 457(f), includible in income when deferred or, if later, when rights to the benefits are not subject to a substantial risk of forfeiture. Certain types of plans of state and local government and tax-exempt entities are not subject to section 457. These types are listed in the definition of *plan* in proposed § 1.457–2.

The proposed regulations make clear that the requirements of section 457(b) for eligible plans apply to both elective contributions and to other types of contributions, such as mandatory contributions, nonelective employer contributions, and employer matching contributions. Thus, for example, proposed § 1.457–2(b) defines *annual deferrals* to include both elective salary reduction contributions and nonelective employer contributions. Annual deferrals also include compensation deferred under eligible plans that are defined benefit plans.

An eligible plan must satisfy the requirements of section 457(b) and related provisions both in form and in operation. Under the proposed regulations, an eligible plan must be established in writing, must include all of the material terms for benefits under the plan, and must be operated in compliance with the requirements reflected in the regulations. Of course, plan sponsors retain flexibility in determining whether to provide certain design options permitted under section 457. For example, although these proposed regulations permit certain in-service distributions of smaller account balances in accordance with section 457(e)(9), an eligible plan is not required to offer participants this distribution option. However, any optional features incorporated into an eligible plan must meet the requirements of section 457 and the regulations in both form and operation.

All amounts deferred under an eligible governmental plan are required to be set aside in a trust, custodial account, or annuity contract for the exclusive benefit of participants and their beneficiaries. However, under section 457(b)(6), all amounts deferred under an eligible plan of a tax-exempt employer are required to be unfunded. This requirement for an eligible plan of a tax-exempt employer does not alter any provision of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Accordingly, an eligible plan of a tax-exempt employer may be subject to certain of the requirements of Title I. In the case of an eligible plan of a tax-exempt employer that is subject to Title I of ERISA, compliance with the exclusive purpose, trust, funding, and certain other rules will cause the plan to fail to satisfy section 457(b)(6). See Q&A–25 of Notice 87–13 (1987–1 C.B. 432).

The proposed regulations include certain basic rules regarding the taxation of contributions and benefits under ineligible plans, especially the relationship between deferred compensation under an ineligible plan and property transfers to which section 83 applies, but are not intended to provide complete or comprehensive guidance under section 457(f). Similarly, the proposed regulations refer to, but do not provide specific guidance on, certain arrangements that are not treated as plans providing deferred compensation, such as bona fide severance pay plans described in section 457(e)(11).

2. Annual Deferrals, Deferral Limitations, and Deferral Agreements Under Eligible Plans

a. Annual Deferrals

Proposed § 1.457–4 sets forth rules regarding deferrals under eligible plans under section 457(b). The proposed regulations would expand the rules contained in the final regulations. Examples have been included in order to illustrate the application of the rules to specific circumstances and to address common questions and situations encountered in the administration of eligible plans.

The proposed regulations use the term *annual deferrals* to describe all amounts contributed or deferred under an eligible plan, whether by voluntary salary reduction contribution or by other employer contribution, and all earnings thereon. If, as is typical, amounts contributed to the eligible plan are fully vested, the total of amounts contributed to the eligible plan during a taxable year is the same as the total of the annual deferrals for the taxable year.

The proposed regulations would also clarify that the rules concerning agreements for deferrals operate on a cash basis. Thus, under proposed § 1.457–4(b), an agreement to defer compensation is valid if it is made before the first day of the month in which compensation is paid or made available. In general, there is no requirement that the agreement be entered into prior to the time the services giving rise to the compensation are performed. However, compensation payable in the first month of employment may be deferred only if an agreement is entered into prior to the time a participant performs services for the employer. The proposed regulations provide explicitly that nonelective employer contributions are treated as being made under a valid agreement. In addition, Rev. Rul. 2000–33 (2000–2 C.B. 142), provides guidance concerning automatic enrollment under eligible plans. Contributions made under an automatic enrollment arrangement described in that Revenue Ruling may be treated as made under a valid agreement.

b. Deferral Limitations

The proposed regulations under § 1.457–4 explain the annual limits that apply to annual deferrals under eligible plans. These contribution limits are sometimes referred to as ''plan ceilings.'' Generally, the basic annual limit or plan ceiling for a year cannot exceed a specified dollar amount for the year or, if less, 100 percent of a participant's ''includible compensation.'' Under EGTRRA, the dollar amount is $11,000 for 2002; $12,000 for 2003; $13,000 for 2004; $14,000 for 2005; and $15,000 for 2006 and thereafter. After 2006, the $15,000 amount is adjusted for cost-of-living. As a result of the enactment of the Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21) on March 9, 2002, the calculation of includible compensation is no longer reduced by the exclusions from gross income under sections 402(g), 125, 132(f), and 457. Thus, for years beginning after December 31, 2001, includible compensation is no longer reduced by elective deferrals to an eligible plan. If a participant's includible compensation is less than the applicable dollar limit, the dollar amount equal to 100 percent of includible compensation is the basic annual limit for the participant.

An eligible plan may also permit certain ''catch-up'' contributions. First, in accordance with section 414(v) as added to the Code by EGTRRA, a plan may allow a participant who attains age 50 by the end of the year to elect to have an additional deferral for the year. The additional amount permitted under this age 50 catch-up is $1,000 for 2002, $2,000 for 2003, $3,000 for 2004, $4,000 for 2005, and $5,000 for 2006. Proposed regulations (REG–142490–01) under section 414(v) were published in the **Federal Register** on October 23, 2001 (66 FR 53555) as § 1.414(v)–1.

Second, an eligible plan may permit a larger catch-up amount in the last three years ending before the participant attains normal retirement age. The amount of this special section 457 catch-up is two times the basic annual limit (e.g., an additional $15,000 for 2006), but only to the extent the participant has not previously deferred the maximum amount under an eligible plan or similar tax-deferred retirement plan (called the underutilized amount or underutilized limitation in the proposed regulations). Alternatively, the age 50 catch-up is available in the last three years ending before the participant attains normal retirement age if the age 50 catch-up amount is larger than the special section 457 catch-up amount.

Under the proposed regulations, a participant may not elect to have the special section 457 catch-up apply more than once, unless the participant is covered by a plan of another employer. If a participant also or later participates in an eligible plan of a different employer and otherwise meets the requirements for limited catch-up, the participant may elect under the new plan to have the special section 457 catch-up apply.

For purposes of the special section 457 catch-up, the proposed regulations provide that the plan must designate a normal retirement age between the age at which participants have the right to receive immediate retirement benefits under the basic pension plan of the state or tax-exempt entity without actuarial or similar reduction and age 70½. Alternatively, a plan may provide that a participant is allowed to designate a normal retirement age within these ages. The proposed regulations provide a special rule for defining normal retirement age in eligible plans of qualified police or firefighters as defined under section 415(b)(2)(H)(ii)(I), taking into account that these participants are often eligible for retirement at a younger age than other workers.

The proposed regulations require an eligible plan to set forth the plan's normal retirement age. However, as discussed in this preamble under Proposed Effective Date, plan amendments to reflect this requirement are not required to be adopted until guidance is issued addressing when plan amendments must be adopted.

3. Individual Limitation for Combined Annual Deferrals Under Eligible Plans

Before enactment of EGTRRA, a coordination limitation applied under which the basic annual limitation and the special section 457 catch-up limitation were reduced by amounts excluded from a participant's income for any taxable year by reason of a salary reduction or elective contribution under a section 401(k) plan or a section 403(b) contract. EGTRRA eliminated coordination with section 401(k) plans and section 403(b) contracts for 2002 and thereafter. However, coordination with these types of arrangements is still taken into account for purposes of determining the underutilized amount for years before 2002, so that these rules continue to be reflected in the proposed regulations for that sole purpose.

EGTRRA did not eliminate section 457(c) under which the maximum amount excludable under all eligible plans, including eligible governmental plans and eligible plans of a tax-exempt entity, cannot exceed applicable section 457 plan limitations. Thus, these limitations, including the basic limitation, the age 50 catch-up limitation, and the special section 457 catch-up limitation, apply not only on a plan basis, but also on an individual basis for cases in which an individual participates in more than one eligible plan during a taxable year. The proposed regulations include rules for how the applicable section 457 limitations apply on an individual basis. The rules for applying catch-up limits on an individual basis provide that the special section 457 catch-up available in the last three years prior to normal retirement age is taken into account only to the extent that an annual deferral is made for a participant under an eligible plan as a result of plan provisions permitted under the special section 457 catch-up and, if the applicable catch-up amount is not the same for each such eligible plan, the individual limit is applied using the catch-up amount under whichever plan that has the largest catch-up amount applicable to the participant. However, as discussed above, a participant may not elect to have the special section 457 catch-up apply more than once, unless the participant is covered by a plan of another employer.

The proposed regulations allow an eligible governmental plan to pay out an annual deferral to the extent the deferral exceeds the individual limit or to correct a deferral in excess of the plan's limit.

4. Sick and Vacation Pay Deferrals

The proposed regulations would permit an eligible plan to provide that a participant may elect to defer accumulated sick pay, accumulated vacation pay, and back pay if certain conditions are satisfied. In accordance with section 457(b)(4), the plan must provide that these amounts may be deferred for any calendar month only if an agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available to the participant. Thus, a participant is not permitted to elect to receive the value of accumulated sick and vacation pay on or after the date on which the employer makes that pay available to the participant in cash. Any deferrals under an eligible plan of sick and vacation pay or back pay are subject to the maximum deferral limitations of section 457 in the year of deferral. Thus, the total amount deferred for any year cannot exceed the plan ceiling for the year, taking into account the 100 percent of includible compensation limit.

5. Excess Deferrals

The proposed regulations address the treatment of excess deferrals and the effect of excess deferrals on plan eligibility under section 457(b). The proposed regulations also provide that an eligible governmental plan may self correct excess deferrals and will not fail to satisfy the applicable requirements of the proposed regulations (including the distribution rules and the funding rules) solely by reason of a distribution of excess deferrals.

Under the proposed regulations, if an excess deferral arises under the maximum deferral limits of section 457(b) for a plan of a governmental employer, an eligible governmental plan is required to correct the failure by distributing the excess deferral to the participant, with allocable net income, as soon as administratively practicable after the plan determines that the amount would be an excess deferral. If excess deferrals of this type are not distributed, the plan will be an ineligible plan with respect to which benefits are taxed according to the rules of section 457(f). If an excess deferral arises under the maximum deferral limits of section 457(b) for a plan of a tax-exempt employer, the plan is not an eligible plan. For purposes of these rules, all plans under which an individual participates by virtue of his or her relationship with a single employer are treated as a single plan.

As stated previously, while EGTRRA repealed the coordination limitation under section 457(c), EGTRRA did not eliminate the requirement that the maximum amount excludable under all eligible plans under section 457(c) as revised by EGTRRA, including eligible governmental plans and eligible plans of a tax-exempt entity, cannot exceed the applicable section 457(b) limitations. Thus, an excess deferral that results from the application of the new individual limitation for multiple eligible plans under section 457(c) may also be, but is not required to be, distributed to the participant. However, consistent with the legislative history to section 457(c), the proposed regulations make clear that a plan will not lose its status as an eligible plan by failing to distribute those excess deferrals that result from the application of this requirement (although those amounts are currently includible in the participant's income).

Comments are specifically requested concerning record-keeping requirements with respect to excess deferrals that are not distributed and, in particular,

concerning the maintenance of records adequate to keep track of any previously taxed excess deferrals that remain in an eligible plan. In addition, comments are also requested as to the proper income and payroll tax reporting of distributions of excess deferrals.

6. Minimum Distribution Requirements

EGTRRA eliminated the special minimum distribution rules that applied to eligible plans. Thus, the proposed regulations generally incorporate by reference the requirements of section 401(a)(9) and the regulations thereunder concerning minimum distributions to participants and beneficiaries. Final and temporary regulations (TD 8987) under section 401(a)(9) were published in the **Federal Register** on April 17, 2002 (67 FR 18988). These regulations provide rules for defined benefit plans and defined contribution plans. Generally, the rules for defined contribution plans apply to eligible deferred compensation plans. Beginning in 2003, a simple uniform table generally applies to all employees to determine the minimum distribution required during their lifetime, including employees covered by an eligible deferred compensation plan.[1] The one exception to this rule for lifetime distributions is for an employee with a spouse designated as the employee's sole beneficiary and the spouse is more than 10 years younger than the employee. In that case the employee can use the employee and spouse's joint and last survivor expectancy to determine the minimum distribution required during the employee's lifetime.

7. Loans

Proposed § 1.457–6(f) sets forth rules governing loans from eligible plans. This proposal responds to the numerous inquiries received concerning the availability of loans from eligible plans maintained by state and local governments, the assets of which are held in trust pursuant to section 457(g).

While section 457(g) does not directly address the issue of whether, or under what circumstances, loans may be made available from trusteed eligible plans, the legislative history to the SBJPA indicates that the new statutory provisions should be interpreted as permitting participant loans from the eligible plan trust under the rules applicable to loans from qualified plans. H.R. Rep. 104–737, at 251. Commentators, some citing this legislative history and some citing pre-ERISA case law and rulings interpreting the exclusive benefit requirement of section 401(a), have urged the IRS to issue formal guidance concerning loans from eligible plans. These comments take the position that the availability of loans will make savings through eligible plans more attractive to participants and will decrease the disparity between eligible plans and the other tax-favored voluntary retirement savings plans.

The pre-ERISA requirements applicable to loans from qualified plans require a facts and circumstances analysis of the availability of the loan feature to all participants, the rate of return, the overall prudence of the investment of the trust corpus in the note of an individual participant, and the pattern of repayments. See, e.g., *Central Motor Co.* v. *United States,* 583 F. 2d 470, 488–491 (10th Cir. 1978); *Winger's Department Store* v. *Commissioner,* 82 T.C. 869 (1982); *Ma-Tran Corp.* v. *Commissioner,* 70 T.C. 158 (1978); and *Feroleto Steel Co.* v. *Commissioner,* 69 T.C. 97 (1977). See also Rev. Rul. 67–258 (1967–2 CB 68).

Under the proposed regulations, a loan from an unfunded eligible plan of a tax-exempt organization would be treated as an impermissible distribution, in violation of the requirements of section 457. However, for loans from an eligible governmental plan, the proposed regulations include a facts and circumstances general standard. This general standard is intended to apply to determine whether the loan is bona fide and for the exclusive purpose of benefitting participants and beneficiaries under section 457(g), as was required under pre-ERISA law for qualified plans. Among the facts and circumstances are whether the loan has a fixed repayment schedule and a reasonable interest rate, and whether there are repayment safeguards to which a prudent lender would adhere.[2] The proposed regulations require a loan to bear a reasonable rate of interest in order to satisfy the requirement that assets and income of an eligible governmental plan be held for the exclusive benefit of participants and their beneficiaries. The proposed regulations would also clarify that section 72(p) applies with respect to loans made under an eligible governmental plan. Regulations interpreting section 72(p)(2) are at § 1.72(p)–1.

If the proposed regulations are finalized in their current form, it is anticipated that the IRS will modify its current no-rule position regarding the issuance of private letter rulings to eligible plans that provide for loans.

8. Distributions From Eligible Plans

a. Eligible Governmental Plans

EGTRRA substantially altered the taxation of distributions from an eligible governmental plan by providing that amounts held under such an eligible plan are not included in a participant's or beneficiary's gross income until distributed. The proposed regulations would interpret this EGTRRA change as applying to all participants in an eligible governmental plan. Thus, an eligible governmental plan may permit participants who are currently entitled to be paid after 2001 to change their previously irrevocable payment elections.

Under EGTRRA, after 2001, the direct rollover rules applicable to qualified plans and section 403(b) contracts will apply to distributions from an eligible governmental plan. The direct rollover rules for qualified plans and section 403(b) contracts are generally explained at §§ 35.3405–1, 31.3405(c)–1, 1.401(a)(31)–1, 1.402(c)–2, and 1.402(f)–1. These direct rollover regulations have not been updated since EGTRRA to reflect that rollovers are permitted for distributions from eligible governmental plans (nor do those regulations reflect that amounts may be rolled over to eligible governmental plans after 2001).

b. Eligible Plans of Tax-Exempt Entities

Amounts deferred under an eligible plan of a tax-exempt entity continue to be taxable when paid or made available. The proposed regulations explain these rules, including the exceptions for amounts available in the event of unforeseeable emergency and distributions of smaller accounts (not in excess of $5,000).

9. Plan terminations and plan-to-plan transfers

The proposed regulations address the topic of plan terminations and plan-to-plan transfers. These topics have become increasingly important in light of the recent statutory changes that impose a trust requirement on eligible governmental plans. In particular, questions have been raised with respect to hospitals and other entities that change from government to private entities, whether or not tax-exempt. The direct rollovers that will be permitted by EGTRRA beginning in 2002 for eligible governmental plans provide participants affected by these types of events the ability to retain their retirement savings in a funded, tax-deferred savings vehicle

[1] Employees may use these new final regulations for distributions for 2002 or may use regulations proposed in 1987 or 2001.

[2] See, for example, the standards in Rev. Rul. 69–494 (1969–2 C.B. 88) for determining when plan investments are primarily for the purpose of benefitting employees or their beneficiaries.

by rollover to IRAs, qualified plan, or section 403(b) contracts. The proposed regulations provide a blueprint for the different plan termination and plan-to-plan transfer alternatives available to sponsors of eligible plans in these situations.

a. Plan Terminations

The proposed regulations would allow a plan to have provisions permitting plan termination whereupon amounts could be distributed without violating the distribution requirements of section 457. Under the proposed regulations, an eligible plan is terminated only if all amounts deferred under the plan are paid to participants as soon as administratively practicable. If the amounts deferred under the plan are not distributed, the plan is treated as a frozen plan and must continue to comply with all of the applicable statutory requirements necessary for plan eligibility. The proposed regulations generally follow the approach of Rev. Rul. 89–87 (1982–2 C.B. 81), which provides guidance on the termination of qualified plans. In that revenue ruling, a qualified plan under which benefit accruals have ceased is not terminated if assets of the plan remain in the plan's related trust rather than being distributed as soon as administratively feasible.

The proposed regulations also highlight the consequences to the plan in the case of an employer that ceases to be an eligible employer but fails to terminate the plan or to transfer its assets under the rules of the proposed regulations described below.

b. Plan-to-plan Transfers

The proposed regulations would clarify that transfers between certain types of eligible plans do not violate the requirements of section 457(b), including the distribution requirements of section 457(d), if certain conditions are satisfied. Thus, an eligible governmental plan may transfer its assets to another eligible governmental plan; likewise, an unfunded, tax-exempt plan may transfer amounts deferred to another unfunded, tax-exempt plan. However, in the same manner that rollovers are not permitted between unfunded plans of tax-exempt employers and funded governmental plans (and because of potential violations of the exclusive benefit rule applicable to eligible governmental plans), amounts cannot be transferred from an eligible plan of a tax-exempt employer to an eligible governmental plan or from an eligible governmental plan to an eligible plan of a tax-exempt employer.

Plan-to-plan transfers within similar types of eligible plans are permitted in two kinds of circumstances. First, it is contemplated that transfers may occur when a participant in the transferor plan terminates employment with the transferor employer and is employed by the transferee employer. Transfers with respect to individual participants are permitted if both plans agree to the transfer, the participant has terminated employment with the transferor, and the participant whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred immediately before the transfer.

Second, the proposed regulations also contemplate certain asset transfers of all amounts deferred under the plan in the event an activity of a state or local government is privatized or otherwise ceases to be performed by a governmental entity. Thus, as an alternative to plan termination or a plan-to-plan transfer, the proposed regulations provide that a government employer that loses its eligible status may transfer the eligible plan to another eligible government employer within the same state. For example, a county hospital that maintains an eligible plan and that ceases to be a governmental entity could transfer the plan to the county for continued administration.

The proposed regulations also address transfers between eligible governmental plans and qualified defined benefit plans with respect to past service credit. Because the proposed regulations specifically state that a transfer for past service credit is not treated as a distribution for purposes of section 457, such a transfer could be made while the participant is still working.

10. Qualified Domestic Relations Orders

The proposed regulations address the issue of qualified domestic relations orders (QDROs). The administration of QDROs has created difficulties for eligible employers and section 457 plan administrators and participants, and numerous inquiries and private letter ruling requests involving the application of judicial domestic relations orders to participants' accounts in eligible section 457(b) deferred compensation plans have been received. The proposed regulations provide that an eligible plan may honor the terms of a QDRO without jeopardizing its eligible status.

Under the proposed regulations, as provided under section 457 as amended by EGTRRA, an eligible plan does not become an ineligible plan described in section 457(f) solely because its administrator or sponsor complies with a QDRO described in section 414(p) (taking into account the special rule section 414(p)(11) for governmental and church plans), including a QDRO requiring the distribution of the benefits of a participant to an alternate payee in advance of the general rules for eligible plan distributions under § 1.457–6. In the case of an eligible governmental plan, amounts paid to the alternate payee who is the spouse or former spouse of a participant under the QDRO are taxable to the alternate payee when they are paid.

In the case of an eligible plan of a tax-exempt entity, amounts payable to the alternate payee who is the spouse or former spouse of a participant under the QDRO are taxable to the alternate payee when they are paid or made available to the alternate payee. In addition, amounts deferred under an eligible plan of a tax-exempt entity that are attributable to the alternate payee are treated as made available on the date the alternate payee is first able to receive a distribution.

11. Rollovers to Eligible Plans

EGTRRA now allows rollovers contributions to be accepted by an eligible governmental plan, but only if the receiving eligible governmental plan maintains the rollover amount in a separate account. The proposed regulations include such rollovers as part of the amount deferred under the receiving plan, but a rollover contribution is not taken into account as an annual deferral under the plan for purposes of the plan ceiling limit on annual deferrals. While EGTRRA does not require a separate account for each type of rollover contributions (e.g, an account for rollovers from qualified plans which is separate from rollovers from section 403(b) contracts), comments are requested on whether there are any special characteristics applicable to qualified plans, section 403(b) contracts, or individual retirement arrangements (IRAs) under section 72(t) (imposing an additional income tax on early distributions from such plans, contracts, or arrangements) which could be lost if multiple types of separate accounts are not maintained.

12. Correction Program for Section 457(b) Eligible Deferred Compensation Plans

Employee Plans, within the office of the Commissioner, Tax Exempt and Government Entities (TE/GE), has comprehensive correction programs for sponsors of retirement plans (qualified retirement plans, 403(b) plans, and Simplified Employee Pensions). These programs, including the Employee Plans

Compliance Resolution System (EPCRS), Rev. Proc. 2001–17 (2001–7 I.R.B. 589), permit plan sponsors to correct plan defects and thereby continue to provide their employees retirement benefits on a tax-favored basis. Employee Plans intends to expand the provisions of EPCRS to include appropriate correction procedures for certain failures arising under eligible deferred compensation plans. The public is invited to submit comments to assist in the development of these procedures. Comments should be sent to: Internal Revenue Service, Attention: T:EP:RA:VC, 1111 Constitution Avenue NW, Washington, DC 20224.

Pending the update of EPCRS, submissions related to section 457 (b) eligible deferred compensation plan failures will be accepted by Employee Plans on a provisional basis outside of EPCRS.

13. Ineligible Plans

The proposed regulations include guidance regarding ineligible plans under section 457(f). Section 457(f) was in section 457 when it was added to the Code in 1978 for governmental employees, and extended to employees of tax-exempt organizations (other than churches or certain church-controlled organizations) in 1986, because unfunded amounts held by a tax-exempt entity compound tax free like an eligible plan, a qualified plan, or a section 403(b) contract. Section 457(f) was viewed as essential in order to provide an incentive for employers that are not subject to income taxes to adopt an eligible plan, a qualified plan, or a section 403(b) contract.[3] Section 457(f) generally provides that, in the case of an agreement or arrangement for the deferral of compensation, the deferred compensation is included in gross income when deferred or, if later, when the rights to payment of the deferred compensation cease to be subject to a substantial risk of forfeiture. Section 457(f) does not apply to an eligible plan, a qualified plan, a section 403(b) contract, a section 403(c) contract, a transfer of property described in section 83, a trust to which section 402(b) applies, or a qualified governmental excess benefit arrangement described in section 415(m).

The proposed regulations reflect the statutory changes in section 457(f) that have been made since 1982—which is when the current outstanding regulations were issued—and clarify the interaction between sections 457(f) and 83 (relating to the transfer of property in connection with the performance of services). Under the proposed regulations, section 457(f) does not apply to a transfer of property if section 83 applies to the transfer. Further, section 457(f) does not apply if the date on which there is no substantial risk of forfeiture with respect to the compensation is on or after the date on which there is a transfer of property to which section 83 applies. However, section 457(f) applies if the date on which there is no substantial risk of forfeiture with respect to the compensation deferred precedes the date on which there is a transfer of property to which section 83 applies. The proposed regulations include several examples, including an example illustrating that section 457(f) does not fail to apply merely because benefits are subsequently paid by a transfer of property. Comments are requested on the coordination of section 457(f) and section 83 under these proposed regulations.

In 2000, the IRS issued Announcement 2000–1 (2000–2 I.R.B. 294), in which it provided interim guidance on certain broad-based, nonelective plans of a state or local government that were in existence before 1999. Comments are requested on whether similar guidance should be included in the final regulations, and, if so, how the guidance should apply to arrangements, such as those maintained by certain state or local governmental educational institutions, under which supplemental compensation is payable as an incentive to terminate employment, or as an incentive to retain retirement-eligible employees, to ensure an appropriate workforce during periods in which a temporary surplus or deficit in workforce is anticipated.

Proposed Effective Date

It is proposed that these regulations apply generally for taxable years beginning after December 31, 2001. This is the general applicability date of the changes made in section 457 by EGTRRA. Special effective date provisions apply to provisions relating to coordination of sections 457(f) and 83 and for qualified domestic relations orders. Plan amendments to reflect EGTRRA, and any other requirement under these regulations, are not required to be adopted until the later of when guidance is issued addressing when plan amendments must be adopted or the date final regulations are issued. However, employers may rely on these proposed regulations in taxable years beginning after August 20, 1996 (which is the earliest applicability date for requirements applicable to eligible plans under the SBJPA). Comments are requested on whether an applicability date later than taxable years beginning after December 31, 2001 should apply when the regulations are issued in final form.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 28, 2002, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 7, 2002. A period of 10 minutes

[3] See generally the *Report to the Congress on the Tax Treatment of Deferred Compensation under Section 457*, Department of the Treasury, January 1992 (available from the Office of Tax Policy, Room 5315, Treasury Department, 1500 Pennsylvania Avenue, NW., Washington DC 20220).

will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Cheryl Press, Office of Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows.

PART 1—INCOME TAXES

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

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

Par. 2. Sections 1.457–1, 1.457–2, 1.457–3 and 1.457–4 are revised to read as follows:

§ 1.457–1 General overview of section 457.

Section 457 provides rules for nonqualified deferred compensation plans established by eligible employers as defined under § 1.457–2(d). Eligible employers can establish either deferred compensation plans that are eligible plans and that meet the requirements of section 457(b) and §§ 1.457–3 through 1.457–10, or deferred compensation plans or arrangements that do not meet the requirements of section 457(b) and §§ 1.457–3 through 1.457–10 and that are subject to tax treatment under section 457(f) and § 1.457–11.

§ 1.457–2 Definitions.

This section sets forth the definitions that are used under §§ 1.457–1 through 1.457–11.

(a) *Amount(s) deferred. Amount(s) deferred* means the total annual deferrals under an eligible plan in the current and prior years, adjusted for gain or loss. Except as otherwise specifically indicated, *amount(s) deferred* includes any rollover amount held by an eligible plan as provided under § 1.457–10(e).

(b) *Annual deferral(s)*—(1) *Annual deferral(s)* means, with respect to a taxable year, the amount of compensation deferred under an eligible plan, whether by salary reduction or by nonelective employer contribution. The amount of compensation deferred under an eligible plan is taken into account as an annual deferral in the taxable year of the participant in which deferred, or, if later, the year in which the amount of compensation deferred is no longer subject to a substantial risk of forfeiture.

(2) If the amount of compensation deferred under the plan during a taxable year is not subject to a substantial risk of forfeiture, the amount taken into account as an annual deferral is not adjusted to reflect gain or loss allocable to the compensation deferred. If, however, the amount of compensation deferred under the plan during the taxable year is subject to a substantial risk of forfeiture, the amount of compensation deferred that is taken into account as an annual deferral in the taxable year in which the substantial risk of forfeiture lapses must be adjusted to reflect gain or loss allocable to the compensation deferred until the substantial risk of forfeiture lapses.

(3) If the eligible plan is a defined benefit plan within the meaning of section 414(j), the annual deferral for a taxable year is the present value of the increase during the taxable year of the participant's accrued benefit that is not subject to a substantial risk of forfeiture (disregarding any such increase attributable to prior annual deferrals). For this purpose, present value must be determined using actuarial assumptions and methods that are reasonable (both individually and in the aggregate), as determined by the Commissioner.

(c) *Beneficiary. Beneficiary* means a beneficiary of a participant, a participant's estate, or any other person whose interest in the plan is derived from the participant, including an alternate payee as described in § 1.457–10(c).

(d) *Catch-up. Catch-up* amount or *catch-up* limitation for a participant for a taxable year means the annual deferral permitted under section 414(v) (as described in § 1.457–4(c)(2)) or section 457(b)(3) (as described in § 1.457–4(c)(3)) to the extent the amount of the annual deferral for the participant for the taxable year is permitted to exceed the plan ceiling applicable under section 457(b)(2) (as described in § 1.457–4(c)(1)).

(e) *Eligible employer. Eligible employer* means an entity that is a state as defined in paragraph (l) of this section that establishes a plan or a tax-exempt entity as defined in paragraph (m) of this section that establishes a plan. The performance of services as an independent contractor for a state or local government or a tax-exempt entity is treated as the performance of services for an eligible employer. The term *eligible employer* does not include a church as defined in section 3121(w)(3)(A), a qualified church-controlled organization as defined in section 3121(w)(3)(B), or the Federal government or any agency or instrumentality thereof.

(f) *Eligible plan.* An *eligible plan* is a plan that meets the requirements of §§ 1.457–3 through 1.457–10 that is established and maintained by an eligible employer. An *eligible governmental plan* is an eligible plan that is established and maintained by an eligible employer as defined in paragraph (l) of this section. An arrangement does not fail to constitute a single eligible governmental plan merely because the arrangement is funded through more than one trustee, custodian, or insurance carrier. An *eligible plan of a tax-exempt entity* is an eligible plan that is established and maintained by an eligible employer as defined in paragraph (m) of this section.

(g) *Includible compensation. Includible compensation* of a participant means, with respect to a taxable year, the participant's compensation, as defined in section 415(c)(3), for services performed for the eligible employer. The amount of includible compensation is determined without regard to any community property laws.

(h) *Ineligible plan. Ineligible plan* means a plan established and maintained by an eligible employer that is not maintained in accordance with §§ 1.457–3 through 1.457–10. A plan that is not established by an eligible employer as defined in paragraph (e) of this section is neither an eligible nor an ineligible plan.

(i) *Nonelective employer contribution.* A *nonelective employer contribution* is a contribution made by an eligible employer for the participant with respect to which the participant does not have the choice to receive the contribution in cash or property. Solely for purposes of section 457 and §§ 1.457–2 through 1.457–11, the term *nonelective employer contribution* includes employer contributions that would be described in section 401(m) if they were contributions to a qualified plan.

(j) *Participant. Participant* in an eligible plan means an individual who is currently deferring compensation, or who has previously deferred compensation under the plan by salary reduction or by nonelective employer contribution and who has not received a distribution of his or her entire benefit under the eligible plan. Only individuals who perform services for

the eligible employer, either as an employee or as an independent contractor, may defer compensation under the eligible plan.

(k) *Plan. Plan* includes any agreement or arrangement between an eligible employer and a participant or participants under which the payment of compensation is deferred (whether by salary reduction or by nonelective employer contribution). The following types of plan are not treated as agreements or arrangement under which compensation is deferred: a bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan described in section 457(e)(11)(A)(i) and any plan paying length of service awards to bona fide volunteers (and their beneficiaries) on account of qualified services performed by such volunteers as described in section 457(e)(11)(A)(ii). Further, the term *plan* does not include any of the following (and section 457 and §§ 1.457–2 through 1.457–11 do not apply to any of the following)—

(1) Any nonelective deferred compensation under which all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship with the eligible employer are covered under the same plan with no individual variations or options under the plan as described in section 457(e)(12), but only to the extent the compensation is attributable to services performed as an independent contractor;

(2) An agreement or arrangement described in § 1.457–11(b);

(3) Any plan satisfying the conditions in section 1107(c)(4) of the Tax Reform Act of 1986 (TRA '86) (relating to certain plans for state judges); and

(4) Any of the following plans or arrangements (to which specific transitional statutory exclusions apply)—

(i) A plan or arrangement of a tax-exempt entity in existence prior to January 1, 1987, if the conditions of section 1107(c)(3)(B) of the TRA '86, as amended by section 1011(e)(6) of Technical and Miscellaneous Revenue Act of 1988 (TAMRA), are satisfied;

(ii) A collectively bargained nonelective deferred compensation plan in effect on December 31, 1987, if the conditions of section 6064(d)(2) of TAMRA are satisfied;

(iii) Amounts described in section 6064(d)(3) of TAMRA (relating to certain nonelective deferred compensation arrangements in effect before 1989); and

(iv) Any plan satisfying the conditions in section 1107(c)(4) or (5) of TRA '86 (relating to certain plans for certain individuals with respect to which the Service issued guidance before 1977).

(l) *State. State* includes the 50 States of the United States, the District of Columbia, a political subdivision of a state or the District of Columbia, or any agency or instrumentality of a state or the District of Columbia.

(m) *Tax-exempt entity. Tax-exempt entity* includes any organization (other than a governmental unit) exempt from tax under subtitle A of the Internal Revenue Code.

(n) *Trust. Trust* means a trust described under section 457(g) and § 1.457–8. Custodial accounts and contracts described in section 401(f) are treated as trusts under the rules described in § 1.457–8(a)(2).

§ 1.457–3 General introduction to eligible plans.

(a) *Compliance in form and operation.* An eligible plan is a written plan established and maintained by an eligible employer that is maintained, in both form and operation, in accordance with the requirements of §§ 1.457–4 through 1.457–10. An eligible plan must contain all the material terms and conditions for benefits under the plan. An eligible plan may contain certain optional features not required for plan eligibility under section 457(b), such as distributions for unforeseeable emergencies, loans, plan-to-plan transfers, additional deferral elections, acceptance of rollovers to the plan, and distributions of smaller accounts to eligible participants. However, except as otherwise specifically provided in §§ 1.457–4 through 1.457–10, if an eligible plan contains any optional provisions, the optional provisions must meet, in both form and operation, the relevant requirements under section 457 and §§ 1.457–2 through 1.457–10.

(b) *Treatment as single plan.* In any case in which multiple plans are used to avoid or evade the requirements of §§ 1.457–4 through 1.457–10, the Commissioner may apply the rules under §§ 1.457–4 through 1.457–10 as if the plans were a single plan.

§ 1.457–4 Annual deferrals, deferral limitations, and deferral agreements under eligible plans.

(a) *Taxation of annual deferrals.* Annual deferrals that satisfy the requirements of paragraphs (b) and (c) of this section are excluded from the gross income of a participant in the year deferred or contributed and are not includible in gross income until paid to the participant in the case of an eligible governmental plan, or until paid or otherwise made available to the participant in the case of an eligible plan of a tax-exempt entity. See § 1.457–7.

(b) *Agreement for deferral.* In order to be an eligible plan, the plan must provide that compensation may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available. A new employee may defer compensation payable in the calendar month during which the participant first becomes an employee if an agreement providing for the deferral is entered into on or before the first day on which the participant performs services for the eligible employer. An eligible plan may provide that if a participant enters into an agreement providing for deferral by salary reduction under the plan, the agreement will remain in effect until the participant revokes or alters the terms of the agreement. Nonelective employer contributions are treated as being made under an agreement entered into before the first day of the calendar month.

(c) *Maximum deferral limitations*—(1) *Basic annual limitation.* (i) Except as described in paragraphs (c)(2) and (3) of this section, in order to be an eligible plan, the plan must provide that the annual deferral amount for a taxable year (the plan ceiling) may not exceed the lesser of—

(A) The applicable annual dollar amount specified in section 457(e)(15): $11,000 for 2002; $12,000 for 2003; $13,000 for 2004; $14,000 for 2005; and $15,000 for 2006 and thereafter. After 2006, the $15,000 amount is adjusted for cost-of-living in the manner described in paragraph (c)(4) of this section; or

(B) 100 percent of the participant's includible compensation for the taxable year.

(ii) The amount of annual deferrals permitted by the 100 percent of includible compensation limitation under paragraph (c)(1)(i)(B) of this section is determined under section 457(e)(5) and § 1.457–2(g).

(iii) For purposes of determining the plan ceiling under this paragraph (c), the annual deferral amount does not include any rollover amounts received by the eligible plan under § 1.457–10(e).

(iv) The provisions of this paragraph (c)(1) are illustrated by the following examples:

Example 1. (i) *Facts.* Participant A, who earns $14,000 a year, enters into a salary reduction agreement in 2006 with A's eligible employer and elects to defer $13,000 of A's compensation for that year. Participant A is not eligible for the catch-up described in paragraph (c)(2) or (3) of this section,

participates in no other retirement plan, and has no other income exclusions taken into account in computing includible compensation.

(ii) *Conclusion.* The annual deferral limit for A in 2006 is the lesser of $15,000 or 100 percent of includible compensation, $14,000. A's annual deferral of $13,000 is permitted under the plan because it is not in excess of $14,000 and thus does not exceed 100 percent of A's includible compensation.

Example 2. (i) *Facts.* Assume the same facts as in *Example 1*, except that *A*'s eligible employer provides an immediately vested, matching employer contribution under the plan for participants who make salary reduction deferrals under A's eligible plan. The matching contribution is equal to 100 percent of elective contributions, but not in excess of 10 percent of compensation (in A's case, $1,400).

(ii) *Conclusion.* Participant A's annual deferral exceeds the limitations of this paragraph (c)(1). A's maximum deferral limitation in 2006 is $14,000. A's salary reduction deferral of $13,000 combined with A's eligible employer's nonelective employer contribution of $1,400 exceeds the basic annual limitation of this paragraph (c)(1) because A's annual deferrals total $14,400. A has an excess deferral for the taxable year of $400, the amount exceeding A's permitted annual deferral limitation. The $400 excess deferral is treated as described in paragraph (e) of this section.

Example 3. (i) *Facts.* Beginning in year 2002, Eligible Employer X contributes $3,000 per year for five years to Participant B's eligible plan account. B's interest in the account vests in 2006. B has annual compensation of $50,000 in each of the five years 2002 through 2006. Participant B is 41 years old. B is not eligible for the catch-up described in paragraph (c)(2) or (3) of this section, participates in no other retirement plan, and has no other income exclusions taken into account in computing includible compensation. Adjusted for gain or loss, the value of B's benefit when B's interest in the account vests in 2006 is $17,000.

(ii) *Conclusion.* Under this vesting schedule, $17,000 is taken into account as an annual deferral in 2006. B's annual deferrals under the plan are limited to a maximum of $15,000 in 2006. Thus, the aggregate of the amounts deferred, $17,000, is in excess of the B's maximum deferral limitation by $2,000. The $2,000 is treated as an excess deferral described in paragraph (e) of this section.

(2) *Age 50 catch-up*—(i) *In general.* In accordance with section 414(v) and the regulations thereunder, an eligible governmental plan may provide for catch-up contributions for a participant who is age 50 by the end of the year, provided that such age 50 catch-up contributions do not exceed the catch-up limit under section 414(v)(2) for the taxable year. The maximum amount of age 50 catch-up contributions for a taxable year under section 414(v) is as follows: $1,000 for 2002; $2,000 for 2003; $3,000 for 2004; $4,000 for 2005; and $5,000 for 2006 and thereafter. After 2006, the $5,000 amount is adjusted for cost-of-living. For additional guidance, see regulations under section 414(v).

(ii) *Coordination with special section 457 catch-up.* In accordance with sections 414(v)(6)(C) and 457(e)(18), the age 50 catch-up described in this paragraph (c)(2) does not apply for any taxable year for which a higher limitation applies under the special section 457 catch-up under paragraph (c)(3) of this section. Thus, for purposes of this paragraph (c)(2)(ii) and paragraph (c)(3) of this section, the special section 457 catch-up under paragraph (c)(3) of this section applies for any taxable year if and only if the plan ceiling taking into account paragraphs (c)(1) and (3) of this section (and disregarding the age 50 catch-up described in this paragraph (c)(2)) is larger than the plan ceiling taking into account paragraph (c)(1) of this section and the age 50 catch-up described in this paragraph (c)(2) (and disregarding paragraph (c)(3) of this section). Thus, a participant who is eligible for the age 50 catch-up for a year and for whom the year is also one of the participant's last three taxable years ending before the participant attains normal retirement age is entitled to the larger of—

(A) The plan ceiling under paragraph (c)(1) of this section and the age 50 catch-up described in this paragraph (c)(2) (and disregarding paragraph (c)(3) of this section) or

(B) The plan ceiling under paragraphs (c)(1) and (3) of this section (and disregarding the age 50 catch-up described in this paragraph (c)(2)).

(iii) *Examples.* The provisions of this paragraph (c)(2) are illustrated by the following examples:

Example 1. (i) *Facts.* Participant C, who is 55, is eligible to participate in an eligible governmental plan in 2006. The plan provides a normal retirement age of 65. The plan provides limitations on annual deferrals up to the maximum permitted under paragraphs (c)(1) and (3) of this section and the age 50 catch-up described in this paragraph (c)(2). For 2006, C will receive compensation of $40,000 from the eligible employer. C desires to defer the maximum amount possible in 2006. The applicable basic dollar limit of paragraph (c)(1)(i)(A) of this section is $15,000 for 2006 and the additional dollar amount permitted under the age 50 catch-up is $5,000 for 2006.

(ii) *Conclusion.* C is eligible for the age 50 catch-up in 2006 because C is 55 in 2006. However, *C* is not eligible for the special section 457 catch-up under paragraph (c)(3) of this section in 2006 because 2006 is not one of the last three taxable years ending before C attains normal retirement age. Accordingly, the maximum that C may defer for 2006 is $20,000.

Example 2. (i) *Facts.* The facts are the same as in *Example 1,* except that, in 2006, C will attain age 62. The maximum amount that C can elect under the special section 457 catch-up under paragraph (c)(3) of this section is $2,000 for 2006.

(ii) *Conclusion.* The maximum that C may defer for 2006 is $20,000. This is the sum of the basic plan ceiling under paragraph (c)(1) of this section equal to $15,000 and the age 50 catch-up equal to $5,000. The special section 457 catch-up under paragraph (c)(3) of this section is not applicable since it provides a smaller plan ceiling.

Example 3. (i) *Facts.* The facts are the same as in *Example 2,* except that the maximum additional amount that C can elect under the special section 457 catch-up under paragraph (c)(3) of this section is $7,000 for 2006.

(ii) *Conclusion.* The maximum that C may defer for 2006 is $22,000. This is the sum of the basic plan ceiling under paragraph (c)(1) of this section equal to $15,000, plus the additional special section 457 catch-up under paragraph (c)(3) of this section equal to $7,000. The additional dollar amount permitted under the age 50 catch-up is not applicable to C for 2006 because it provides a smaller plan ceiling.

(3) *Special section 457 catch-up*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, an eligible plan may provide that, for one or more of the participant's last three taxable years ending before the participant attains ''normal retirement age,'' the plan ceiling is an amount not in excess of the lesser of—

(A) Twice the dollar amount in effect under paragraph (c)(1)(i)(A) of this section; or

(B) The underutilized limitation determined under paragraph (c)(3)(ii) of this section.

(ii) *Underutilized limitation.* The underutilized amount determined under this paragraph (c)(3)(ii) is the sum of—

(A) The plan ceiling established under paragraph (c)(1) of this section for the taxable year; plus

(B) The plan ceiling established under paragraph (c)(1) of this section (or under section 457(b)(2) for any year before the applicability date of this section) for any prior taxable year or years, less the amount of annual deferrals under the plan for such prior taxable year or years (disregarding any annual deferrals under the plan permitted under the age 50 catch-up under paragraph (c)(2) of this section).

(iii) *Determining underutilized limitation under paragraph (c)(3)(ii)(B) of this section.* In determining the includible compensation of a participant under § 1.457–2(g) for purposes of calculating the amount described in paragraph (c)(3)(ii)(A) of this section, includible compensation is not reduced by contributions of amounts described in paragraph (c)(3)(ii)(B) of this section. In addition, a prior taxable year is taken into account

under paragraph (c)(3)(ii)(B) of this section only if it is a year beginning after December 31, 1978, in which the participant was eligible to participate in the plan, and in which compensation deferred (if any) under the plan during the year was subject to a plan ceiling established under paragraph (c)(1) of this section.

(iv) *Special rules concerning application of the coordination limit for years prior to 2002 for purposes of determining the underutilized limitation*—(A) *General rule.* For purposes of determining the underutilized limitation for years prior to 2002, participants remain subject to the rules in effect prior to the repeal of the coordination limitation under section 457(c)(2). Thus, the applicable basic annual limitation under paragraph (c)(1) of this section and the special section 457 catch-up under this paragraph (c)(3) for years in effect prior to 2002 are reduced, for purposes of determining a participant's underutilized amount under a plan, by amounts excluded from the participant's income for any prior taxable year by reason of a salary reduction or elective contribution under any other eligible section 457(b) plan, section 401(k) qualified cash or deferred arrangement, section 402(h)(1)(B) simplified employee pension (SARSEP), section 403(b) annuity contract, and section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in section 501(c)(18) (pre-2002 coordination plans). Similarly, in applying the section 457(b)(2)(B) limitation for includible compensation for years prior to 2002, the limitation is 33⅓ percent of the participant's compensation includible in gross income.

(B) *Coordination limitation applied to participant.* For purposes of determining the underutilized limitation for years prior to 2002, the coordination limitation applies to pre-2002 coordination plans of all employers for whom a participant has performed services, not only to those of the eligible employer. Thus, for purposes of determining the amount excluded from a participant's gross income in any prior taxable year under paragraph (c)(3)(ii)(B) of this section, the participant's annual deferral under an eligible plan, and salary reduction or elective deferrals under all other pre-2002 coordination plans, must be determined on an aggregate basis. To the extent that the combined deferral for years prior to 2002 exceeded the maximum deferral limitations, the amount is treated as an excess deferral under paragraph (e) of this section for those prior years.

(C) *Special rule where no annual deferrals under the eligible plan.* A participant who, although eligible, did not defer any compensation under the eligible plan in any given year before 2002 is not subject to the coordinated deferral limit, even though the participant may have deferred compensation under one of the other pre-2002 coordination plans. An individual is treated as not having deferred compensation under an eligible plan for a prior taxable year if all annual deferrals under the plan are distributed in accordance with paragraph (e) of this section. Thus, to the extent that a participant participated solely in one or more of the other pre-2002 coordination plans during a prior taxable year (and not the eligible plan), the participant is not subject to the coordinated limitation for that prior taxable year. However, the participant is treated as having deferred amounts in a prior taxable year for purposes of determining the underutilized limitation for that prior taxable year under this paragraph (c)(3)(iv)(C), but only to the extent that the participant's salary reduction contributions or elective deferrals under all pre-2002 coordination plans have not exceeded the maximum deferral limitations in effect under section 457(b) for that prior taxable year. To the extent an employer did not offer an eligible plan to an individual in a prior given year, no underutilized limitation is available to the individual for that prior year, even if the employee subsequently becomes eligible to participate in an eligible plan of the employer.

(D) *Examples.* The provisions of this paragraph (c)(3)(iv) are illustrated by the following examples:

Example 1. (i) *Facts.* In 2001 and in years prior to 2001, Participant D earned $50,000 a year and was eligible to participate in both an eligible plan and a section 401(k) plan. However, D had always participated only in the section 401(k) plan and had always deferred the maximum amount possible. For each year before 2002, the maximum amount permitted under section 401(k) exceeded the limitation of paragraph (c)(3)(i) of this section. In 2002, D is in the 3-year period prior to D's attainment of the eligible plan's normal retirement age of 65, and D now wants to participate in the eligible plan and make annual deferrals of up to $30,000 under the plan's special section 457 catch-up provisions.

(ii) *Conclusion.* Participant D is treated as having no underutilized amount under paragraph (c)(3)(ii)(B) of this section for 2002 for purposes of the catch-up limitation under section 457(b)(3) and paragraph (c)(3) of this section because, in each of the years before 2002, D has deferred an amount in excess of the limitation of paragraph (c)(3)(i) of this section.

Example 2. (i) *Facts.* Assume the same facts as in *Example 1,* except that D only deferred $2,500 per year under the section 401(k) plan for one year before 2002.

(ii) *Conclusion.* D is treated as having an underutilized amount under paragraph (c)(3)(ii)(B) of this section for 2002 for purposes of the special section 457 catch-up limitation. This is because D has deferred an amount for prior years that is less than the limitation of paragraph (c)(1)(i) of this section.

Example 3. (i) *Facts.* Participant E, who earned $15,000 for 2000, entered into a salary reduction agreement in 2000 with E's eligible employer and elected to defer $3,000 for that year. For 2000, E's eligible employer provided an immediately vested, matching employer contribution under the plan for participants who make salary reduction deferrals under E's eligible plan. The matching contribution was equal to 100 percent of elective contributions, but not in excess of 10 percent of compensation before salary reduction deferrals (in E's case, $1,500). For 2000, E was not eligible for any catch-up contribution, participated in no other retirement plan, and had no other income exclusions taken into account in computing taxable compensation.

(ii) *Conclusion.* Participant E's annual deferral exceeded the limitations of section 457(b) for 2000. E's maximum deferral limitation in 2000 was $4,000 because E's includible compensation was $12,000 ($15,000 minus the deferral of $3,000) and the applicable limitation for 2000 was one-third of the individual's includible compensation (one-third of $12,000 equals $4,000). E's salary reduction deferral of $3,000 combined with E's eligible employer's matching contribution of $1,500 exceeded the limitation of section 457(b) for 2000 because E's annual deferrals totaled $4,500. E had an excess deferral for 2000 of $500, the amount exceeding E's permitted annual deferral limitation, and E's underutilized amount for 2000 is zero.

(v) *Normal retirement age*—(A) *General rule.* For purposes of the special section 457 catch-up in this paragraph (c)(3), a plan must specify the normal retirement age under the plan. A plan may define normal retirement age as any age that is on or after the earlier of age 65 or the age at which participants have the right to retire and receive, under the basic defined benefit pension plan of the state or tax-exempt entity, immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, and that is not later than age 70½. Alternatively, a plan may provide that a participant is allowed to designate a normal retirement age within these ages. For purposes of the special section 457 catch-up in this paragraph (c)(3), an entity sponsoring more than one eligible plan may not permit a participant to have more than one normal retirement age under the eligible plans it sponsors.

(B) *Special rule for eligible plans of qualified police or firefighters.* An eligible plan with participants that include qualified police or firefighters as defined under section 415(b)(2)(H)(ii)(I) may designate a normal retirement age for such qualified police or firefighters that is earlier than the earliest normal retirement age designated under the general rule of paragraph (c)(3)(i)(A) of this section, but in no event may the normal retirement age be earlier than age 40. Alternatively, a plan may allow a qualified police or firefighter participant to designate a normal retirement age that is between age 40 and age 70½.

(vi) *Examples.* The provisions of this paragraph (c)(3) are illustrated by the following examples:

Example 1. (i) *Facts.* Participant *F,* who will turn 61 on April 1, 2006, becomes eligible to participate in an eligible plan on January 1, 2006. The plan provides a normal retirement age of 65. The plan provides limitations on annual deferrals up to the maximum permitted under paragraphs (c)(1) through (3) of this section. For 2006, F will receive compensation of $40,000 from the eligible employer. F desires to defer the maximum amount possible in 2006. The applicable basic dollar limit of paragraph (c)(1)(i)(A) of this section is $15,000 for 2006 and the additional dollar amount permitted under the age 50 catch-up in paragraph (c)(2) of this section for an individual who is at least age 50 is $5,000 for 2006.

(ii) *Conclusion.* F is not eligible for the special section 457 catch-up under paragraph (c)(3) of this section in 2006 because 2006 is not one of the last three taxable years ending before F attains normal retirement age. Accordingly, the maximum that F may defer for 2006 is $20,000. See also paragraph (c)(2)(iii) *Example 1* of this section.

Example 2. (i) *Facts.* The facts are the same as in *Example 1* except that, in 2006, F elects to defer only $2,000 under the plan (rather than the maximum permitted amount of $20,000). In addition, assume that the applicable basic dollar limit of paragraph (c)(1)(i)(A) of this section continues to be $15,000 for 2007 and the additional dollar amount permitted under the age 50 catch-up in paragraph (c)(2) of this section for an individual who is at least age 50 continues to be $5,000 for 2007. In F's taxable year 2007, which is one of the last three taxable years ending before F attains the plan's normal retirement age of 65, F again receives a salary of $40,000 and elects to defer the maximum amount permissible under the plan's catch-up provisions prescribed under paragraph (c) of this section.

(ii) *Conclusion.* For 2007, which is one of the last three taxable years ending before F attains the plan's normal retirement age of 65, the applicable limit on deferrals for F is the larger of the amount under the special section 457 catch-up or $20,000, which is the basic annual limitation ($15,000) and the age 50 catch-up limit of section 414(v) ($5,000). For 2007, F's special section 457 catch-up amount is the lesser of two times the basic annual limitation ($30,000) or the sum of the basic annual limitation ($15,000) plus the $13,000 underutilized limitation under paragraph (c)(3)(ii) of this section (the $15,000 plan ceiling in 2006, minus the $2,000 contributed for F in 2006), or $28,000. Thus, the maximum amount that F may defer in 2007 is $28,000.

Example 3. (i) *Facts.* The facts are the same as in *Examples 1* and *2,* except that F does not make any contributions to the plan before 2010. In addition, assume that the applicable basic dollar limitation of paragraph (c)(1)(i)(A) of this section continues to be $15,000 for 2010 and the additional dollar amount permitted under the age 50 catch-up in paragraph (c)(2) of this section for an individual who is at least age 50 continues to be $5,000 for 2010. In F's taxable year 2010, the year in which F attains age 65 (which is the normal retirement age under the plan), F desires to defer the maximum amount possible under the plan. F's compensation for 2010 is again $40,000.

(ii) *Conclusion.* For 2010, the maximum amount that F may defer is $20,000. The special section 457 catch-up provisions under paragraph (c)(3) of this section are not applicable because 2010 is not a taxable year ending before the year in which F attains normal retirement age.

(4) *Cost-of-living adjustment.* For years beginning after December 31, 2006, the $15,000 dollar limitation in paragraph (c)(1)(i)(A) of this section will be adjusted to take into account increases in the cost-of-living. The adjustment in the dollar limitation is made at the same time and in the same manner as under section 415(d) (relating to qualified plans under section 401(a)), except that the base period is the calendar quarter beginning July 1, 2005 and any increase which is not a multiple of $500 will be rounded to the next lowest multiple of $500.

(d) *Deferral of sick, vacation, and back pay under an eligible plan*—(1) *In general.* An eligible plan may provide that a participant may elect to defer accumulated sick pay, accumulated vacation pay, and back pay under an eligible plan if certain conditions are satisfied. The plan must provide, in accordance with paragraph (b) of this section, that these amounts may be deferred for any calendar month only if an agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the participant is an employee in that month. Any deferrals made under this paragraph (d)(1) under an eligible plan are subject to the maximum deferral limitations of paragraph (c) of this section.

(2) *Examples.* The provisions of this paragraph (d) are illustrated by the following examples:

Example 1. (i) *Facts.* Participant G, age 62, is a participant in an eligible plan providing a normal retirement age of 65. Under the terms of G's employer's eligible plan and G's sick leave plan, G may, during November of 2003 (which is one of the three years prior to normal retirement age), make a one-time election to contribute amounts representing accumulated sick pay to the eligible plan in December of 2003 (within the maximum deferral limitations). Alternatively, such amounts may remain in the ''bank'' under the sick leave plan. No cash out of the sick pay is available at any time prior to termination of employment. The total value of G's accumulated sick pay (determined, in accordance with the terms of the sick leave plan, by reference to G's current salary) is $4,000 in December of 2003.

(ii) *Conclusion.* Under the terms of the eligible plan and sick leave plan, G may elect before December of 2003 to defer the $4,000 value of accumulated sick pay under the eligible plan, provided that G's other annual deferrals to the eligible plan for 2003, when added to the $4,000, do not exceed G's maximum deferral limitation for the year.

Example 2. (i) *Facts.* Employer X maintains an eligible plan and a vacation leave plan. Under the terms of the vacation leave plan, employees generally accrue three weeks of vacation per year. Up to one week's unused vacation may be carried over from one year to the next, so that in any single year an employee may have a maximum of four weeks vacation time. At the beginning of each calendar year, under the terms of the eligible plan (which constitutes an agreement providing for the deferral), the value of any unused vacation time from the prior year in excess of one week is automatically contributed to the eligible plan, to the extent of the employee's maximum deferral limitations. Amounts in excess of the maximum deferral limitations are forfeited.

(ii) *Conclusion.* The value of the unused vacation pay contributed to X's eligible plan pursuant to the terms of the plan and the terms of the vacation leave plan is treated as an annual deferral to the eligible plan in the calendar year the contribution is made. No amounts contributed to the eligible plan will be considered made available to a participant in X's eligible plan.

(e) *Excess deferrals under an eligible plan*—(1) *In general.* Any amount deferred under an eligible plan for the taxable year of a participant that exceeds the maximum deferral limitations set forth in paragraphs (c)(1) through (3) of this section, and any amount that exceeds the individual limitation under § 1.457–5, constitutes an excess deferral taxable in accordance with § 1.457–11 for that taxable year. Thus, an excess deferral is includible in gross income in the taxable year deferred or, if later, the first taxable year in which there is no substantial risk of forfeiture.

(2) *Excess deferrals under an eligible governmental plan other than as a result of the individual limitation.* In order to be an eligible governmental plan, the plan must provide that any excess deferrals resulting from a failure of a

plan to apply the limitations of paragraphs (c)(1) through (3) of this section to amounts deferred under the eligible plan (computed without regard to the individual limitation under § 1.457–5) will be distributed to the participant, with allocable net income, as soon as administratively practicable after the plan determines that the amount is an excess deferral. For purposes of determining whether there is an excess deferral resulting from a failure of a plan to apply the limitations of paragraphs (c)(1) through (3) of this section, all plans under which an individual participates by virtue of his or her relationship with a single employer are treated as a single plan. An eligible governmental plan does not fail to satisfy the requirements of paragraphs (a) through (d) of this section or §§ 1.457–6 through 1.457–10 (including the distribution rules under § 1.457–6 and the funding rules under § 1.457–8) solely by reason of a distribution made under this paragraph (e)(2). If such excess deferrals are not corrected by distribution under this paragraph (e)(2), the plan will be an ineligible plan under which benefits are taxable in accordance with § 1.457–11.

(3) *Excess deferrals under an eligible plan of a tax-exempt employer other than as a result of the individual limitation.* If a plan of a tax-exempt employer fails to comply with the limitations of paragraphs (c)(1) through (3) of this section, the plan will be an ineligible plan under which benefits are taxable in accordance with § 1.457–11. For purposes of determining whether there is an excess deferral resulting from a failure of a plan to apply the limitations of paragraphs (c)(1) through (3) of this section, all plans under which an individual participates by virtue of his or her relationship with a single employer are treated as a single plan.

(4) *Excess deferrals arising from application of the individual limitation.* An eligible plan may provide that an excess deferral as a result of a failure to comply with the individual limitation under § 1.457–5 for a taxable year may be distributed to the participant, with allocable net income, as soon as administratively practicable after the plan determines that the amount is an excess deferral. An eligible plan does not fail to satisfy the requirements of paragraphs (a) through (d) of this section or §§ 1.457–6 through 1.457–10 (including the distribution rules under § 1.457–6 and the funding rules under § 1.457–8) solely by reason of a distribution made under this paragraph (e)(4). Although a plan will still maintain eligible status if excess deferrals are not distributed under this paragraph (e)(4), a participant must include the excess amounts in income as provided in paragraph (e)(1) of this section.

(5) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

Example 1. (i) *Facts.* In 2006, the eligible plan of State Employer X in which Participant H participates permits a maximum deferral of the lesser of $15,000 or 100 percent of includible compensation. In 2006, H, who has compensation of $28,000, nevertheless defers $16,000 under the eligible plan. Participant H is age 45 and normal retirement age under the plan is age 65. For 2006, the applicable dollar limit under paragraph (c)(1)(i)(A) of this section is $15,000.

(ii) *Conclusion.* Participant H has deferred $1,000 in excess of the $15,000 limitation provided for under the plan for 2006. The $1,000 excess must be included by H into H's income for 2006. In order to correct the failure and still be an eligible plan, the plan must distribute the excess deferral, with allocable net income, as soon as administratively practicable after determining that the amount exceeds the plan deferral limitations. If the excess deferral is not distributed, the plan will be an ineligible plan with respect to which benefits are taxable in accordance with § 1.457–11.

Example 2. (i) *Facts.* The facts are the same as in *Example 1,* except that *H's* deferral under the eligible plan is limited to $11,000 and H also makes a salary reduction contribution of $5,000 to an annuity contract under section 403(b) with the same Employer X.

(ii) *Conclusion.* H's deferrals are within the plan deferral limitations of Employer X. Because of the repeal of the application of the coordination limitation under former paragraph (2) of section 457(c), H's salary reduction deferrals under the annuity contract are no longer considered in determining H's applicable deferral limits under paragraphs (c)(1) through (3) of this section.

Example 3. (i) *Facts.* The facts are the same as in *Example 1,* except that *H's* deferral under the eligible governmental plan is limited to $14,000 and H also makes a deferral of $4,000 to an eligible governmental plan of a different employer. Participant H is age 45 and normal retirement age under both eligible plans is age 65.

(ii) *Conclusion.* Because of the application of the individual limitation under § 1.457–5, H has an excess deferral of $3,000 (the sum of $14,000 plus $4,000 equals $18,000, which is $3,000 in excess of the dollar limitation of $15,000). The $3,000 excess deferral, with allocable net income, may be distributed from either plan as soon as administratively practicable after determining that the combined amount exceeds the deferral limitations. If the $3,000 excess deferral is not distributed to H, each plan will continue to be an eligible plan, but the $3,000 must be included by H into H's income for 2006.

Example 4. (i) *Facts.* Assume the same facts as in *Example 3,* except that H's deferral under the eligible governmental plan is limited to $14,000 and H also makes a deferral of $4,000 to an eligible plan of Employer Y, a tax-exempt entity.

(ii) *Conclusion.* The results are the same as in *Example 3, i.e.,* because of the application of the individual limitation under § 1.457–5, H has an excess deferral of $3,000. If the $3,000 excess deferral is not distributed to H, each plan will continue to be an eligible plan, but the $3,000 must be included by H into H's income for 2006.

Par. 3. Sections 1.457–5 through 1.457–12 are added to read as follows:

§ 1.457–5 Individual limitation for combined annual deferrals under multiple eligible plans

(a) *General rule.* The individual limitation under section 457(c) and this section equals the basic annual deferral limitation under § 1.457–4(c)(1)(i)(A), the age 50 catch-up amount under § 1.457–4(c)(2), and the special section 457 catch-up amount under § 1.457–4(c)(3), applied by taking into account the combined annual deferral for the participant for any taxable year under all eligible plans. While an eligible plan may include provisions under which it will meet the individual limitation under section 457(c) and this section, annual deferrals by a participant that exceed the individual limit under section 457(c) and this section will not cause a plan to lose its eligible status. However, to the extent the combined annual deferrals for a participant for any taxable year exceed the individual limitation under section 457(c) and this section for that year, the amounts are treated as excess deferrals as described in § 1.457–4(e).

(b) *Limitation applied to participant.* The individual limitation in this section applies to eligible plans of all employers for whom a participant has performed services, including both eligible governmental plans and eligible plans of a tax-exempt entity and both eligible plans of the employer and eligible plans of other employers. Thus, for purposes of determining the amount excluded from a participant's gross income in any taxable year (including the underutilized limitation under § 1.457–4(c)(3)(ii)(B)), the participant's annual deferral under an eligible plan, and the participant's annual deferrals under all other eligible plans, must be determined on an aggregate basis. To the extent that the combined annual deferral amount exceeds the maximum deferral limitation applicable under § 1.457–4(c)(1)(i)(A), (c)(2), or (c)(3), the amount is treated as an excess deferral under § 1.457–4(e).

(c) *Special rules for catch-up amounts under multiple eligible plans.* For purposes of applying section 457(c) and

this section, the special section 457 catch-up under § 1.457–4(c)(3) is taken into account only to the extent that an annual deferral is made for a participant under an eligible plan as a result of plan provisions permitted under § 1.457–4(c)(3). In addition, if a participant has annual deferrals under more than one eligible plan and the applicable catch-up amount under § 1.457–4(c)(2) or (3) is not the same for each such eligible plan for the taxable year, section 457(c) and this section are applied using the catch-up amount under whichever plan has the largest catch-up amount applicable to the participant.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Participant F is age 62 in 2006 and participates in two eligible plans during 2006, Plans J and K, which are each eligible plans of two different governmental entities. Each plan includes provisions allowing the maximum annual deferral permitted under § 1.457–4(c)(1) through (3). For 2006, the underutilized amount under § 1.457–4(c)(3)(ii)(B) is $20,000 under Plan J and is $40,000 under Plan K. Normal retirement age is age 65 under both plans. Participant F defers $15,000 under each plan. Participant F's includible compensation is in each case in excess of the deferral. Neither plan designates the $15,000 contribution as a catch-up permitted under each plan's special section 457 catch-up provisions.

(ii) *Conclusion.* For purposes of applying this section to Participant F for 2006, the maximum exclusion is $20,000. This is equal to the sum of $15,000 plus $5,000, which is the age 50 catch-up amount. Thus, F has an excess amount of $10,000 which is treated as an excess deferral for Participant F for 2006 under § 1.457–4(e).

Example 2. (i) *Facts.* Participant E, who will turn 63 on April 1, 2006, participates in four eligible plans during 2006: Plan W which is an eligible governmental plan; and Plans X, Y, and Z which are each eligible plans of three different tax-exempt entities. For 2006, the limitation under these plans that apply to Participant E under all four plans under § 1.457–4(c)(1)(i)(A) is $15,000. For 2006, the additional age 50 catch-up limitation that applies to Participant E under Plan W under § 1.457–4(c)(2) is $5,000. Further, for 2006, different limitations under §§ 1.457–4(c)(3) and (c)(3)(ii)(B) apply to Participant E under each of these plans, as follows: Under Plan W, the underutilized limitation under § 1.457–4(c)(3)(ii)(B) is $7,000; under Plan X, the underutilized limitation under § 1.457–4(c)(3)(ii)(B) is $2,000; under Plan Y, the underutilized limitation under § 1.457–4(c)(3)(ii)(B) is $8,000; and under Plan Z, § 1.457–4(c)(3) is not applicable since normal retirement age is age 62 under Plan Z. Participant E's includible compensation is in each case in excess of any applicable deferral.

(ii) *Conclusion.* For purposes of applying this section to Participant E for 2006, Participant E could elect to defer $23,000 under Plan Y, which is the maximum deferral limitation under §§ 1.457–4(c)(1) through (3), and to defer no amount under Plans W, X, and Z. The $23,000 maximum amount is equal to the sum of $15,000 plus $8,000, which is the catch-up amount applicable to Participant E under Plan Y and which is the largest catch-up amount applicable to Participant E under any of the four plans for 2006. Alternatively, Participant E could instead elect to defer the following combination of amounts: $5,000 to Plan W and an aggregate total of $15,000 to Plans X, Y, and Z; $22,000 to Plan W and none to any of the other three plans; $17,000 to Plan X and none to any of the other three plans; or $15,000 to Plan Z and none to any of the other three plans.

(iii) If the underutilized amount under Plans W, X, and Y for 2006 were in each case zero (because E had always contributed the maximum amount or E was a new participant) or an amount not in excess of $5,000, the maximum exclusion under this section would be $20,000 for Participant E for 2006 ($15,000 plus the $5,000 age 50 catch-up amount), which Participant E could contribute to Plan W.

§ 1.457–6 Timing of distributions under eligible plans.

(a) *In general.* Except as provided in paragraph (c) of this section (relating to distributions on account of an unforeseeable emergency), paragraph (e) of this section (relating to distributions of small accounts), § 1.457–10(a) (relating to plan terminations), or § 1.457–10(c) (relating to domestic relations orders), amounts deferred under an eligible governmental plan may not be paid to a participant or beneficiary before the participant has a severance from employment with the eligible employer. For rules relating to loans, see paragraph (f) of this section.

(b) *Severance from employment*—(1) *Employees.* An employee has a severance from employment with the eligible employer if the employee dies, retires, or otherwise has a severance from employment with the eligible employer.

(2) *Independent contractors*—(i) *In general.* An independent contractor is considered to have a severance from employment with the eligible employer upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the eligible employer, if the expiration constitutes a good-faith and complete termination of the contractual relationship. An expiration does not constitute a good faith and complete termination of the contractual relationship if the eligible employer anticipates a renewal of a contractual relationship or the independent contractor becoming an employee. For this purpose, an eligible employer is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to again contract for the services provided under the expired contract, and neither the eligible employer nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, an eligible employer is considered to intend to again contract for the services provided under an expired contract if the eligible employer's doing so is conditioned only upon incurring a need for the services, the availability of funds, or both.

(ii) *Special rule.* Notwithstanding paragraph (b)(2)(i) of this section, the plan is considered to satisfy the requirement described in paragraph (a) of this section that no amounts deferred under the plan be paid or made available to the participant before the participant has a severance from employment with the eligible employer, if, with respect to amounts payable to a participant who is an independent contractor, an eligible plan provides that—

(A) No amount will be paid to the participant before a date at least 12 months after the day on which the contract expires under which services are performed for the eligible employer (or, in the case of more than one contract, all such contracts expire); and

(B) No amount payable to the participant on that date will be paid to the participant if, after the expiration of the contract (or contracts) and before that date, the participant performs services for the eligible employer as an independent contractor or an employee.

(c) *Rules applicable to distributions for unforeseeable emergencies*—(1) *In general.* An eligible plan may permit a distribution to a participant or beneficiary faced with an unforeseeable emergency. The distribution must satisfy the requirement of paragraph (c)(2) of this section.

(2) *Requirements*—(i) *Unforeseeable emergency defined.* An unforeseeable emergency must be defined in the plan as a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse or the participant's or beneficiary's dependent (as defined in section 152(a)); loss of the participant's or beneficiary's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary. For example, the imminent foreclosure of or eviction from the participant's or beneficiary's primary residence may constitute an unforeseeable emergency.

In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a family member may also constitute an unforeseeable emergency. Except in extraordinary circumstances, the purchase of a home and the payment of college tuition are not unforeseeable emergencies under this paragraph (c)(2).

(ii) *Unforeseeable emergency distribution standard.* Whether a participant or beneficiary is faced with an unforeseeable emergency permitting a distribution under this paragraph (c) is to be determined based on the relevant facts and circumstances of each case, but, in any case, a distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise; by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or by cessation of deferrals under the plan.

(iii) *Distribution necessary to satisfy emergency need.* Distributions because of an unforeseeable emergency must be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(d) *Minimum required distributions for eligible plans.* In order to be an eligible plan, a plan must meet the distribution requirements of section 457(d)(1) and (2). Under section 457(d)(2), a plan must meet the minimum distribution requirements of section 401(a)(9). See section 401(a)(9) and the regulations thereunder for these requirements. Section 401(a)(9) requires that a plan begin lifetime distributions to a participant no later than April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires.

(e) *Distributions of smaller accounts*—(1) *In general.* An eligible plan may provide for a distribution of all or a portion of a dollar amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D)). In order to permit such a distribution, an eligible plan must provide that the amount of the distribution must not exceed the dollar limit under section 411(a)(11)(A) (which is $5,000 for 2002) and that the distribution is made only if no amount has been deferred under the plan by or for the participant during the two-year period ending on the date of the distribution and there has been no prior distribution under the plan to the participant under this paragraph (e). An eligible plan is not required to permit distributions under this paragraph (e).

(2) *Alternative provisions possible.* Consistent with the provisions of paragraph (e)(1) of this section, a plan may provide that the total amount deferred for a participant or beneficiary, if not in excess of the applicable dollar limit of section 411(a)(11)(A), will be distributed automatically to the participant or beneficiary if the requirements of paragraph (e)(1) of this section are met. Alternatively, the plan may provide for the total amount deferred for a participant or beneficiary, if not in excess of the applicable dollar limit of section 411(a)(11)(A), to be distributed to the participant or beneficiary only if the participant or beneficiary so elects. The plan is permitted to substitute a specified dollar amount that is less than the applicable dollar limit of section 411(a)(11)(A) under either of these alternatives. In addition, these two alternatives can be combined; for example, a plan could provide for automatic distributions for account balances totaling an amount not in excess of the applicable dollar limit of section 411(a)(11)(A) but allow participants or beneficiary to elect a distribution if the total account balance is above $500 but not above the applicable dollar limit of section 411(a)(11)(A).

(f) *Loans from eligible plans*—(1) *Eligible plans of tax-exempt entities.* If a participant or beneficiary receives (directly or indirectly) any amount deferred as a loan from an eligible plan of a tax-exempt entity, that amount will be treated as having been paid or made available to the individual as a distribution under the plan, in violation of the distribution requirements of section 457(d).

(2) *Eligible governmental plans.* The determination of whether the availability of a loan, the making of a loan, or a failure to repay a loan made from a trustee (or a person treated as a trustee under section 457(g)) of an eligible governmental plan to a participant or beneficiary is treated as a distribution (directly or indirectly) for purposes of this section, and the determination of whether the availability of the loan, the making of the loan, or a failure to repay the loan is in any other respect a violation of the requirements of section 457(b) and the regulations, depends on the facts and circumstances. Thus, for example, a loan must bear a reasonable rate of interest in order to satisfy the exclusive benefit requirement of section 457(g)(1) and § 1.457–8(a)(1). See also § 1.457–7(b)(3) relating to the application of section 72(p) with respect to the taxation of a loan made under an eligible governmental plan, and § 1.72(p)–1 relating to section 72(p)(2).

(3) *Example.* The provisions of paragraph (f)(2) of this section are illustrated by the following example:

Example. (i) *Facts.* Eligible Plan X of State Y is funded through Trust Z. Plan X provides for an employee's account balance under Plan X to be paid in 5 annual installments (of ⅕th the account balance the first year, ¼th the account balance the second year, *etc.*) beginning at severance from employment with State Y. Plan X includes a loan program under which any active employee with a vested account balance may receive a loan from Trust Z. Loans are made pursuant to plan provisions regarding loans that are set forth in the plan under which loans bear a reasonable rate of interest and are secured by the employee's account balance. In order to avoid taxation under § 1.457–7(b)(3) and section 72(p)(1), the plan provisions limit the amount of loans and require loans to be repaid in level installments as required under section 72(p)(2). Participant J's vested account balance under Plan X is $50,000. J receives a loan from Trust Z in the amount of $5,000 on December 1, 2003 to be repaid in level installments made quarterly over the 5-year period ending on November 30, 2008. Participant J makes the required repayments until J has a severance from employment from State Y in 2005 and subsequently fails to repay the outstanding loan balance of $2,250. The $2,250 loan balance is offset against J's $80,000 account balance benefit under Plan X, and J is paid one fifth of the remaining $77,750 in 2005.

(ii) *Conclusion.* The making of the loan to J will not be treated as a violation of the requirements of section 457(b) or the regulations. The cancellation of the loan at severance from employment does not cause Plan X to fail to satisfy the requirements for plan eligibility under section 457. In addition, because the loan satisfies the maximum amount and repayment requirements of section 72(p)(2), J is not required to include any amount in income as a result of the loan until 2005, when J has income of $2,250 as a result of the offset (which is a permissible distribution under this section) and income of $15,550 (one fifth of $77,750) as a result of the first annual installment payment.

§ 1.457–7 Taxation of distributions under eligible plans.

(a) *General rules for when amounts are included in gross income.* The rules for determining when an amount deferred under an eligible plan is includible in the gross income of a participant or beneficiary depend on whether the plan is an eligible governmental plan or an eligible plan of a tax-exempt entity. Paragraph (b) of this

section sets forth the rules for an eligible governmental plan. Paragraph (c) of this section sets forth the rules for an eligible plan of a tax-exempt entity.

(b) *Amounts included in gross income under an eligible governmental plan*—(1) *Amounts included in gross income in year paid under an eligible governmental plan.* Except as provided in paragraphs (b)(2) and (3) of this section (or in § 1.457–10(c) relating to payments to a spouse or former spouse pursuant to a qualified domestic relations order), amounts deferred under an eligible governmental plan are includible in the gross income of a participant or beneficiary for the taxable year in which paid to the participant or beneficiary under the plan.

(2) *Rollovers to individual retirement arrangements and other eligible retirement plans.* A trustee-to-trustee transfer in accordance with section 401(a)(31) (generally referred to as a direct rollover) is not includible in gross income of a participant or beneficiary in the year transferred. In addition, any payment made in the form of an eligible rollover distribution (as defined in section 402(c)(4)) is not includible in gross income in the year paid to the extent the payment is transferred to an eligible retirement plan (as defined in section 402(c)(8)(B)) within 60 days, including the transfer to the eligible retirement plan of any property distributed from the eligible governmental plan. For this purpose, the rules of section 402(c)(2) through (7) and (9) apply. Any trustee-to-trustee transfer under this paragraph (b)(2) is a distribution that is subject to the distribution requirements of § 1.457–6.

(3) *Amounts taxable under section 72(p)(1).* In accordance with section 72(p), the amount of any loan from an eligible governmental plan to a participant or beneficiary (including any pledge or assignment treated as a loan under section 72(p)(1)(B)) is treated as having been received as a distribution from the plan under section 72(p)(1), except to the extent set forth in section 72(p)(2) (relating to loans that do not exceed a maximum amount and that are repayable in accordance with certain terms) and § 1.72(p)–1. Thus, except to the extent a loan satisfies section 72(p)(2), any amount loaned from an eligible governmental plan to a participant or beneficiary (including any pledge or assignment treated as a loan under section 72(p)(1)(B)) is includible in the gross income of the participant or beneficiary for the taxable year in which the loan is made. See generally § 1.72(p)–1.

(4) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

Example 1. (i) *Facts.* Eligible Plan G of a governmental entity permits distribution of benefits in a single sum or in installments of up to 20 years, with such benefits to commence at any date that is after severance from employment (but not later than the plan's normal retirement age of 65). Effective for participants who have a severance from employment after December 31, 2001, Plan X allows an election—as to both the date on which payments are to begin and the form in which payments are to be made—to be made by the participant at any time that is before the commencement date selected. However, Plan X chooses to require elections to be filed at least 30 days before the commencement date selected in order for Plan X to have enough time to be able to effectuate the election.

(ii) *Conclusion.* No amounts are included in gross income before actual payments begin. If installment payments begin (and the installment payments are payable over at least 10 years so as not to be eligible rollover distributions), the amount included in gross income for any year is equal to the amount of the installment payment paid during the year.

Example 2. (i) *Facts.* Same facts as in *Example 1*, except that the same rules are extended to participants who had a severance from employment before January 1, 2002.

(ii) *Conclusion.* For all participants (i.e., both those who have a severance from employment after December 31, 2001 and those who have a severance from employment before January 1, 2002 (including those whose benefit payments have commenced before January 1, 2002)), no amounts are included in gross income before actual payments begin. If installment payments begin (and the installment payments are payable over at least 10 years so as not to be eligible rollover distributions), the amount included in gross income for any year is equal to the amount of the installment payment paid during the year.

(c) *Amounts included in gross income under an eligible plan of a tax-exempt entity*—(1) *Amounts included in gross income in year paid or made available under an eligible plan of a tax-exempt entity.* Amounts deferred under an eligible plan of a tax-exempt entity are includible in the gross income of a participant or beneficiary for the taxable year in which paid or otherwise made available to the participant or beneficiary under the plan. Thus, amounts deferred under an eligible plan of a tax-exempt entity are includible in the gross income of the participant or beneficiary in the year the amounts are first made available under the terms of the plan, even if the plan has not distributed the amounts deferred. Amounts deferred under an eligible plan of a tax-exempt entity are not considered made available to the participant or beneficiary solely because the participant or beneficiary is permitted to choose among various investments under the plan.

(2) *When amounts deferred are considered to be made available under an eligible plan of a tax-exempt entity*—(i) *General rule.* Except as provided in paragraphs (c)(2)(ii) through (iv) of this section, amounts deferred under an eligible plan of a tax-exempt entity are considered made available (and, thus, are includible in the gross income of the participant or beneficiary under this paragraph (c)) at the earliest date, on or after severance from employment, on which the plan allows distributions to commence, but in no event later than the date on which distributions must commence pursuant to section 401(a)(9). For example, in the case of a plan that permits distribution to commence on the date that is 60 days after the close of the plan year in which the participant has a severance from employment with the eligible employer, amounts deferred are considered to be made available on that date. However, distributions deferred in accordance with paragraphs (c)(2)(ii) through (iv) of this section are not considered made available prior to the applicable date under paragraphs (c)(2)(ii) through (iv) of this section. In addition, no portion of a participant or beneficiary's account is treated as made available (and thus currently includible in income) under an eligible plan of a tax-exempt entity merely because the participant or beneficiary under the plan may elect to receive a distribution in any of the following circumstances:

(A) If the requirements of § 1.457–4(d) are met, a distribution of amounts representing accumulated sick and vacation pay solely because a participant was entitled to take paid sick or vacation leave in lieu of regular compensation or because the participant could have deferred these amounts under an eligible plan at an earlier date. However, to the extent that the participant is able to receive the value of accumulated sick and vacation pay in cash (in addition to regular compensation) at the time of the election to defer, these amounts are considered made available.

(B) If the requirements of § 1.457–6(c)(2) are met, a distribution in the event of an unforeseeable emergency.

(C) If the requirements of § 1.457–6(e)(1) are met, a distribution not in excess of the dollar limit under section 411(a)(11)(A) (which is $5,000 for 2002) either before or after the participant has a severance from employment with the employer.

(ii) *Initial election to defer commencement of distributions*—(A) *In general.* An eligible plan of a tax-exempt

entity may provide a period for making an initial election during which the participant or beneficiary may elect, in accordance with the terms of the plan, to defer the payment of some or all of the amounts deferred to a fixed or determinable future time. The period for making this initial election must expire prior to the first time that any such amounts would be considered made available under the plan under paragraph (c)(2)(i) of this section.

(B) *Failure to make initial election to defer commencement of distributions.* Generally, if no initial election is made by a participant or beneficiary under this paragraph (c)(2)(ii), then the amounts deferred under an eligible plan of a tax-exempt entity are considered made available and taxable to the participant or beneficiary in accordance with paragraph (c)(2)(i) of this section at the earliest time, on or after severance from employment (but in no event later than the date on which distributions must commence pursuant to section 401(a)(9)), that distribution is permitted to commence under the terms of the plan. However, the plan may provide for a default payment schedule that applies if no election is made. If the plan provides for a default payment schedule, the amounts deferred are includible in the gross income of the participant or beneficiary in the year the amounts deferred are first made available under the terms of the default payment schedule.

(iii) *Additional election to defer commencement of distribution.* An eligible plan of a tax-exempt entity is permitted to provide that a participant or beneficiary who has made an initial election under paragraph (c)(2)(ii)(A) of this section may make one additional election to defer (but not accelerate) commencement of distributions under the plan before distributions have commenced in accordance with the initial deferral election under paragraph (c)(2)(ii)(A) of this section. Amounts payable to a participant or beneficiary under an eligible plan of a tax-exempt entity are not treated as made available merely because the plan allows the participant to make an additional election under this paragraph (c)(2)(iii). A participant or beneficiary is not precluded from making an additional election to defer commencement of distributions merely because the participant or beneficiary has previously received a distribution under § 1.457–6(c) because of an unforeseeable emergency, has received a distribution of smaller amounts under § 1.457–6(e), has made (and revoked) other deferral or method of payment elections within the initial election period, or is subject to a default payment schedule under which the commencement of benefits is deferred (for example, until a participant is age 65).

(iv) *Election as to method of payment.* An eligible plan of a tax-exempt entity may provide that the election as to the method of payment under the plan may be made at any time prior to the time the amounts are distributed in accordance with the participant or beneficiary's initial or additional election to defer commencement of distributions under paragraph (c)(2)(ii) or (iii) of this section. Where no method of payment is elected, the entire amount deferred will be includible in the gross income of the participant or beneficiary when the amounts first become made available in accordance with a participant's initial or additional elections to defer under paragraphs (c)(2)(ii) and (iii) of this section, unless the eligible plan provides for a default method of payment (in which case amounts are considered made available and taxable when paid under the terms of the default payment schedule).

(3) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. (i) *Facts.* Eligible Plan X of a tax-exempt entity provides that a participant's total account balance, representing all amounts deferred under the plan, is payable to a participant in a single sum 60 days after severance from employment throughout these examples, unless, during a 30-day period immediately following the severance, the participant elects to receive the single sum payment at a later date (that is not later than the plan's normal retirement age of 65) or elects to receive distribution in 10 annual installments to begin 60 days after severance from employment (or at a later date, if so elected, that is not later than the plan's normal retirement age of 65). On November 13, 2002, participant K, a calendar year taxpayer, has a severance from employment with the eligible employer. K does not, within the 30-day window period, elect to postpone distributions to a later date or to receive payment in 10 fixed annual installments.

(ii) *Conclusion.* The single sum payment is payable to K 60 days after the date K has a severance from employment (January 12, 2003), and is includible in the gross income of K in 2003 under section 457(a).

Example 2. (i) *Facts.* The terms of eligible Plan X are the same as described in *Example 1.* Participant L participates in eligible Plan X. On November 11, 2002, participant L has a severance from the employment of the eligible employer. On November 24, 2002, L makes an initial deferral election not to receive the single sum payment payable 60 days after the severance, and instead elects to receive the amounts in 10 annual installments to begin 60 days after severance from employment.

(ii) *Conclusion.* No portion of L's account is considered made available in 2002 or 2003 before a payment is made and no amount is includible in the gross income of L until distributions commence. The annual installment payable in 2003 will be includible in L's gross income in 2003.

Example 3. (i) *Facts.* The facts are the same as in *Example 1*, except that eligible Plan X also provides that those participants who are receiving distributions in 10 annual installments may, at any time and without restriction, elect to receive a cash out of all remaining installments. Participant M elects to receive a distribution in 10 annual installments commencing in 2003.

(ii) *Conclusion.* M's total account balance, representing the total of the amounts deferred under the plan, is considered made available in, and is includible in M's gross income, in 2003.

Example 4. (i) *Facts.* The facts are the same as in *Example 3*, except that, instead of providing for an unrestricted cash out of remaining payments, the plan provides that participants or beneficiaries who are receiving distributions in 10 annual installments may accelerate the payment of the amount remaining payable to the participant upon the occurrence of an unforeseeable emergency as described in § 1.457–6(c)(1) in an amount not exceeding that described in § 1.457–6(c)(2).

(ii) *Conclusion.* No amount is considered made available to participant M on account of M's right to accelerate payments upon the occurrence of an unforeseeable emergency.

Example 5. (i) *Facts.* Eligible Plan Y of a tax-exempt entity provides that distributions will commence 60 days after a participant's severance from employment unless the participant elects, within a 30-day window period following severance from employment, to defer distributions to a later date (but no later than the year following the calendar year the participant attains age 70½). The plan provides that a participant who has elected to defer distributions to a later date may make an election as to form of distribution at any time prior to the 30th day before distributions are to commence.

(ii) *Conclusion.* No amount is considered made available prior to the date distributions are to commence by reason of a participant's right to defer or make an election as to the form of distribution.

Example 6. (i) *Facts.* The facts are the same as in *Example 1*, except that the plan also permits participants who have earlier made an election to defer distribution to make one additional deferral election at any time prior to the date distributions are scheduled to commence. Participant N has a severance from employment at age 50. The next day, during the 30-day period provided in the plan, N elects to receive distribution in the form of 10 annual installment payments beginning at age 55. Two weeks later, within the 30-day window period, N makes a new election permitted under the plan to receive 10 annual installment payments beginning at age 60 (instead of age 55). When N is age 59, N elects under the additional deferral election provisions, to defer distributions until age 65.

(ii) *Conclusion.* In this example, N's election to defer distributions until age 65 is a valid election. The two elections N makes

during the 30-day window period are not additional deferral elections described in paragraph (c)(2)(iii) of this section because they are made before the first permissible payout date under the plan. Therefore, the plan is not precluded from allowing N to make the additional deferral election. However, N can make no further election to defer distributions beyond age 65 because this additional deferral election can only be made once.

§ 1.457–8 Funding rules for eligible plans.

(a) *Eligible governmental plans*—(1) *In general.* In order to be an eligible governmental plan, all amounts deferred under the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights, must be held in trust for the exclusive benefit of participants and their beneficiaries. A trust described in this paragraph (a) that also meets the requirements of §§ 1.457–3 through 1.457–10 is treated as an organization exempt from tax under section 501(a), and a participant's or beneficiary's interest in amounts in the trust is includible in the gross income of the participants and beneficiaries only to the extent, and at the time, provided for in section 457(a) and §§ 1.457–4 through 1.457–10.

(2) *Trust requirement.* (i) A trust described in this paragraph (a) must be established pursuant to a written agreement that constitutes a valid trust under state law. The terms of the trust must make it impossible, prior to the satisfaction of all liabilities with respect to participants and their beneficiaries, for any part of the assets and income of the trust to be used for, or diverted to, purposes other than for the exclusive benefit of participants and their beneficiaries.

(ii) Amounts deferred under an eligible governmental plan must be transferred to a trust within a period that is not longer than is reasonable for the proper administration of the participant accounts (if any). For purposes of this requirement, the plan may provide for amounts deferred for a participant under the plan to be transferred to the trust within a specified period after the date the amounts would otherwise have been paid to the participant. For example, the plan could provide for amounts deferred under the plan to be contributed to the trust within 15 business days following the month in which these amounts would otherwise have been paid to the participant.

(3) *Custodial accounts and annuity contracts treated as trusts*—(i) *In general.* For purposes of the trust requirement of this paragraph (a), custodial accounts and annuity contracts described in section 401(f) that satisfy the requirements of this paragraph (a)(3) are treated as trusts under rules similar to the rules of section 401(f). Therefore, the provisions of § 1.401(f)–1(b) will generally apply to determine whether a custodial account or an annuity contract is treated as a trust. The use of a custodial account or annuity contract as part of an eligible governmental plan does not preclude the use of a trust or another custodial account or annuity contract as part of the same plan, provided that all such vehicles satisfy the requirements of section 457(g)(1) and (3) and paragraphs (a)(1) and (2) of this section and that all assets and income of the plan are held in such vehicles.

(ii) *Custodial accounts*—(A) *In general.* A custodial account is treated as a trust, for purposes of section 457(g)(1) and paragraph (a)(1) and (2) of this section, if the custodian is a bank, as described in section 408(n), or a person who meets the nonbank trustee requirements of paragraph (a)(3)(ii)(B) of this section, and the account meets the requirements of paragraphs (a)(1) and (2) of this section, other than the requirement that it be a trust.

(B) *Nonbank trustee status.* The custodian of a custodial account may be a person other than a bank only if the person demonstrates to the satisfaction of the Commissioner that the manner in which the person will administer the custodial account will be consistent with the requirements of section 457(g)(1) and (3). To do so, the person must demonstrate that the requirements of § 1.408–2(e)(2) through (6) (relating to nonbank trustees) are met. The written application must be sent to the address prescribed by the Commissioner in the same manner as prescribed under § 1.408–2(e). To the extent that a person has already demonstrated to the satisfaction of the Commissioner that the person satisfies the requirements of § 1.408–2(e) in connection with a qualified trust (or custodial account or annuity contract) under section 401(a), that person is deemed to satisfy the requirements of this paragraph (a)(3)(ii)(B).

(iii) *Annuity contracts.* An annuity contract is treated as a trust for purposes of section 457(g)(1) and paragraph (a)(1) of this section if the contract is an annuity contract, as defined in section 401(g), that has been issued by an insurance company qualified to do business in the State, and the contract meets the requirements of paragraphs (a)(1) and (2) of this section, other than the requirement that it be a trust. An annuity contract does not include a life, health or accident, property, casualty, or liability insurance contract.

(4) *Combining assets.* [Reserved]

(b) *Eligible plans maintained by tax-exempt entity*—(1) *General rule.* In order to be an eligible plan of a tax-exempt entity, the plan must be unfunded and plan assets must not be set aside for participants or their beneficiaries. Under section 457(b)(6) and this paragraph (b), an eligible plan of a tax-exempt entity must provide that all amounts deferred under the plan, all property and rights to property (including rights as a beneficiary of a contract providing life insurance protection) purchased with such amounts, and all income attributable to such amounts, property, or rights, must remain (until paid or made available to the participant or beneficiary) solely the property and rights of the eligible employer (without being restricted to the provision of benefits under the plan), subject only to the claims of the eligible employer's general creditors.

(2) *Additional requirements.* For purposes of paragraph (b)(1) of this section, the plan must be unfunded regardless of whether or not the amounts were deferred pursuant to a salary reduction agreement between the eligible employer and the participant. Any funding arrangement under an eligible plan of a tax-exempt entity that sets aside assets for the exclusive benefit of participants violates this requirement, and amounts deferred are generally immediately includible in the gross income of plan participants and beneficiaries. Nothing in this paragraph (b) prohibits an eligible plan from permitting participants and their beneficiaries to make an election among different investment options available under the plan, such as an election affecting the investment of the amounts described in paragraph (b)(1) of this section.

§ 1.457–9 Effect on eligible governmental plan when not administered in accordance with eligibility requirements.

A plan of a state ceases to be an eligible governmental plan on the first day of the first plan year beginning more than 180 days after the date on which the Commissioner notifies the state in writing that the plan is being administered in a manner that is inconsistent with one or more of the requirements of §§ 1.457–3 through 1.457–8, or 1.457–10. However, the plan may correct the plan inconsistencies specified in the written notification before the first day of that plan year and continue to maintain plan eligibility. If a plan ceases to be an eligible governmental plan, amounts

subsequently deferred by participants will be includible in income when deferred, or, if later, when the amounts deferred cease to be subject to a substantial risk of forfeiture, as provided at § 1.457–11. Amounts deferred before the date on which the plan ceases to be an eligible governmental plan, and any earnings thereon, will be treated as if the plan continues to be an eligible governmental plan and will not be includible in participant's or beneficiary's gross income until paid to the participant or beneficiary.

§ 1.457–10 Miscellaneous provisions.

(a) *Plan terminations and frozen plans*—(1) *In general.* An eligible employer may amend its plan to eliminate future deferrals for existing participants or to limit participation to existing participants and employees. An eligible plan may also contain provisions that permit plan termination and permit amounts deferred to be distributed on termination. In order for a plan to be considered terminated, amounts deferred under an eligible plan must be distributed to all plan participants and beneficiaries as soon as administratively practicable after termination of the eligible plan. The mere provision for, and making of, distributions to participants or beneficiaries upon a plan termination will not cause an eligible plan to cease to satisfy the requirements of section 457(b) of the regulations.

(2) *Employers that cease to be eligible employers*—(i) *Plan not terminated.* An eligible employer that ceases to be an eligible employer may no longer maintain an eligible plan. If the employer was a tax-exempt entity and the plan is not terminated as permitted under paragraph (a)(2)(ii) of this section, the tax consequences to participants and beneficiaries in the previously eligible (unfunded) plan of an ineligible employer will be determined in accordance with either section 451 if the employer becomes an entity other than a state or § 1.457–11 if the employer becomes a state. If the employer was a state and the plan is neither terminated as permitted under paragraph (a)(2)(ii) of this section nor transferred to another eligible plan of that state as permitted under paragraph (b) of this section, the tax consequences to participants in the previously eligible governmental plan of an ineligible employer, the assets of which are held in trust pursuant to § 1.457–8(a), will be determined in accordance with section 402(b) (section 403(c) in the case of an annuity contract) and the trust will no longer be treated as a trust that is exempt from tax under section 501(a).

(ii) *Plan termination.* As an alternative to determining the tax consequences to the plan and participants under paragraph (a)(2)(i) of this section, the employer may terminate the plan and distribute the amounts deferred (and all plan assets) to all plan participants as soon as administratively practicable in accordance with paragraph (a)(1) of this section. Such distribution may include eligible rollover distributions in the case of a plan that was an eligible governmental plan. In addition, if the employer is a state, another alternative to determining the tax consequences under paragraph (a)(2)(i) of this section is to transfer the assets of the eligible governmental plan to an eligible governmental plan of another eligible employer within the same state under the plan-to-plan transfer rules of paragraph (b) of this section.

(3) *Examples.* The provisions of this paragraph (a) are illustrated by the following examples:

Example 1. (i) *Facts.* Employer Y, a corporation that owns a state hospital, sponsors an eligible governmental plan funded through a trust. Employer Y is acquired by a for-profit hospital and Employer Y ceases to be an eligible employer under section 457(e)(1) or § 1.457–2(e). Employer Y terminates the plan and, during the next 6 months, distributes to participants and beneficiaries all amounts deferred that were under the plan.

(ii) *Conclusion.* The termination and distribution does not cause the plan to fail to be an eligible governmental plan. Amounts that are distributed as eligible rollover distributions may be rolled over to an eligible retirement plan described in section 402(c)(8)(B).

Example 2. (i) *Facts.* The facts are the same as in *Example 1,* except that Employer Y decides to continue to maintain the plan.

(ii) *Conclusion.* If Employer Y continues to maintains the plan, the tax consequences to participants and beneficiaries with respect to compensation deferred thereafter will be determined in accordance with either section 402(b) if the compensation deferred is funded through a trust, section 403(c) if the compensation deferred is funded through annuity contracts, or § 1.457–11 if the compensation deferred is not funded through a trust or annuity contract. In addition, if Employer Y continues to maintain the plan, the trust (including amounts deferred before the date on which the plan ceases to be an eligible governmental plan and any earnings thereon) will no longer be treated as exempt from tax under section 501(a).

Example 3. (i) *Facts.* Employer Z, a corporation that owns a tax-exempt hospital, sponsors an unfunded eligible plan. Employer Z is acquired by a for-profit hospital and is no longer an eligible employer under section 457(e)(1) or § 1.457–2(e). Employer Z terminates the plan and distributes all amounts deferred under the eligible plan to participants and beneficiaries within a one-year period.

(ii) *Conclusion.* Distributions under the plan are treated as made under an eligible plan of a tax-exempt entity and the distributions of the amounts deferred are includible in the gross income of the participant or beneficiary in the year distributed.

Example 4. (i) Facts. The facts are the same as in *Example 3,* except that Employer Z decides to maintain instead of terminate the plan.

(ii) *Conclusion.* If Employer Z maintains the plan, the tax consequences to participants and beneficiaries in the plan will thereafter be determined in accordance with section 451.

(b) *Plan-to-plan transfers*—(1) *General rule.* An eligible governmental plan may provide for the transfer of amounts deferred by a participant or beneficiary to another eligible governmental plan, and an eligible plan of a tax-exempt entity may provide for transfers of amounts deferred by a participant to another eligible plan of a tax-exempt entity, if the conditions in paragraph (b)(2) of this section are met. An eligible governmental plan may accept transfers from another eligible governmental plan as described in the preceding sentence, and an eligible plan of a tax-exempt entity may accept transfers from another eligible plan of a tax-exempt entity as described in the preceding sentence. However, a state may not transfer the assets of its eligible governmental plan to a tax-exempt entity's eligible plan and the plan of a tax-exempt entity may not accept such a transfer. Similarly, a tax-exempt entity may not transfer the assets of its eligible plan to an eligible governmental plan and an eligible governmental plan may not accept such a transfer. In addition, if the conditions in paragraph (b)(4) of this section (relating to permissive past service credit and repayments under section 415) are met, an eligible governmental plan of a state may provide for the transfer of amounts deferred by a participant or beneficiary to a qualified plan (under section 401(a)) maintained by a state. However, a qualified plan may not transfer assets to an eligible governmental plan or to an eligible plan of a tax-exempt entity, and an eligible governmental plan or the plan of a tax-exempt entity may not accept such a transfer.

(2) *Requirements for plan-to-plan transfers among eligible plans.* A transfer under paragraph (b)(1) of this section from an eligible governmental plan to another eligible governmental plan is permitted only if the following conditions are met—

(i) The transferor plan provides for transfers;

(ii) The receiving plan provides for the receipt of transfers;

(iii) The participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and

(iv) The participant or beneficiary whose amounts deferred are being transferred has had a severance from employment with the transferring employer and is performing services for the entity maintaining the receiving plan. However, this paragraph (b)(2)(iv) is not required to be satisfied if—

(A) All of the assets held by the eligible governmental plan are transferred;

(B) The transfer is to another eligible governmental plan maintained by an eligible employer that is a state entity within the same state; and

(C) The participants whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless they are performing services for the entity maintaining the receiving plan.

(3) *Examples.* The provisions of paragraphs (b)(1) and (2) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Participant A, the president of City X's hospital, has accepted a position with another hospital which is a tax-exempt entity. A participates in the eligible governmental plan of City X. A would like to transfer the amounts deferred under City X's eligible governmental plan to the eligible plan of the tax-exempt hospital.

(ii) *Conclusion.* City X's plan may not transfer A's amounts deferred to the tax-exempt employer's eligible plan. In addition, because the amounts deferred would no longer be held in trust for the exclusive benefit of participants and their beneficiaries, the transfer would violate the exclusive benefit rule of section 457(g) and § 1.457–8(a).

Example 2. (i) *Facts.* County M, located in State S, operates several health clinics and maintains an eligible governmental plan for employees of those clinics. One of the clinics operated by County M is being acquired by a hospital operated by State S, and employees of that clinic will become employees of State S. County M permits those employees to transfer their balances under County M's eligible governmental plan to the eligible governmental plan of State S.

(ii) *Conclusion.* If the eligible governmental plans of County M and State S provide for the transfer and acceptance of the transfer (and the other requirements of paragraph (b)(1) of this section are satisfied), the transfer will not cause either plan to violate the requirements of section 457 or these regulations.

Example 3. (i) *Facts.* City Employer Z, a hospital, sponsors an eligible governmental plan. City Employer Z is located in State B. All of the assets of City Employer Z are being acquired by a tax-exempt hospital. City Employer Z, in accordance with the plan-to-plan transfer rules of paragraph (b) of this section, would like to transfer the total amount of assets deferred under City Employer Z's eligible governmental plan to the acquiring tax-exempt entity's eligible plan.

(ii) *Conclusion.* City Employer Z may not permit participants to transfer the amounts to the eligible plan of the tax-exempt entity. In addition, because the amounts deferred would no longer be held in trust for the exclusive benefit of participants and their beneficiaries, the transfer would violate the exclusive benefit rule of section 457(g) and § 1.457–8(a).

Example 4. (i) *Facts.* The facts are the same as in *Example 3,* except that City Employer Z, prior to the transfer of all of its assets to the eligible plan of the tax-exempt entity, decides to transfer all of the amounts deferred under City Z's eligible governmental plan to the eligible governmental plan of the related state government entity, State B.

(ii) *Conclusion.* If City Employer Z's (transferor) eligible governmental plan provides for such transfer and the eligible governmental plan of the State B permits the acceptance of such a transfer (and the other requirements of paragraph (b)(1) of this section are satisfied), City Employer Z may transfer the total amounts deferred under its eligible governmental plan, prior to termination of that plan, to the eligible governmental plan maintained by State B. However, the participants of City Employer Z whose deferred amounts are being transferred are not eligible to participate in the eligible governmental plan of State B, the receiving plan, unless they are performing services for State B.

(4) *Purchase of permissive past service credit by plan-to-plan transfers from an eligible governmental plan to a qualified plan*—(i) *General rule.* An eligible governmental plan of a state may provide for the transfer of amounts deferred by a participant or beneficiary to a defined benefit governmental plan (as defined in section 414(d)) of that state, and no amount shall be includible in gross income by reason of the transfer, if the conditions in paragraph (b)(4)(ii) of this section are met. A transfer under this paragraph (b)(4) is not treated as a distribution for purposes of § 1.457–6. Therefore, such a transfer may be made before severance from employment.

(ii) *Conditions for plan-to-plan transfers from an eligible governmental plan to a qualified plan.* A transfer may be made under this paragraph (b)(4) only if the transfer is either—

(A) For the purchase of permissive past service credit (as defined in section 415(n)(3)(A)) under the receiving defined benefit governmental plan; or

(B) A repayment to which section 415 does not apply by reason of section 415(k)(3).

(iii) *Example.* The provisions of this paragraph (b)(4) are illustrated by the following example:

Example. (i) *Facts.* Plan X is an eligible governmental plan maintained by County Y for its employees. Plan X provides for distributions only in the event of death, an unforeseeable emergency, or severance from employment with Y (including retirement from Y). Plan S is a qualified defined benefit plan maintained by State T for its employees. County Y is within State T. Employee A is an employee of Y and is a participant in Plan X. Employee A previously was an employee of T and is still entitled to benefits under Plan S. Plan S includes provisions allowing participants in certain plans, including Plan X, to transfer assets to Plan S for the purchase past service credit under Plan S not in excess of the credit permitted under section 415(n) and does not permit the amount transferred to exceed the amount necessary to fund the benefit resulting from the past service credit. Although not required to do so, Plan X allows A to transfer assets to Plan T to provide a past service benefit under Plan T.

(ii) *Conclusion.* Assuming that the special rules at section 415(n)(3) are satisfied with respect to the transfer, the transfer is permitted under this paragraph (b)(4).

(c) *Qualified domestic relations orders under eligible plans*—(1) *General rule.* An eligible plan does not become an ineligible plan described in section 457(f) solely because its administrator or sponsor complies with a qualified domestic relations order as defined in section 414(p), including an order requiring the distribution of the benefits of a participant to an alternate payee in advance of the general rules for eligible plan distributions under § 1.457–6. If a distribution or payment is made from an eligible plan to an alternate payee pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to the distribution or payment.

(2) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. (i) *Facts.* Participant C and C's spouse D are divorcing. C is employed by State S and is a participant in an eligible plan maintained by S. C has an account valued at $100,000 under the plan. Pursuant to the divorce, a court issues a qualified domestic relations order on September 1, 2003 that allocates 50 percent of C's $100,000 plan account to D and specifically provides for an immediate distribution to D of D's share within 6 months of the order. Payment is made to D in January of 2004.

(ii) *Conclusion.* S's eligible plan does not become an ineligible plan described in section 457(f) and § 1.457–11 solely because its administrator or sponsor complies with the qualified domestic relations order requiring the immediate distribution to D in advance of the general rules for eligible plan distributions under § 1.457–6. In accordance with section 402(e)(1)(A), D (not C) must include the distribution in gross income. The

distribution is includible in D's gross income in 2004. If the qualified domestic relations order were to provide for distribution to D at a future date, amounts deferred attributable to D's share will be includible in D's gross income when paid to D.

Example 2. (i) *Facts.* The facts are the same as in *Example 1,* except that S is a tax-exempt entity, instead of a state.

(ii) *Conclusion.* S's eligible plan does not become an ineligible plan described in section 457(f) and § 1.457–11 solely because its administrator or sponsor complies with the qualified domestic relations order requiring the immediate distribution to D in advance of the general rules for eligible plan distributions under § 1.457–6. In accordance with section 402(e)(1)(A), D (not C) must include the distribution in gross income. The distribution is includible in D's gross income in 2004, assuming that the plan did not make the distribution available to D in 2003. If the qualified domestic relations order were to provide for distribution to D at a future date, amounts deferred attributable to D's share would be includible in D's gross income when paid or made available to D.

(d) *Death benefits and life insurance proceeds.* A death benefit plan under section 457(e)(11) is not an eligible plan. In addition, no amount paid or made available under an eligible plan as death benefits or life insurance proceeds is excludable from gross income under section 101.

(e) *Rollovers to eligible governmental plans*—(1) *General rule.* An eligible governmental plan may accept contributions that are eligible rollover distributions (as defined in section 402(c)(4)) made from another eligible retirement plan (as defined in section 402(c)(8)(B)) if the conditions in paragraph (e)(2) of this section are met. Amounts contributed to an eligible governmental plan as eligible rollover distributions are not taken into account for purposes of the annual limit on annual deferrals by a participant in § 1.457–4(c) or § 1.457–5, but are otherwise treated in the same manner as amounts deferred under section 457 for purposes of §§ 1.457–3 through 1.457–9 and this section.

(2) *Conditions for rollovers to an eligible governmental plan.* An eligible governmental plan that permits eligible rollover distributions made from another eligible retirement plan to be paid into the eligible governmental plan is required under this paragraph (e)(2) to provide that it will separately account for any eligible rollover distributions it receives.

(3) *Example.* The provisions of this paragraph (e) are illustrated by the following example:

Example. (i) *Facts.* Plan T is an eligible governmental plan that provides that employees who are eligible to participate in Plan T may make rollover contributions to Plan T from amounts distributed to an employee from an eligible retirement plan. An eligible retirement plan is defined in Plan T as another eligible governmental plan, a qualified section 401(a) or 403(a) plan, or a section 403(b) contract, or an individual retirement arrangement (IRA) that holds such amounts. Plan T requires rollover contributions to be paid by the eligible retirement plan directly to Plan T (a direct rollover) or to be paid by the participant within 60 days after the date on which the participant received the amount from the other eligible retirement plan. Plan T does not take rollover contributions into account for purposes of the plan's limits on amounts deferred that conform to § 1.457–4(c). Rollover contributions paid to Plan T are invested in the trust in the same manner as amounts deferred under Plan T and rollover contributions (and earnings thereon) are available for distribution to the participant at the same time and in the same manner as amounts deferred under Plan T. In addition, Plan T provides that, for each participant who makes a rollover contribution to Plan T, the Plan T recordkeeper is to establish a separate account for the participant's rollover contributions. The recordkeeper calculates earnings and losses for investments held in the rollover account separately from earnings and losses on other amounts held under the plan and calculates disbursements from and payments made to the rollover account separately from disbursements from and payments made to other amounts held under the plan.

(ii) *Conclusion.* Plan T does not lose its status as an eligible governmental plan as a result of the receipt of rollover contributions.

(f) *Deemed IRAs under eligible governmental plans.* [Reserved]

§ 1.457–11 Tax treatment of participants if plan is not an eligible plan.

(a) *In general.* Under section 457(f), if an eligible employer provides for a deferral of compensation under any agreement or arrangement that is an ineligible plan—

(1) Compensation deferred under the agreement or arrangement is includible in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture (within the meaning of section 457(f)(3)(B)) of the rights to such compensation;

(2) If the compensation deferred is subject to a substantial risk of forfeiture, the amount includible in gross income for the first taxable year in which there is no substantial risk of forfeiture includes earnings thereon to the date on which there is no substantial risk of forfeiture;

(3) Earnings credited on the compensation deferred under the agreement or arrangement that are not includible in gross income under paragraph (a)(2) of this section are includible in the gross income of the participant or beneficiary only when paid or made available to the participant or beneficiary, provided that the interest of the participant or beneficiary in any assets (including amounts deferred under the plan) of the entity sponsoring the agreement or arrangement is not senior to the entity's general creditors; and

(4) Amounts paid or made available to a participant or beneficiary under the agreement or arrangement are includible in the gross income of the participant or beneficiary under section 72, relating to annuities.

(b) *Exceptions.* Paragraph (a) of this section does not apply with respect to—

(1) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a);

(2) An annuity plan or contract described in section 403;

(3) That portion of any plan which consists of a transfer of property described in section 83;

(4) That portion of any plan which consists of a trust to which section 402(b) applies; or

(5) A qualified governmental excess benefit arrangement described in section 415(m).

(c) *Coordination of section 457(f) with section 83*—(1) *Transfer of property described in section 83.* Under paragraph (b)(3) of this section, section 457(f) and paragraph (a) of this section do not apply to that portion of any plan which consists of a transfer of property described in section 83. For this purpose, a transfer of property described in section 83 means a transfer of property to which section 83 applies. Section 457(f) and paragraph (a) of this section do not apply if the date on which there is no substantial risk of forfeiture with respect to compensation deferred under an agreement or arrangement that is not an eligible plan is on or after the date on which there is a transfer of property to which section 83 applies. However, section 457(f) and paragraph (a) of this section apply if the date on which there is no substantial risk of forfeiture with respect to compensation deferred under an agreement or arrangement that is not an eligible plan precedes the date on which there is a transfer of property to which section 83 applies. If deferred compensation payable in property is includible in gross income under section 457(f), then, as provided in section 72, the amount includible in gross income when that property is later transferred or made available to the service provider is the excess of the value of the property at that time over the amount previously included in gross income under section 457(f).

(2) *Examples.* The provisions of this paragraph (c) are illustrated in the following examples:

Example 1. (i) *Facts.* As part of an arrangement for the deferral of compensation, an eligible employer agrees on December 1, 2002 to pay an individual rendering services for the eligible employer a specified dollar amount on January 15, 2005. The arrangement provides for the payment to be made in the form of property having a fair market value equal to the specified dollar amount. The individual's rights to the payment are not subject to a substantial risk of forfeiture (within the meaning of section 457(f)(3)(B)).

(ii) *Conclusion.* In this example, because there is no substantial risk of forfeiture with respect to the agreement to transfer property in 2005, the present value (as of December 1, 2002) of the payment is includible in the individual's gross income for 2002. Under paragraph (a)(4) of this section, when the payment is made on January 15, 2005, the amount includible in the individual's gross income is equal to the excess of the fair market value of the property when paid, over the amount that was includible in gross income for 2002 (which is the basis allocable to that payment).

Example 2. (i) *Facts.* As part of an arrangement for the deferral of compensation, individuals A and B rendering services for a tax-exempt entity each receive in 2010 property that is subject to a substantial risk of forfeiture (within the meaning of section 457(f)(3)(B) and within the meaning of section 83(c)(1)). Individual A makes an election to include the fair market value of the property in gross income under section 83(b) and individual B does not make this election. The substantial risk of forfeiture for the property transferred to individual A lapses in 2012 and the substantial risk of forfeiture for the property transferred to individual B also lapses in 2012. Thus, the property transferred to individual A is included in A's gross income for 2010 when A makes a section 83(b) election and the property transferred to individual B is included in B's gross income for 2012 when the substantial risk of forfeiture for the property lapses.

(ii) *Conclusion.* In this example *2*, in each case, the compensation deferred is not subject to section 457(f) or this section because section 83 applies to the transfer of property on or before the date on which there is no substantial risk of forfeiture with respect to compensation deferred under the arrangement.

Example 3. (i) *Facts.* In 2010, X, a tax-exempt entity, agrees to pay deferred compensation to employee C. The amount payable is $100,000 to be paid 10 years later in 2020. The commitment to make the $100,000 payment is not subject to a substantial risk of forfeiture. In 2010, the present value of the $100,000 is $50,000. In 2018, X transfers to C property having a fair market value (for purposes of section 83) equal to $70,000. The transfer is in partial settlement of the commitment made in 2010 and, at the time of the transfer in 2018, the present value of the commitment is $80,000. In 2020, X pays C the $12,500 that remains due.

(ii) *Conclusion.* In this example *3,* C has income of $50,000 in 2010. In 2018, C has income of $30,000, which is the amount transferred in 2018, minus the allocable portion of the basis that results from the $50,000 of income in 2010. (Under section 72(e)(2)(B), income is allocated first. The income is equal to $30,000 ($80,000 minus the $50,000 basis), with the result that the allocable portion of the basis is equal to $40,000 ($70,000 minus the $30,000 of income).) In 2020, C has income of $2,500 ($12,500 minus $10,000, which is the excess of the original $50,000 basis over the $40,000 basis allocated to the transfer made in 2018).

§ 1.457–12 Effective dates.

Sections 1.457–1 through 1.457–11 apply for taxable years beginning after December 31, 2001, except that § 1.457–11(c) does not apply with respect to an option without a readily ascertainable fair market value (within the meaning of section 83(e)(3)) that was granted on or before May 8, 2002 and, except that § 1.457–10(c) (relating to qualified domestic relations orders) applies for transfers, distributions, and payments made afer December 31, 2001.

Robert E. Wenzel,

Deputy Commissioner of the Internal Revenue Service.

[FR Doc. 02–11036 Filed 5–7–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–011]

RIN 2115–AA97

Security Zones; Captain of the Port Toledo Zone, Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two permanent security zones on the navigable waters of Lake Erie in the Captain of the Port Toledo zone. These security zones are necessary to protect the Enrico Fermi 2 Nuclear Power Station and the Davis Besse Nuclear Power Station from possible acts of terrorism. These security zones are intended to restrict vessel traffic from a portion of Lake Erie off the Enrico Fermi 2 Nuclear Power Station and the Davis Besse Nuclear Power Stations.

DATES: Comments and related material must reach the Coast Guard on or before June 7, 2002.

ADDRESSES: You may mail comments to U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio 43604. The telephone number is (419) 418–6050. Marine Safety Office Toledo maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LT Herb Oertli, Chief of Port Operations, Marine Safety Office, 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 418–6050.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–02–011), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Marine Safety Office Toledo at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in the destruction of the World Trade Center, significant damage to the Pentagon, and tragic loss of life. National security and intelligence officials warn that future terrorists attacks are likely.

We propose to establish a permanent security zone off the waters of Enrico Fermi 2 Nuclear Power Station, Newport, Michigan. This security zone

would include waters and adjacent shoreline within a boundary commencing at 41°58.4′ N, 083°15.4′ W; then northeast to 41°58.5′ N, 083°15.0′ W; then southeast to 41°58.2′ N, 083°13.7′ W; then south to 41°56.9′ N, 083°13.8′ W; then west to 41°56.9′ N, 083°15.2′ W; then back to the starting point at 41°58.4′ N, 083°15.4′ W.

Our proposed rule would also establish a permanent security zone off the waters of Davis Besse Nuclear Power Station, Port Clinton, Ohio. This security zone would include waters and adjacent shoreline within a boundary commencing at 41°36.3 N, 083°04.9′ W; then north to 41°37.0′ N, 083°03.9′ W; east to 41°35.9′ N, 083°02.5′ W; southwest to 41°35.4′ N, 083°03.7′ W; then back to the starting point 41°36.3′ N, 083°04.9′ W.

These proposed security zones are necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Toledo, or his authorized representative, are prohibited from entering or moving within these zones. The Captain of the Port Toledo may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The Captain of the Port Toledo's on-scene representative will be the patrol commander. In addition to publication in the **Federal Register**, the public will be made aware of the existence of this security zone, exact location and the restrictions involved via Local Notice To Mariners and a Broadcast Notice to Mariners.

Discussion of Proposed Rule

Following the catastrophic nature and extent of damage realized from the attacks of September 11, this proposed rulemaking is necessary to protect the national security interests of the United States against having these nuclear power plants become targets of terrorists.

On October 12, 2001 we published a temporary final rule establishing a security zone on the waters of Lake Erie around the Enrico Fermi 2 Nuclear Power Station, (66 FR 52039), as well as a security zone on Lake Erie around Davis Besse Nuclear Power Plant (66 FR 52038). We propose to establish permanent security zones in place of those temporary security zones. The proposed security zones in this regulation are smaller in size compared to those originally created on October 12, 2001 in the temporary final rule.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 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 exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

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

These proposed security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Our proposed rule will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the security zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the office listed in Addresses in this preamble.

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

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that this proposed rule would not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an

economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

§ 165.T09–135 [Removed]

2. Remove § 165.T09–135.

§ 165.T09–136 [Removed]

3. Remove § 165.T09–136.

4. Add § 165.915 to read as follows:

§ 165.915 Security zones; Captain of the Port Toledo Zone, Lake Erie.

(a) *Security zones.* The following areas are security zones:

(1) *Enrico Fermi 2 Nuclear Power Station.* All waters and adjacent shoreline encompassed by a line commencing at 41°58.4′ N, 083°15.4′ W; then northeast to 41°58.5′ N, 083°15.0′ W; then southeast to 41°58.2′ N, 083°13.7′ W; then south to 41°56.9′, N 083°13.8′ W; then west to 41°56.9′ N, 083°15.2′ W; then back to the starting point at 41°58.4′ N, 083°15.4′ W (NAD 83).

(2) *Davis Besse Nuclear Power Station.* All waters and adjacent shoreline encompassed by a line commencing at 41°36.3′ N, 083°04.9′ W; north to 41°37.0′ N, 083°03.9′ W; east to 41°35.9′ N, 083°02.5′ W; southwest to 41°35.4′ N, 083°03.7′ W; then back to the starting point 41°36.3′ N, 083°04.9′ W. (NAD 83).

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Toledo. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit through either of these security zones, prior to transiting, must contact the Captain of the Port Toledo at telephone number (419) 418–6050, or on VHF/FM channel 16 and request permission. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: April 26, 2002.

D.L. Scott,

Commander, U.S. Coast Guard, Captain of the Port Toledo.

[FR Doc. 02–11492 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7207–7]

RIN 2060–AG93

National Emission Standards for Hazardous Air Pollutants: Semiconductor Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for semiconductor manufacturing operations. The EPA has identified these operations as major sources of emissions of hazardous air pollutants (HAP) such as hydrochloric acid (HCl), hydrofluoric acid (HF), glycol ethers, methanol, and xylene. These HAP are associated with a variety of adverse health effects. These adverse health effects include irritation of the lung, skin, and mucus membranes, effects on the central nervous system, and damage to the skeleton system. These proposed NESHAP would require all semiconductor manufacturing facilities that are major sources to meet emission standards reflecting the application of the maximum achievable control technology (MACT).

DATES: *Comments.* Submit comments on or before July 8, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by May 28, 2002, a public hearing will be held on June 7, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–15, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–15, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, or an alternate site nearby.

Docket. Docket No. A–97–15 includes source category-specific supporting information for Semiconductor Manufacturing. The docket is located at the U.S. EPA, Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500 (ground floor), 401 M Street SW., Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed rule, contact Mr. John Schaefer, US EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone (919) 541–0296, e-mail: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® format. All comments and data submitted in electronic form must note the appropriate docket number (*see* **ADDRESSES**). No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: John Schaefer, c/o OAQPS Document Control Officer (Room 740B), 411 W. Chapel Hill Street, Durham, North Carolina 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Maria Noell, Organic Chemicals Group, Emission Standards Division (MD–13), US EPA, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5607 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also call Ms. Noell to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of the record compiled by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS code	SIC code	Examples of regulated entities
Industrial	334413	3674	Semiconductor crystal growing facilities, semiconductor wafer fabrication facilities, semiconductor test and assembly facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7181 of the proposed subpart. If you have any questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What are the health effects associated with the pollutants emitted from semiconductor manufacturing operations?
II. Summary of the Proposed NESHAP
A. What is the source category to be regulated?
B. What are the primary sources of emissions and what are the baseline emissions?
C. What is the affected source?
D. What are the emission limits?
E. When must I comply with these proposed NESHAP?
F. What are the testing and initial and continuous compliance requirements?
G. What are the notification, recordkeeping, and reporting requirements?
III. Rationale for Selecting the Proposed Standards
A. How did we select the source category?
B. How did we select the affected source?
C. How did we determine the basis and level of the proposed standards for existing and new sources?
D. Did we consider control options more stringent than the MACT floor?
E. How did we select the compliance, monitoring, recordkeeping, and reporting requirements?
IV. Summary of Environmental, Energy, and Economic Impacts
A. What are the secondary and energy impacts associated with these proposed NESHAP?
B. What are the cost impacts?
C. What are the economic impacts?
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
C. Executive Order 13132, Federalism
D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Semiconductor Manufacturing source

category was listed on July 16, 1992 (57 FR 31576). As specified in section 112(a) of the CAA, a major source of HAP is any stationary source or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires us to establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that all major sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, NESHAP cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The NESHAP for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor following consideration of cost, any health and environmental impacts, and energy requirements.

C. What Are the Health Effects Associated With the Pollutants Emitted From Semiconductor Manufacturing Operations?

The primary HAP emitted by the semiconductor manufacturing industry are HCl, HF, glycol ethers, methanol, and xylene.

Glycol ethers. Glycol ethers are a large group of related compounds. Acute (short-term) exposure in humans to high levels of glycol ethers results in narcosis, pulmonary edema, and severe liver and kidney damage. Chronic (long-term) exposure to glycol ethers may result in neurological and blood effects, including fatigue, nausea, tremors, and anemia. No information is available on the reproductive, developmental, or carcinogenic effects of glycol ethers in humans. Animal studies have reported reproductive and developmental effects, including testicular damage, reduced fertility, maternal toxicity, early embryonic death, birth defects, and delayed development. The EPA has not classified any glycol ether compounds for carcinogenicity.

Hydrochloric acid. Hydrochloric acid is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of HCl in humans. In rats exposed to HCl by inhalation, altered estrus cycles have been reported in females, and increased fetal mortality and decreased fetal weight have been reported in offspring. The EPA has not classified HCl for carcinogenicity.

Hydrogen fluoride. Acute inhalation exposure to gaseous HF can cause severe respiratory damage in humans, including severe irritation and pulmonary edema. While the respiratory effects are attributable to the HF compound, other effects, including those associated with chronic exposures are attributable to the fluoride ion absorbed into the body (as a result of inhalation or ingestion of various fluoride compounds, including HF). Chronic exposure to fluoride at certain levels may cause dental fluorosis or mottling, while very high exposures through drinking water or air can result in crippling skeletal fluorosis. One study reported menstrual irregularities in women occupationally exposed to fluoride. The EPA has not classified HF for carcinogenicity.

Methanol. Acute or chronic exposure of humans to methanol by inhalation or ingestion may result in blurred vision, headache, dizziness, and nausea. No information is available on the reproductive, developmental, or carcinogenic effects of methanol in humans. Birth defects have been observed in the offspring of rats and mice exposed to methanol by inhalation. A methanol inhalation study using rhesus monkeys reported a decrease in the length of pregnancy and limited evidence of impaired learning ability in offspring. The EPA has not classified methanol with respect to carcinogenicity.

Xylene. Short-term inhalation of mixed xylenes (a mixture of three closely-related compounds) in humans may cause irritation of the nose and throat, nausea, vomiting, gastric irritation, mild transient eye irritation, and neurological effects. Long-term inhalation of xylenes in humans may result in nervous system effects such as headache, dizziness, fatigue, tremors, and incoordination. Other reported effects include labored breathing, heart palpitation, severe chest pain, abnormal electrocardiograms, and possible effects on the blood and kidneys. The EPA has classified mixed xylenes as Group D carcinogens, not classifiable with respect to human carcinogenicity.

II. Summary of the Proposed NESHAP

A. What Is the Source Category To Be Regulated?

The Semiconductor Manufacturing source category includes operations used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate. Research and development activities located at a site manufacturing p-type and n-type semiconductors and active solid-state devices are included in the definition of semiconductor manufacturing. Examples of semiconductor or related solid-state devices include semiconductor diodes, semiconductor stacks, rectifiers, integrated circuits, and transistors. The source category includes all manufacturing from crystal growth through wafer fabrication, and test and assembly.

The crystal growing stage is where crystalline wafers of silicon or other specific semiconducting materials are manufactured for use as the substrate in the wafer fabrication process. Crystal growing begins with the storage of the raw materials (usually trichlorosilane, which is refined from ordinary sand) and ends with the final polishing of a wafer.

The wafer fabrication process is where a group of integrated circuits are created on the wafer through a series of pattern-forming processes. Wafer fabrication begins at the point where the wafer receives its first protective oxidative layer and ends when a functional integrated circuit or circuits have been created on a wafer.

The test and assembly process is the final step in the integrated circuit manufacturing process and begins when a wafer is cut into individual chips. The chips are then mounted onto a metal

frame, connected to the leads, and enclosed in a protective housing. The process endpoint is the last test performed at an assembly facility to verify proper function of a completed integrated circuit housing.

B. What Are the Primary Sources of Emissions and What Are the Baseline Emissions?

We estimate nationwide HAP emissions from the semiconductor manufacturing industry to be 636 tpy. More than 90 percent of these emissions come from process vents at these facilities. We estimate that five chemicals comprise over 90 percent of the total HAP emissions: HCl, HF, glycol ethers, methanol, and xylene.

C. What Is the Affected Source?

For the Semiconductor Manufacturing source category, the affected source includes the collection of all semiconductor manufacturing units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate, research and development activities on a semiconductor manufacturing site, and storage tanks located at a major source.

A semiconductor manufacturing unit is the equipment assembled and connected by duct work or hard-piping including: furnaces and associated unit operations; associated wet and dry work benches; associated recovery devices; feed, intermediate, and product storage tanks; product transfer racks and connected ducts and piping; pumps, compressors, agitators, pressure-relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; and control devices. We have identified three distinct processes used in the manufacture of these semiconductors and devices: crystal growing, wafer fabrication, and assembly and test. A semiconductor manufacturing unit is typically engaged in one of these processes.

D. What Are the Emission Limits?

We are proposing NESHAP that would regulate HAP emissions from process vents and storage tank vents at semiconductor manufacturing facilities. We are proposing the same requirements for existing and new sources. We are proposing that all major sources reduce process vent HAP outlet concentrations by 98 percent from their uncontrolled levels. As an alternative, process vents may be controlled to a level below 20 parts per million volume (ppmv) HAP, corrected to 3 percent oxygen. We are proposing that all major sources reduce storage tank vent HAP outlet concentrations by 99 percent from their uncontrolled levels. As an alternative, storage tank vents may be controlled to a level below 1 ppmv HAP.

E. When Must I Comply With These Proposed NESHAP?

Existing semiconductor manufacturing affected sources must comply with the rule no later than 3 years from the effective date of the promulgated subpart. New or reconstructed affected sources that startup before the effective date of the promulgated subpart must comply with the rule no later than the effective date of the promulgated subpart unless the provisions in section 112(i)(2) of the CAA apply. New or reconstructed affected sources that startup after the effective date of the promulgated subpart must comply with the rule upon startup of the affected source.

F. What Are the Testing and Initial and Continuous Compliance Requirements?

We are proposing testing and initial and continuous compliance requirements that are, where appropriate, based on procedures and methods that we have previously developed and used for sources similar to those for which standards are being proposed today. For example, we are proposing compliance determination procedures, performance tests, and test methods to determine what level of control a process vent needs to achieve to demonstrate compliance with the standards.

We are proposing compliance procedures to determine process vent and storage tank vent flow rates and HAP concentrations. The proposed test methods parallel what we have used for process vents in previous organic HAP emissions standards (e.g., the Hazardous Organic NESHAP (HON)). For measuring vent stream flow rate, we propose the use of Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A. For measuring total vent stream organic HAP concentration to determine whether it is below a specified level, we propose the use of Method 18 of 40 CFR part 60, appendix A. For measuring the total HAP concentration of emission streams with inorganic HAP to determine if it is below a specified level, we propose the use of Method 320 of 40 CFR part 60, appendix A.

Additionally, we are proposing to require initial performance tests for all process vent and storage tank vent HAP emission control devices other than flares and certain boilers and process heaters. For vents controlled using flares, we are not requiring performance tests because we have developed design specifications that ensure these devices will achieve 98 percent destruction efficiency. As with the HON, we are not proposing a requirement to perform an initial performance test for boilers and process heaters larger than 44 megawatts (MW) because they operate at high temperatures and residence times. In general, the higher the temperature and residence time, the greater the level of HAP destruction that is achieved by a control device. Therefore, boilers and process heaters larger than 44 MW easily achieve the required 98 percent destruction efficiency or the alternative requirement to reduce outlet concentrations below 20 ppmv.

For all other types of control devices, the proposed NESHAP require the owner or operator to conduct a performance test to demonstrate that the control device can achieve the required control level and to establish operating parameters to be maintained to demonstrate continuous compliance. The proposed testing requirements for semiconductor manufacturing list the parameters that can be monitored for the common types of combustion devices. For other control devices, we require that an owner or operator establish site-specific parameter ranges for monitoring purposes through the Notification of Compliance Status Report and through the facility's operating permit. Parameters selected are required to be good indicators of continuous control device performance.

G. What Are the Notification, Recordkeeping, and Reporting Requirements?

We are proposing notification, recordkeeping, and reporting requirements in accordance with the part 63 General Provisions (40 CFR part 63, subpart A) and other previously promulgated NESHAP for similar source categories.

We are proposing that owners or operators of semiconductor manufacturing affected sources submit the following four types of reports: an Initial Notification Report, a Notification of Compliance Status Report, periodic compliance reports, reports of changes and other specified events. Records of reported information and other information necessary to document compliance with the promulgated standards would be required to be kept for 5 years. Equipment design records would be required to be kept for the life of the equipment.

For the Initial Notification Report, we are proposing that you list the

semiconductor manufacturing operations at your facility, and the provisions of the rule that may apply. The Initial Notification Report must also state whether your facility can achieve compliance by the specified compliance date. You must submit this notification within 1 year after the date of promulgation of these NESHAP for existing sources, and within 180 days before commencement of construction or reconstruction of an affected source.

For the Notification of Compliance Status Report, we are proposing that you submit the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests and design analyses. For each test method that you use for a particular kind of emission point (e.g., process vent), you must submit one complete test report. This notification must also include the specific range established for each monitored parameter for each emission point for demonstrating continuous compliance, and the rationale for why this range indicates proper operation of the control device.

We are proposing that you submit semiannual compliance reports. These reports must include a statement that no deviations from the emission limitations occurred during the reporting period, and that no continuous monitoring system (CMS) was inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted. Additionally, a statement must be included if you had a startup, shutdown, or malfunction during the reporting period, and you took actions consistent with your Startup Shutdown and Malfunction Plan (SSMP). For process and storage tank vents, records of continuously monitored parameters must be kept. Records that such inspections or measurements were performed must be kept, but results are included in your periodic report only if there is a deviation from the operating limit. For each deviation from an emission limit, the semiannual compliance reports must document the time periods of each deviation; its cause; whether it occurred during a period of startup, shutdown, or malfunction; and whether and what time periods the CMS was inoperative or out of control.

We are proposing that you submit an immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction that is not consistent with your SSMP.

Other proposed reporting requirements include reports to notify the regulatory authority before or after a specific event (e.g., if a process change is made, requests for extension of repair period).

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category?

The Semiconductor Manufacturing source category includes facilities that grow crystalline wafers for use in the manufacture of semiconductors, engage in the manufacture of p-type and n-type semiconductors and active solid-state devices, or engage in the assembly and test of semiconductor devices. The Semiconductor Manufacturing source category was included on the initial source category list at 57 FR 31576 (July 16, 1992). It was included on the list because there were facilities emitting HAP at major source levels, as defined in section 112(a) of the CAA.

However, since the initial listing, most of these semiconductor facilities have controlled emissions to levels below major source thresholds. As a result, during the course of developing this rulemaking, EPA received several requests from the Semiconductor Industry Association (SIA) to delist the semiconductor source category pursuant to CAA section 112(c)(1). These requests and comments are included in the docket (A–97–15).

We recognize this proposal will be of limited significance because it would regulate only a single source that, standing alone, has very small emissions. We nonetheless believe promulgation of standards for this source category is compelled by the Act. Section 112(a) defines ''major source'' as ''any stationary source or group of stationary sources located within a contiguous area and under common control, that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.'' Thus, sources such as the semiconductor manufacturing source subject to this rule are considered part of a major source when they are collocated with other sources at facilities that in combination have the potential to emit over the major source thresholds. Because the statute is clear that such collocated sources must be considered major, we believe it is also clear in the statute that we must list categories that include such sources and promulgate standards for those categories pursuant to section 112(d).

Notwithstanding our reading of the Act, EPA requests comments on the appropriateness of including semiconductor manufacturing as a source category for regulation under CAA section 112(d). We will respond to SIA's pre-proposal requests and all additional comments in any final action on this rulemaking. We believe this approach is consistent with the approach outlined in section 112(e)(4), which indicates that EPA's decision to list a source category is not a reviewable final agency action unless, and until, EPA issues emissions standards for that category. See also *National Asphalt Paving Ass'n* v. *EPA*, 539 F.2d 775, 779 n.2 (D.C. Cir. 1976) (describing similar approach for category listing under CAA section 111).

B. How Did We Select the Affected Source?

In selecting the affected source for the Semiconductor Manufacturing source category, we included all equipment that emits HAP or has the potential to emit HAP, such as process vents, storage tanks, wastewater, and fugitive sources. We also included within the affected source other auxiliary equipment that is necessary to make the operation run, but which may not emit HAP. We did this to ensure that all equipment necessary to run a semiconductor manufacturing operation is included under these proposed NESHAP. In addition, we also included all research and development activities located at a site engaged in the manufacture of semiconductors. Thus, we are defining the affected source broadly to include the sum of all operations engaged in the manufacture of semiconductors.

C. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

We identified six facilities as having the potential to emit greater than the major source emissions threshold, but for the presence of add-on controls. A seventh facility was identified as being a major source due to the fact that it is collocated with other HAP-emitting processes. These seven facilities were evaluated to determine the MACT floor level of control.

Based on data gathering efforts that included site visits, industry survey responses, and literature searches, we identified three potential sources of HAP emissions for the semiconductor manufacturing industry: Process vents, storage tanks, and wastewater treatment. We did not consider equipment leaks as a separate emissions source because any potential emissions from this source are emitted into the manufacturing buildings and are included as part of process vent emissions.

We established a floor for process vents based on testing data that we collected for several vents. Additionally, we established a floor for storage tanks based on testing data we collected for HCl storage tanks in the HCl production industry. We could identify no emission controls, work practices, or other techniques currently used at these facilities to reduce HAP emissions from wastewater treatment based on the information obtained from the data gathering efforts. Therefore, MACT for wastewater treatment is based on no emission reduction.

For a source category with under 30 sources, section 112(d)(3) of the CAA directs that the MACT floor for existing sources be based on the average emission limitation achieved by the best performing five sources. The MACT floor for new sources in a source category is required to reflect the level of control being achieved by the best controlled similar source. The term ''average'' is not defined in the CAA, but we have interpreted ''average,'' as used in section 112(d)(3), to include the mean, median, mode, or some other measure of central tendency (59 FR 29196, June 6, 1994). In this MACT floor analysis, we chose a modal analysis to determine the most frequently used control technology reported by the best performing sources.

For both the process vent and storage tank MACT floor analyses, we evaluated performance in terms of control device removal efficiency. In other words, the ''best performing'' semiconductor manufacturing facilities are those with the highest removal efficiencies.

Semiconductor manufacturing units typically produce process vent emission streams that contain either organic or inorganic compounds. At some facilities, the organic and inorganic process vent emission streams are segregated to facilitate control, while others combine them into one or more common exhaust streams. For purposes of the MACT floor analysis, all the data obtained for process vents were considered together. We made no distinction between organic, inorganic, or combined emission streams for the test data because the same level of control can be achieved whether the streams are segregated or combined.

A total of 26 process vents were reported at the seven facilities that make up the MACT floor data set. We calculated removal efficiency from the inlet and outlet concentration values for each process vent emission stream. We then ranked process vents from highest to lowest removal efficiency. We performed the ranking this way to determine the most prevalent control technology, not to determine the average removal efficiency, since the performance of control devices in the semiconductor manufacturing industry is affected by highly variable inlet conditions. The performance of these control devices varies in response to inlet conditions and is more erratic at lower inlet conditions. Any single control device will perform at peak efficiency on an episodic basis under optimum conditions, but the removal efficiencies represented by these test results cannot be maintained under all operating conditions that are typical in the semiconductor manufacturing industry.

We determined the MACT floor for process vents for existing sources from the best performing five sources, rather than the average of the top 12 percent because fewer than 30 sources are represented. Four of the top five best performing sources use some form of thermal oxidation; therefore, thermal oxidation is the technology basis of the MACT floor.

Consistent with other previously promulgated NESHAP for process vents, such as the HON (40 CFR part 63, subpart G), the level of control deemed to be generally achievable by a combustion control device, such as thermal oxidation, is 98 percent removal efficiency. We selected this value as the MACT floor for process vents at existing semiconductor manufacturing facilities. Because the same considerations for low concentration, high flow exhaust streams apply equally to new sources, and the best controlled source uses a thermal oxidizer, we also selected this level of control as the new source MACT floor for vents.

In order to account for the variability in the performance of control devices used in the semiconductor manufacturing industry, as well as the increased variability inherent in the test methods when analyzing the high flow, low concentration process vent emission streams typically controlled by these devices, the MACT floor includes an alternate format based on outlet concentration of HAP. This alternate format is intended to provide facilities with added flexibility to comply with the standard when the inlet concentration of the add-on control device drops below the point where optimum control efficiency can be achieved, and it would not be feasible to require optimum performance levels (expressed in terms of removal efficiency) to be met. To again be consistent with previous NESHAP that have specified a control level of 98 percent through the use of a combustion control device, we selected the alternate format for the MACT floor that would allow a facility to meet a HAP concentration limit of 20 ppmv for their vents. This level has been used in many other rules, including 40 CFR part 63, subpart SS, which is referenced by this action.

We obtained data on control of HAP emissions from storage tanks from six semiconductor manufacturing facilities, representing a total of 56 storage tanks. Emission controls were reported on 29 of these tanks. The materials stored in the controlled tanks were HCl and HF. In all cases, the control device was a scrubber. Therefore, scrubbers were selected as the technology basis of the storage tank MACT floor.

The semiconductor manufacturing industry was unable to provide control device removal efficiency or emissions data for the storage tank scrubbers. Therefore, we developed a floor based on scrubber performance data from scrubbers applied to storage tank vents in the HCl production industry, which would be expected to have similar characteristics.

We reviewed data from 17 sources in the HCl production source category. Because we had less than 30 sources, we based the floor on the best performing five facilities. The performance of the scrubber at the median facility of the best performing five was 99 percent HAP removal. Therefore, we chose 99 percent HAP removal as the floor. Similar to process vents, the concentration of HAP in storage tank exhaust streams is low and can vary widely. Low and variable inlet concentrations can result in high variability in scrubber removal efficiency. For this reason, we are proposing an alternative emission limit of 1 ppmv for storage vents. The value of 1 ppmv is the detection limit of the test method we are proposing for HCl and HF. Therefore, this is the lowest level outlet concentration we can specify because this is the lowest level we can measure.

We have no data on the performance of these scrubbers in reducing HF emissions. However, because HF has a similar solubility to HCl, it is reasonable to assume that scrubbers can also reduce HF emissions by 99 percent or to 1 ppmv.

The semiconductor industry reported storage tank capacities ranging from 300 gallons to 16,000 gallons. We ranked the tanks by their capacity and examined which tanks reported controls on their vents. The smallest storage tank with controls is 800 gallons. Five storage tanks in our data set are smaller than 800 gallons and do not control their emissions. Therefore, we have

concluded that it is not feasible to control storage tanks of less than 800 gallons. We are proposing that facilities control HAP emissions from vents by 99 percent or reduce HAP emissions to no more than 1 ppmv for all storage tanks 800 gallons or larger.

D. Did We Consider Control Options More Stringent Than the MACT Floor?

We considered control options more stringent than the MACT floor for process vents, storage tanks, and wastewater treatment. No such control options were determined to be feasible.

The MACT floor of 98 percent control for process vents was determined to be the highest level of control achievable on a consistent basis. While control devices such as thermal oxidizers can be operated under certain conditions to achieve greater than 98 percent removal efficiency, this was not deemed achievable on a consistent basis for the varying emission streams present throughout the semiconductor manufacturing industry. Thus, no regulatory alternatives above the floor value of 98 percent control were identified that were expected to be technically feasible.

For storage tanks, the MACT floor of 99 percent control was determined to be the highest level of control achievable on a consistent basis. Like thermal oxidizers, scrubbers can be operated under certain conditions to achieve greater than 99 percent removal efficiency. However, due to the variability of HAP concentrations in storage tank emission streams, this was not deemed achievable on a consistent basis. Thus, no regulatory alternatives above the floor value of 99 percent control were identified that were expected to be technically feasible.

No wastewater HAP emission controls were identified for the semiconductor manufacturing industry. Wastewater streams from the semiconductor manufacturing industry consist predominately of acids (e.g., HCl), which do not readily volatilize. In addition, the concentration of HAP contained in these wastewater streams is very small, typically on the order of 3 to 4 ppmv. Due to these factors, the potential for emissions is very small. Due to this low level of emissions, we could not identify any technically or economically feasible control options.

Finally, we examined process changes that would reduce the amount of HAP used, and thus, have the potential to reduce HAP emissions from all emission points. Specifically, we considered requiring industry to increase the size of wafers used in the manufacture of integrated circuits. Industry studies indicate that going from one wafer size to the next larger size decreases a facility's HAP usage by about 20 to 30 percent. Typically, sizes used are 4, 6, and 8 inch wafers.

We have determined, however, that these process changes are not cost effective because an increase in wafer size requires replacing most of the equipment in a wafer fabrication facility. The one major source covered by these NESHAP would need to replace approximately $150 million worth of equipment in order to reduce HAP emissions by several hundred pounds. Therefore, we determined that process changes would not be a cost-effective or practical method for reducing HAP emissions at this time without a further evaluation of risk.

E. How Did We Select the Compliance, Monitoring, Recordkeeping, and Reporting Requirements?

The general recordkeeping and reporting requirements of these proposed NESHAP are very similar to those found in the HON (40 CFR part 63, subparts F, G, and H). You are also required to comply with the notification, recordkeeping, and reporting requirements in the General Provisions (40 CFR part 63 subpart A). We have included a table in the proposed subpart BBBBB that designates which sections of subpart A apply.

General compliance, monitoring, recordkeeping, and reporting requirements for emission points are contained within the proposed NESHAP. We specify compliance procedures necessary to determine the required level of control for process vents. We based the selection of emission point and/or control device-specific monitoring (including continuous monitoring), recordkeeping, and reporting requirements on the requirements contained in 40 CFR part 63, subpart SS for closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process. Subpart SS contains a common set of monitoring, recordkeeping, and reporting requirements. We established these subparts to ensure consistency among emission requirements applied to similar emission points with pollutant streams containing gaseous HAP. We have proposed changes to the performance specifications for continuous compliance monitoring devices contained within subpart SS (65 FR 76408, December 6, 2000). Background information and public comments on the proposed changes can be found in Docket A–97–17. Interested parties should consider the proposed changes to subpart SS when reviewing and commenting on today's action for the Semiconductor Manufacturing source category.

As with the HON, we are not proposing a requirement to perform an initial performance test for boilers and process heaters larger than 44 MW because they operate at high temperatures and residence times. Analysis shows that when vent streams are introduced into the flame zone of these boilers and process heaters, greater than 98 weight-percent of HAP emissions are reduced, or the outlet concentration of HAP is below 20 ppmv, corrected to 3 percent oxygen. For flares, a percent reduction or outlet concentration measurement is not feasible. Therefore, we determined that a performance test is not necessary for boilers and process heaters larger 44 MW, or for flares. For all other types of control devices, the proposed NESHAP require the owner or operator to conduct a performance test to demonstrate that the control device can achieve the required control level and to establish operating parameters to be maintained to demonstrate continuous compliance. We believe that the compliance, monitoring, recordkeeping, and reporting requirements of the proposed NESHAP are consistent with subpart SS and the HON.

IV. Summary of Environmental, Energy, and Economic Impacts

This section presents projected impacts for existing sources only. We did not calculate impacts for new sources because we do not project any new major sources will commence construction in the foreseeable future. We expect that any new sources will have HAP emissions below major source thresholds. The industry trend over the past several years has been that HAP emissions have decreased while semiconductor production has increased. As a result, only one source in the industry is still a major source of HAP, and only because it is collocated at a facility with other HAP-emitting operations. We do not project that any other new semiconductor sources would be built on the site of another operation. We also project that the types of technologies that have evolved (*e.g.*, producing larger wafers), which are inherently less emitting, will continue.

A. What Are the Secondary and Energy Impacts Associated With These Proposed NESHAP?

We do not anticipate any significant increase in national annual energy usage as a result of these proposed NESHAP. Energy impacts include changes in

energy use, typically increases, and secondary air impacts associated with increased energy use. Increases in energy use are associated with the operation of control equipment—in this case, the use of thermal oxidizers—to control process vents. Secondary air impacts associated with increased energy use are the emission of particulates, sulfur oxides (SO_X), and nitrogen oxides (NO_X). These secondary impacts are associated with power plants that would supply the increased energy demand. Since we project these NESHAP will apply to only one existing major source, no significant new control equipment requirements are expected. Therefore, secondary and energy impacts will be negligible.

B. What Are the Cost Impacts?

Although we estimate there are approximately 127 facilities engaged in semiconductor production, we estimate that the source category contains only one existing major source subject to the regulatory provisions specified under these proposed NESHAP. The remaining facilities are either area sources or synthetic minor sources, which are sources that have the potential to emit above major source thresholds but have taken enforceable permit conditions limiting their HAP emissions to below these major source thresholds.

We estimate that the one existing major source will not incur any control costs or annual operating and maintenance costs to comply with these proposed NESHAP. We estimate the one major source will incur a $5,180 cost to conduct all monitoring, inspection, reporting, and recordkeeping (MIRR) activities during the first 3 years after promulgation of the NESHAP. Other sources will not incur any costs from these proposed NESHAP. Because no capital costs will be incurred by the one major source, the total cost of the proposed NESHAP will be $5,180 in MIRR costs.

C. What Are the Economic Impacts?

The proposed NESHAP apply to only one major existing source, and no significant new control equipment requirements are expected. We estimate the MIRR costs for this facility to be only $5,180 over a 3-year period. Therefore, no economic impact on the industry is expected.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

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

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

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

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

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

It has been determined that the proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, the proposed rule is not economically significant as defined by Executive Order 12866.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. No facilities subject to the proposed rule are owned by State or local governments, and the rule imposes no other obligations on State and local governments. Thus, Executive order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

D. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate semiconductor manufacturing facilities, and the rule imposes no obligations on

tribal governments. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

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

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total cost to the private sector is approximately $22,700 per year. The proposed rule contains no mandates affecting State, local, or Tribal governments. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We have also determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because the proposal contains no requirements that apply to such governments nor imposes obligations upon them.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards for NAICS code 334413 (i.e., semiconductor crystal growing facilities, semiconductor wafer fabrication facilities, semiconductor test and assembly facilities) whose parent company has 500 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on the above definition of small entities, the Agency has determined that there are no small businesses within this source category that would be subject to these proposed NESHAP. Therefore, because these proposed NESHAP will not impose any requirements on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 2042.01), and you may obtain a copy from Sandy Farmer by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue NW., Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B. The annual monitoring, reporting, and recordkeeping burden for this collection, as averaged over the first 3 years after the effective date of the rule, is estimated to be 35 labor hours per year at a total annual cost of $1,727. This estimate includes a one-time plan for demonstrating compliance, annual compliance certificate reports, notifications, and recordkeeping. Total labor burden associated with the monitoring requirements over the 3-year period of the ICR are estimated at $5,180.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 8, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by June 7, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in our regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

These proposed NESHAP involve technical standards. The EPA proposes in this rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 18, 25, 25A, 26, 26A, 316, and 320. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, and 316. The search and review results have been documented and are placed in Docket A–97–15.

The consensus standard, ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS), is appropriate in the cases described below for inclusion in these proposed NESHAP for measurement of xylene, in addition to EPA Method 18, codified at 40 CFR part 60, appendix A.

Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 is a suitable alternative to Method 18 only where the target compound(s) are those listed in section 1.1 of ASTM D6420–99, and the target concentration is between 150 parts per billion volume and 100 ppmv.

For target compound(s) not listed in Table 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report, even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Table 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

As a result, EPA proposes to incorporate ASTM D6420–99 into 40 CFR 63.14 by reference for application under subpart SS of part 63. ASTM D6420–99 is being incorporated as an alternative to Method 18 for applicable situations discussed above. The EPA will also cite Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99. This will allow the continued use of GC configurations other than GC/MS.

In addition to the voluntary consensus standards EPA proposes to use in these NESHAP, this search for emissions measurement procedures identified 17 other voluntary consensus standards. The EPA determined that 13 of these 17 standards identified for measuring emissions of HAP or surrogates subject to emission standards in the proposed NESHAP were impractical alternatives to EPA test methods for the purposes of these proposed NESHAP. Therefore, EPA does not propose to adopt these standards today.

The following three of the 17 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of these proposed NESHAP because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; and ISO/DIS 12039, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Method 3A. While we are not proposing to include these three voluntary consensus standards in today's proposed NESHAP, the EPA will consider the standards when final.

One of the 17 voluntary consensus standards identified in this search, ASTM D6348–98, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' is under consideration by the EPA as an alternative for EPA Method 320. This ASTM standard has been reviewed by EPA and comments were sent to ASTM. Currently, the ASTM Subcommittee D22–03 is now undertaking a revision of the ASTM standard. Upon successful ASTM balloting and demonstration of technical equivalency with the EPA FTIR methods, the revised ASTM standard could be incorporated by reference for EPA regulatory applicability.

The EPA takes comment on the compliance demonstration requirements in these NESHAP and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this proposed rule should adopt these voluntary consensus standards in lieu of, or in addition to, EPA standards. Emission test methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

Section 63.7193 and table 1 to proposed subpart BBBBB lists the EPA testing methods included in the

proposed NESHAP. Under 40 CFR 63.8 (the General Provisions), a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 1, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart BBBBB to read as follows:

Sec.

Subpart BBBBB—National Emission Standards for Hazardous Air Pollutants: Semiconductor Manufacturing

What This Subpart Covers

63.7180 What is the purpose of this subpart?
63.7181 Am I subject to this subpart?
63.7182 What parts of my facility does this subpart cover?
63.7183 When do I have to comply with this subpart?

Emission Standards

63.7184 What emission limitations, operating limits, and work practice standards must I meet?

Compliance Requirements

63.7185 What are my general requirements for complying with this subpart?
63.7186 By what date must I conduct performance tests or other initial compliance demonstrations?
63.7187 What performance tests and other compliance procedures must I use?
63.7188 What are my monitoring installation, operation, and maintenance requirements?

Applications, Notifications, Reports, and Records

63.7189 What applications and notifications must I submit and when?
63.7190 What reports must I submit and when?
63.7191 What records must I keep?
63.7192 In what form and how long must I keep my records?

Other Requirements and Information

63.7193 What parts of the General Provisions apply to me?
63.7194 Who implements and enforces this subpart?
63.7195 What definitions apply to this subpart?

Tables to Subpart BBBBB of Part 63

Table 1 to Subpart BBBBB of Part 63—Requirements for Performance Tests
Table 2 to Subpart BBBBB of Part 63—Applicability of General Provisions to Subpart BBBBB

Subpart BBBBB—National Emission Standards for Hazardous Air Pollutants: Semiconductor Manufacturing

What This Subpart Covers

§ 63.7180 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for semiconductor manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.7181 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a semiconductor manufacturing process unit that is a major source of hazardous air pollutants (HAP) emissions or that is located at, or is part of, a major source of HAP emissions.

(b) A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, any single HAP at a rate of 10 tons per year (tpy) or more or any combination of HAP at a rate of 25 tpy or more.

§ 63.7182 What parts of my facility does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source that you own or operate that manufactures semiconductors.

(b) An affected source subject to this subpart is the collection of all semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate, including research and development activities at a semiconductor manufacturing site. A semiconductor manufacturing unit includes the equipment assembled and connected by ductwork or hard-piping, including furnaces and associated unit operations; associated wet and dry work benches; associated recovery devices; feed, intermediate, and product storage tanks; product transfer racks and connected ducts and piping; pumps, compressors, agitators, pressure-relief devices, sampling connecting systems, open-ended valves or lines, valves, connectors, and instrumentation systems; and control devices.

(c) Your affected source is a new affected source if you commence construction of the affected source after May 8, 2002, and you meet the applicability criteria in § 63.7181 at the time you commence construction.

(d) Your affected source is a reconstructed affected source if you meet the criteria for ''reconstruction,'' as defined in § 63.2.

(e) Your source is an existing affected source if it is not a new or reconstructed affected source.

§ 63.7183 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If you start up your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], then you must comply with the emission standards for new and reconstructed sources in this subpart no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(2) If you start up your affected source after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], then you must comply with the emission standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission standards for existing sources no later than 3 years from [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP and an affected source subject to this subpart, paragraphs (c)(1) and (2) of this section apply.

(1) Any portion of your existing facility that is a new affected source as specified at § 63.7182(c), or a reconstructed affected source as specified at § 63.1782(d), must be in compliance with this subpart upon startup.

(2) Any portion of your facility that is an existing affected source, as specified at § 63.7182(e), must be in compliance with this subpart by not later than 3 years after it becomes a major source.

(d) You must meet the notification requirements in § 63.7189 and in subpart A of this part. You must submit some of the notifications (e.g., Initial

Notification) before the date you are required to comply with the emission limitations in this subpart.

Emission Standards

§ 63.7184 What emission limitations, operating limits, and work practice standards must I meet?

(a) If you have a new, reconstructed, or existing affected source, as defined in § 63.7182(b), you must comply with one of the emission limitations in paragraph (a)(1) or (2) of this section for each process vent that emits HAP. These limitations can be met by venting emissions from your process vent through a closed vent system to any combination of control devices meeting the requirements of § 63.982(a)(2).

(1) Reduce the emissions of total HAP from the process vent stream by 98 percent by weight, corrected to 3 percent oxygen.

(2) Reduce or maintain the concentration of emitted HAP from the process vent to less than or equal to 20 parts per million volume (ppmv).

(b) If you have a new, reconstructed, or existing affected source, as defined in § 63.7182(b), you must comply with one of the emission limitations in paragraph (b)(1) or (2) of this section for each storage tank (including waste and wastewater storage tanks) 800 gallons or larger if the emissions from the storage tank vent contains greater than 1 ppmv HAP. These limitations can be met by venting emissions from your storage tank through a closed vent system to a halogen scrubber meeting the requirements of §§ 63.983 (closed vent system requirements) and 63.994 (halogen scrubber requirements); the applicable general monitoring requirements of § 63.996; the applicable performance test requirements; and the monitoring, recordkeeping and reporting requirements referenced therein.

(1) Reduce the emissions of total HAP from each storage tank by 99 percent by weight.

(2) Reduce or maintain the concentration of emitted HAP from the process vent to less than or equal to 1 ppmv.

(c) If you have a new, reconstructed, or existing affected source, as defined at § 63.7182(b), you must comply with the applicable work practice standards and operating limits contained in § 63.982(a)(1) and (2). The closed vent system inspection requirements of § 63.983(c), as referenced by § 63.982(a)(1) and (2), do not apply.

Compliance Requirements

§ 63.7185 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the requirements of § 63.7184 at all times, except during periods of startup, shutdown, or malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP). Your SSMP must be prepared in accordance with the provisions in § 63.6(e)(3).

(d) You must perform all the items listed in paragraphs (d)(1) through (3) of this section:

(1) Submit the necessary notifications in accordance with § 63.7189.

(2) Submit the necessary reports in accordance with § 63.7190.

(3) Maintain all necessary records you have used to demonstrate compliance with this subpart in accordance with § 63.7191.

§ 63.7186 By what date must I conduct performance tests or other initial compliance demonstrations?

For each process vent or storage tank vent emission limitation in § 63.7184 for which initial compliance is demonstrated by meeting a percent by weight HAP emissions reduction, or a HAP concentration limitation, you must conduct performance tests or an initial compliance demonstration within 180 days after the compliance date that is specified for your source in § 63.7183 and according to the provisions in § 63.7(a)(2).

§ 63.7187 What performance tests and other compliance procedures must I use?

(a) You must conduct each performance test in Table 1 to this subpart that applies to you as specified for process vents in § 63.982(a)(2) and storage tanks in § 63.982(a)(1). Performance tests must be conducted under maximum operating conditions or HAP emissions potential. Section 63.982(a)(1) and (2) only includes methods for the measure of total organic regulated material or total organic carbon (TOC) concentration. The EPA Method 301 is included in Table 1 to this subpart in addition to the test methods contained within § 63.982(a)(1) and (2). The EPA Method 301 must be used for testing regulated material containing inorganic HAP. The EPA Method 320 of 40 CFR part 63, appendix A, must be used to measure total vapor phase organic and inorganic HAP concentrations.

(b) If, without the use of a control device, your process vent stream has a HAP concentration of 20 ppmv or less, or your storage tank vent stream has a HAP concentration of 1 ppmv or less, you must demonstrate that the vent stream is compliant by engineering assessments and calculations or by conducting the applicable performance test requirements specified in Table 1 to this subpart. Your engineering assessments and calculations, as with performance tests (as specified in § 63.982(a)(1) and (2)), must represent your maximum operating conditions or HAP emissions potential and must be approved by the Administrator. You must demonstrate continuous compliance by certifying that your operations will not exceed the maximum operating conditions or HAP emissions potential represented by your engineering assessments, calculations, or performance test.

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with your SSMP.

(d) For each monitoring system required in this section, you must develop and submit for approval a site-specific monitoring plan that addresses the following three criteria:

(i) Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device);

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(iii) Performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(e) In your site-specific monitoring plan, you must also address the following three procedural processes:

(i) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8);

(ii) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(iii) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(f) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(g) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

§ 63.7188 What are my monitoring installation, operation, and maintenance requirements?

If you comply with the emission limitations of § 63.7184 by venting the emissions of your semiconductor process vent through a closed vent system to a control device, you must comply with the requirements of paragraphs (a) and (b) of this section.

(a) You must meet the applicable general monitoring, installation, operation, and maintenance requirements specified in § 63.996.

(b) You must meet the monitoring, installation, operation, and maintenance requirements specified for closed vent systems and applicable control devices in §§ 63.938 through 63.995.

Applications, Notifications, Reports, and Records

§ 63.7189 What applications and notifications must I submit and when?

(a) You must submit all of the applications and notifications in §§ 63.7(b) and (c); 63.8(e), (f)(4) and (f)(6); and 63.9(b) through (e), (g) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], you must submit an Initial Notification not later than 120 calendar days after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii) and according to paragraphs (e)(1) and (2) of this section.

(1) For each initial compliance demonstration that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required that includes a performance test conducted according to the requirements in Table 1 to this subpart, you must submit a notification of the date of the performance evaluation at least 60 days prior to the date the performance evaluation is scheduled to begin as required in § 63.8(e)(2).

§ 63.7190 What reports must I submit and when?

(a) You must submit each of the following reports that apply to you.

(1) *Periodic compliance reports.* You must submit a periodic compliance report that contains the information required under paragraphs (c) through (e) of this section, and any requirements specified to be reported for process vents in § 63.982(a)(2) and storage tanks in § 63.982(a)(1).

(2) *Immediate startup, shutdown, and malfunction report.* You must submit an immediate Startup, Shutdown, and Malfunction Report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP. Your report must contain actions taken during the event. You must submit this report by fax or telephone within 2 working days after starting actions inconsistent with your SSMP. You are required to follow up this report with a report specifying the information in § 63.10(d)(5)(ii) by letter within 7 working days after the end of the event unless you have made alternative arrangements with your permitting authority.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date according to paragraphs (b)(1) through (5) of this section.

(1) The first periodic compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7183 and ending on June 30 or December 31, whichever date is the first date following the end of the first 12 calendar months after the compliance date that is specified for your source in § 63.7183.

(2) The first periodic compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first 12 calendar months after the compliance date that is specified for your affected source in § 63.7183.

(3) Each subsequent periodic compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent periodic compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent periodic compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The periodic compliance report must contain the information specified in paragraphs (c)(1) through (5) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period and that no CMS was inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(5) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, your periodic compliance report must include the information in § 63.10(d)(5) for each startup, shutdown, and malfunction.

(d) For each deviation from an emission limitation that occurs at an affected source where you are not using a CMS to comply with the emission limitations, the periodic compliance report must contain the information in paragraphs (d)(1) through (3) of this section.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable, other than downtime associated with calibration checks).

(3) Information on the number, duration, and cause for monitor downtime incidents (including

unknown cause, if applicable, other than downtime associated with calibration checks).

(e) For each deviation from an emission limitation occurring at an affected source where you are using a CMS to demonstrate compliance with the emission limitation, you must include the information in paragraphs (e)(1) through (8) of this section.

(1) The date and time that each malfunction started and stopped, and the reason it was inoperative.

(2) The date and time that each CMS was inoperative, except for calibration checks.

(3) The date and time that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period, and the cause of the deviation.

(5) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(6) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total source operating time during the reporting period.

(7) An identification of each HAP that was monitored at the affected source.

(8) The date of the latest CMS certification or audit.

§ 63.7191 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Notification of Compliance Status and periodic report of compliance that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunctions.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) For each CMS, you must keep the records listed in paragraphs (b)(1) through (5) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) All required measurements needed to demonstrate compliance with a relevant standard (e.g., 30-minute averages of CMS data, raw performance testing measurements, raw performance evaluation measurements).

(3) All required CMS measurements (including monitoring data recorded during unavoidable CMS breakdowns and out-of-control periods).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) Records for process vents according to the requirements specified in § 63.982(a)(2) and storage tank vents according to the requirements specified in § 63.982(a)(1).

§ 63.7192 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.7193 What parts of the General Provisions apply to me?

Table 2 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.7194 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the U.S. EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the non-opacity emission limitations in § 63.7184 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7195 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in §§ 63.2 and 63.981, the General Provisions of this part (40 CFR part 63, subpart A), and in this section as follows:

Semiconductor manufacturing means the collection of semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors or active solid state devices from a wafer substrate, including processing from crystal growth through wafer fabrication, and testing and assembly. Examples of semiconductor or related solid state devices include semiconductor diodes, semiconductor stacks, rectifiers, integrated circuits, and transistors.

Semiconductor manufacturing process unit means the collection of equipment used to carry out a discrete operation in the semiconductor manufacturing process. These operations include, but are not limited to, crystal growing; solvent stations used to prepare and clean materials for subsequent processing or for parts cleaning; wet chemical stations used for cleaning (other than solvent cleaning); photoresist application, developing, and stripping; etching; gaseous operation stations used for stripping, cleaning, doping, etching, and layering; separation; encapsulation; and testing. Research and development operations conducted at a semiconductor manufacturing facility are considered to be semiconductor manufacturing process units.

Tables to Subpart BBBBB of Part 63

As stated in § 63.7187, you must comply with the requirements for performance tests in the following table:

TABLE 1 TO SUBPART BBBBB OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For * * *	You must * * *	Using * * *	According to the following requirements * * *
(1) Process or storage tank vent streams.	a. Select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A.	Sampling sites must be located at the inlet (if emission reduction or destruction efficiency testing is required) and outlet of the control device and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A.	For HAP reduction efficiency testing only; not necessary for determining compliance with a ppmv concentration limit.
	c. Conduct gas molecular weight analysis.	Method 3, 3A, or 3B of 40 CFR part 60, appendix A.	For flow rate determination only.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A.	For flow rate determination and correction to dry basis, if necessary.
(2) Process vent stream	a. Measure oxygen concentration.	Method 3A or 3B of 40 CFR part 60, appendix A.	For correcting HAP concentrations measured from combustion control devices to 3 percent O_2.
	b. Measure organic and inorganic HAP concentration (two method option).	Method 18, 25, or 25A of 40 CFR part 60, appendix A.	To determine compliance with the 98 percent reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same organic and inorganic HAP at both inlet and outlet. If you use Method 25A to determine the TOC concentration for compliance with the 20 ppmv emission limitation, the instrument must be calibrated on methane or the predominant HAP. If you calibrate on the predominant HAP, you must comply with each of the following: • The organic HAP used as the calibration gas must be the single organic HAP representing the largest percent of emissions by volume. • The results are acceptable if the response from the high level calibration.
	c. Measure organic and inorganic HAP simultaneously (''one method'' option).	Method 320 of 40 CFR part 63, appendix A.	To determine compliance with 98 percent reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same organic and inorganic HAP at both inlet and outlet.
(3) Storage tank vent stream ...	Measure inorganic HAP concentration.	Method 301 of 40 CFR part 63, appendix A.	To determine compliance with 99 percent reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same inorganic HAP at both inlet and outlet.

As stated in § 63.7193, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART BBBBB OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART BBBBB

Citation	Subject	Applicable to Subpart BBBBB?
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities and Circumvention.	Yes.
§ 63.5	Construction and Reconstruction ..	Yes.
§ 63.6	Compliance With Standards and Maintenance.	Yes.
§ 63.7	Performance Testing Requirements.	Yes, with the exception of § 63.7(e)(1). The requirements of § 63.7(e)(1) do not apply. Performance testing requirements that apply are specified in this subpart and in § 63.982(a)(1) and (2).
§ 63.8	Monitoring Requirements	Monitoring requirements are specified in this subpart and in § 63.982(a)(1) and (2). The closed vent system inspection requirements of § 63.983(c), as referenced by § 63.982(a)(1) and (2), do not apply.
§ 63.9	Notification Requirements	Yes.

TABLE 2 TO SUBPART BBBBB OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART BBBBB—Continued

Citation	Subject	Applicable to Subpart BBBBB?
§ 63.10	Recordkeeping and Reporting Requirements.	Yes, with the exception of § 63.10(e). The requirements of § 63.10(e) do not apply. In addition, the recordkeeping and reporting requirements specified in this subpart apply.
§ 63.11	Flares	Yes.
§ 63.12	Delegation	Yes.
§ 63.13	Addresses	Yes.
§ 63.14	Incorporation by Reference	Yes.
§ 63.15	Availability of Information	Yes.

[FR Doc. 02–11298 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 98–204, DA 02–1007]

Revision of Broadcast and Cable EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: In this document, the Media Bureau (Bureau) grants a motion for procedural relief filed by the Minority Media and Telecommunications Council (MMTC). The intended effect is to grant an extension of the reply comments filing deadline.

DATES: Reply comments are due May 29, 2002.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Estella Salvatierra, Media Bureau. (202) 418–1450.

SUPPLEMENTARY INFORMATION:

1. This is a synopsis of the Media Bureau's *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, DA 02–1007, released May 1, 2002. On December 21, 2001, the Commission released a *Second Notice of Proposed Rule Making*, MM Docket No. 98–204, 67 FR 1704 (January 14, 2002) (*Second NPRM*) requesting comment on various proposals concerning the Commission's broadcast and cable EEO rules and policies.

2. On April 25, 2002, MMTC filed a Motion for Extension of Reply Comment Deadline requesting an extension of time for the filing date for reply comments.

3. MMTC requests that the Commission extend the reply comment deadline from May 15, 2002, to May 29, 2002. Because the Bureau believes that the public interest would be served by an extension of the reply comment period in this proceeding, we grant MMTC's request and extend the date for filing reply comments to May 29, 2002.

4. *Accordingly, it is ordered* that the Motion for Extension of Reply Comment Deadline filed by MMTC is granted.

5. *It is therefore ordered* that the date for filing reply comments in this proceeding *is extended* to May 29, 2002.

6. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 303(r), and §§ 0.204(b), 0.283 and 1.46 of the Commission's rules, 47 CFR 0.204(b), 0.283 and 1.46.

Federal Communications Commission.

W. Kenneth Ferree,

Chief, Media Bureau.

[FR Doc. 02–11388 Filed 5–7–02; 8:45 am]

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Notices

Federal Register

Vol. 67, No. 89

Wednesday, May 8, 2002

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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Invitation for Membership on Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice.

SUMMARY: The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employment Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire on November 1, 2002. This notice describes the Advisory Committee and invites applications from those interested in servicing on it.

1. General

To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries, and the American Society of Pension Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to those actuarial organizations as part of their respective examination programs.

2. Programs

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations that will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views on examination content are understood.

3. Function

The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable, and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions and include them in what is recommend.)

4. Membership

The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examination extant in the community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations that will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. The Advisory Committee will meet about four times a year. Advisory Committee members should be prepared to devote from 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for Advisory Committee travels meals and lodging expenses incurred in accordance with applicable government regulations.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director N:C:SC:DOP, 1111 Constitution Avenue, NW., Washington, DC 20224.

Any questions may be directed to the Joint Board's Executive Director at 202–694–1891.

The deadline for accepting applications is August 19, 2002.

Dated: April 30, 2002

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 02–11472 Filed 5–7–02; 8:45 am]

BILLING CODE 4830–01–U

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary

for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (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: Submit comments on or before July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–.

Form No.: N/A.

Title: Certification Agreement.

Type of Review: New.

Purpose: The United States Agency for International Development (USAID) needs to require applicants for assistance to certify that it does not and will not engage in financial transactions with, and does not and will not provide material support and resources to individuals or organizations that engage in terrorism. The purpose of this requirement is to assure that USAID does not directly provide support to such organizations or individuals, and to assure that recipients are aware of these requirements when it considers individuals or organizations are subrecipients.

Annual Reporting Burden:

Respondents: 1,100.

Total Annual Responses: 5,500.

Total Annual Hours Requested: 3,700 hours.

Dated: April 28, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–11336 Filed 5–7–02; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0506.

Form Number: AID 1420–50

Title: Vendor Data Base (formerly known as USAID Consultant Registry Information System (ACRIS)) Instruction Books for the Organization Profile.

Type of Submission: Renew

Purpose: USAID procuring activities are required to establish bidders mailing lists to assure access to sources and to obtain meaningful competition (41 CFR section 1–2.205). In compliance with this requirement, USAID's Office of Small and Disadvantaged Business Utilization/Minority Resource Center has responsibility for developing and maintaining a Contractor's Index of bidders/offerors capable of furnishing services for use by the USAID procuring activities. (AIDAR 719.271–2(b)(4)).

Annual Reporting Burden:

Respondents: 1,000.

Total Annual Responses: 1,000.

Total Annual Hours Requested: 1,000 hours.

Dated: April 22, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–11335 Filed 5–7–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–02–06]

Burley Tobacco Advisory Committee; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of a forthcoming meeting of the Burley Tobacco Advisory Committee.

DATES: May 23, 2002, 9 a.m.

ADDRESSES: The meeting will be held at the Campbell House Inn, South Colonial Hall, 1375 Harrodsburg Road, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW, Washington, DC 20250–0280, telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the implementation of mandatory grading, establish alternate grading schedules, and discuss other related issues for the 2002–2003 burley tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by May 17, 2002, and inform us of your needs.

Dated: May 2, 2002.

Barry L. Carpenter,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–11458 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Leon, Liberty, Wakulla, Franklin, Columbia, Baker, Lake, Putnam and Marion Counties, FL

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare a draft environmental impact statement.

SUMMARY: The USDA Forest Service intends to prepare a draft environmental impact statement for designating a system of roads and trails within portions of the Apalachicola, Osceola, and Ocala National Forests in Florida.

DATES: A draft environmental impact statement is expected to be completed in August 2002. The final environmental impact statement is scheduled to be completed in November 2002.

ADDRESSES: You may request to be placed on the project mailing list and submit comments by contacting: Marsha Kearney, Forest Supervisor, USDA Forest Service, 325 John Knox Rd., Tallahassee, Florida, 32303.

FOR FURTHER INFORMATION CONTACT: Andy Colaninno, District Ranger, Apalalachicola Ranger District, PO Box 579, Bristol, Florida 32321; Jerri Marr, District Ranger, Lake George Ranger District, 17147 Highway 40, Silver Springs, Florida 34488; Jim Thorsen, District Ranger, Seminole Ranger District, 40929 State Road 19, Umatilla, Florida 32784; Will Metz, District Ranger, Osceola Ranger District, PO Box 70, Olustee, Florida 32072.

SUPPLEMENTARY INFORMATION: Prior to 1999, vehicles could travel off roads (cross-country) on the National Forests in Florida except in areas specifically posted closed. The policy of allowing cross-country access contributed to a proliferation of travelways in portions of the Forests. As a result of this situation, vehicle access was addressed in the revision of Land and Resource Management Plan for the National Forests in Florida (Forest Plan).

Upon approval in 1999, the Forest Plan changed access for motorized vehicles in two ways: ''cross-country'' travel on land with no existing roads or trails is prohibited anywhere in the forests; and restricted areas were established where travel will be limited to designated roads and trails. The Forest Plan provided that a system of roads and trails would be designated in the restricted areas in cooperation with the public and user groups.

In January 2000 a series of public meetings was held near each National Forest in Florida. At these meetings, attendees selected a variety of stakeholder representatives to provide information on access preferences and needs. The group developed a proposed system for consideration by the Forest Service along with a set of guiding principles and designation criteria. The Forest Service began an environmental assessment of the proposed action in 2001. During the assessment, it became evident that an accurate inventory of roads, trails, and travelways was needed in the restricted areas. An inventory using the global positioning system (GPS) began in August 2001 and was completed in April 2002. It also became evident that the proposed action may have a significant effect on the human environment leading to preparation of an environmental impact statement.

The scoping process, as outlined by the Council on Environmental Quality (CEQ), will be utilized to involve Federal, State, and local agencies and other interested persons and organizations. Interested persons and organizations wishing to participate in the scoping process should contact the Forest Service at the above mentioned address. Environmental considerations include potential presence of historical or archeological resources, aesthetics, recreation demand, wetlands, endangered and threatened species, and fish and wildlife habitats and values. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

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

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

Dated: May 2, 2002.

Marsha Kearney,

Forest Supervisor, National Forests in Florida.

[FR Doc. 02–11354 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wildland Urban Interface Project; Caribou-Targhee National Forest, Fremont County, ID

AGENCY: Forest Service, USDA.

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

SUMMARY: The U.S. Department of Agriculture, Forest Service is beginning to prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impacts of the Wildland Urban Interface Project in Island Park, ID. Within the project area, different treatment methods would be used to reduce the fire hazard depending upon the forest and fuel conditions. In the young and regenerated noncommercial lodgepole pine stands, trees would be thinned. Fuel reductions in larger diameter stands would be in the form of shaded fuel breaks. The shaded fuel breaks would be located in tactically important areas to provide firefighters an anchor from which to safely fight fire. Proposed fuel breaks would be up to 500 feet wide. These fuel breaks would be created along the interface between National Forest Service land and private property.

DATES: Comments concerning the scope of the analysis should be received within 30 days of the date of pu8blication of this notice in the **Federal Register.** The draft environmental impact statement is expected November of 2002 and the final environmental impact statement is expected February 2003.

ADDRESSES: Send written comments to the Ashton/Island Park Ranger District, Attn: Jim Cox/Becky Nedrow, Island Park Ranger Station, 3726 Highway 20, Island Park, ID.

FOR FURTHER INFORMATION CONTACT: Further information and questions concerning this proposed action and EIS contact Jim Cox at (208) 558–7301 or Becky Nedrow at (208) 652–7442. Jim can also be reached at *jcox@fs.fed/us.* Becky can be reached at *bnedrow@fs.fed.us*

SUPPLEMENTARY INFORMATION: The Douglas-fir and lodgepole pine forest types are included in the project area as are some sagebrush/grasslands. The Douglas-fir forest type occurs throughout the Centennial and Henrys Lake Mountains. Within the Douglas-fir type, mature forest makes up 79 percent of the forested areas. Because of the large component of mature Douglas-fir,

severe first are a concern in these areas. The lodgepole pine forest type is primarily in the Island Park Caldera. Large areas of the lodgepole type were clearcut between 1960 and the late 1980's to salvage trees damaged or killed during a mountain pine bettle epidemic.

Purpose and Need for Action

A combination of accumulating fuels and increasing development on private lands along with existing residences under permit on the National Forest (National Forest summer homes) has led to an increase risk to human life and property from wildfire. The purpose of this project is to reduce the threat to human life and private property by reducing or removing the amount of woody material on National Forest System Lands adjacent to these private lands.

Proposed Action

The Ashton/Island Park Ranger District of the Caribou-Targhee National Forest is proposing a hazardous fuels reduction project located in the Island Park area of eastern Idaho. Implementation is expected to start in 2003 and continue through 2005. The project would create fuel breaks along the interface (boundary) between public and private lands (urban interface). These fuel breaks would reduce the risk to private lands from wildfire and provide for greater public and firefighter safety. The project includes only National Forest System Lands adjacent to private land, developed campgrounds, and those summer home areas under special use permit on the National Forest. No private or State land would be treated.

Proposed activities include:

- Thinning of small diameter noncommercial size trees
- Hand piling of thinning and other slash followed by burning
- Public firewood gathering
- Removal of fuels by private contractors
- Commercial timber sales (total volume from the project area is estimated at less than 1 million board feet with only temporary road construction)
- Prescribed burning where it is safe and at minimal risk to private property with appropriate involvement of property owners

Responsible Official

Jerry B. Reese, Forest Supervisory, Caribou-Targhee National Forest is the responsible official for this EIS.

Nature of Decision To Be Made

The Forest Supervisor will decide on whether to implement one of the alternatives for hazardous fuels reduction or defer any action at this time.

Scoping Process

Public scoping will be completed through letters, news releases, and public meetings. The meeting may be held in Idaho Falls or Island Park.

Preliminary Issues

Preliminary Issues identified are:

- Public safety
- Effects on visual quality of private property adjacent to National Forest land
- Reduction of wildlife hiding cover
- Risk to private property by burning to remove fuels
- Heritage resources
- Unauthorized structures or personal property on National Forest System lands

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

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

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

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

Dated: April 18, 2002.

Jerry B. Reese,

Forest Supervisor.

[FR Doc. 02–11383 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

CARMA (Combined Array for Research in Millimeter-Wave Astronomy) Special Use Permit Authorization

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement and to conduct public scoping meetings.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a Special-Use Permit for a proposed project in the Inyo National Forest to operate an array of radio telescopes (antennas). The proposed project is called CARMA (Combined Array for Research in Millimeter-wave Astronomy).

The proposed CARMA array would combine two existing arrays: 6 antennas currently operated by the California Institute of Technology (Caltech) at the existing Owens Valley Radio Observatory (OVRO) site, and 9 antennas at Hat Creek in Shasta County, California, operated by the Berkeley-Illinois-Maryland Association (BIMA). BIMA is comprised of the University of California (Berkeley), the University of

Illinois (Urbana-Champaign), and the University of Maryland (College Park). An additional 8 antennas from the University of Chicago, currently under development, are also proposed as part of the CARMA project. The CARMA consortium is a collaboration between Caltech and the BIMA consortium.

CARMA would enhance the United States' capability for research and education in millimeter-wave astronomy by using a combined array at an altitude approximately 4,000 feet higher than that at the OVRO facility. The increased altitude minimizes the adverse effects of atmospheric water vapor on astronomical observations. The proposed site for the project is an unnamed flat, which will be refered to as Juniper Flat, that is at an altitude of 7,800–7,900 feetin the Inyo Mountains, northeast from Big Pine, California. Two additional sites in the Inyo Mountains (Cedar Flat and Lower Harkless Flat) within the Inyo National Forest have also been analyzed by the proponent.

The purpose of the EIS will be to develop and evaluate a range of alternatives, including a No Action alternative and possible additional alternatives, to respond to issues identified during the scoping process. The decision on the proposed project by the Responsible Official will be in compliance with the direction in the Inyo National Forest Land and Resource Management Plans (1988), as amended by the Sierra Nevada Forest Plan Amendment, Record of Decision 2001, which provides the overall guidance for management of the area.

A joint EIS–EIR document is being prepared for compliance with the California Environmental Quality Act (CEQA), in coordination with the University of California (UC). UC will be carrying out the procedures under CEQA necessary to process the document as an EIR. Public meetings, hearings, and comment opportunities will be coordinated. For example, the scoping meeting described below will serve as the CEQA scoping meeting, and all comments submitted to the USFS contact person below will be addressed by UC in the CEQA process.

DATES: Two Public Scoping Meetings will be held to discuss the proposed action and the EIS process. On Monday June 3, 2002, a meeting will be held at the Parish Hall of Our Lady of Perpetual Help Catholic Church, 849 Home St., Bishop, California from 6:30 to 9 p.m. On Tuesday, June 4, 2002 a meeting will be held at the Mammoth Room at the Shilo Inn, 2963 Main Street, Mammoth Lakes, California from 6:30 to 9 p.m. The public is asked to submit comments on the proposed action postmarked by June 21, 2002.

ADDRESSES: Send written comments to: Colleen (Chaz) O'Brien, IDT Leader, USDA Forest Service, Inyo National Forest, 873 North Main Street, Bishop, CA 93514.

FOR FURTHER INFORMATION CONTACT: Colleen (Chaz) O'Brien, IDT Leader, Inyo National Forest, at the address listed above. The phone number is (760) 873–2490.

SUPPLEMENTARY INFORMATION:

Background

This action is proposed in response to an application submitted by Caltech. The CARMA Project has been under predevelopment review by the Forest Service since 1999. Initially, the project proponent had identified Upper Harkless Flat (UHF) as the proposed site. In response to public comments expressing concern about the UHF site and requesting that an alternative site be identified, the applicant removed the UHF site from consideration and proposed the Juniper Flat site. A special-use permit application for the Juniper Flat site was submitted in October of 2001.

The proposed site is located in Management Prescription #18 within Inyo National Forest Management Area #13 and is designated as a Multiple Resource Area. The proposed rule will be consistent with the management direction for Multiple Resource Area in the Land and Resource Management Plan for Inyo National forest. The EIS/EIR and any permit terms and conditions that may be contemplated for the Proposed Action will comprehensively address applicable standards and guidelines in the Land and Resource Management Plan.

Proposed Action

The INF is not in the business of identifying or controlling the best procedures for developing and managing research in millimeter wave astronomy. The Proposed Action that is being contemplated is whether to grant a special-use permit for the use of Forest land for the CARMA proposal, based on the National Forest plans and policies and considering the potential environmental impacts of the proposed action, other action alternatives, and a no action alternative. Depending upon the alternative selected, the Responsible official will also decide if a non-significant amendment is necessary. Preliminary analysis indicates that a non-significant amendment may be necessary to meet Visual Quality Objectives (VQO's).

The CARMA proposal consists of a millimeter-wave radio telescope array of 23 antennas of three different sizes: six 10.4 meter diameter antennas relocated from the OVRO facility; nine 6.1 meter diameter antennas relocated from the BIMA observatory at Hat Creek, CA; and, eight 3.5 meter diameter antennas from the University of Chicago.

The 23 movable antennas would be placed on the stations in various patterns depending on the research project; the eight 3.5 meter diameter antennas from the University of Chicago will remain on the central pad. All of the antennas would be relocated to the site from the OVRO facility and repositioned on the site by a road-capable special purpose transporter.

The antenna array would be positioned within a area of approximately 800 acres. The proposed project would require the disturbance and development of approximately 30.5 acres including a central complex, outlying antenna stations, site access improvements, and a repeater station. The proposed central complex includes: A 250-foot-by-250-foot concrete center pad area with 17 antenna stations; a 7,000-square-foot control building (including overnight accommodations for two astronomers); a 2,000-square-foot workshop; and a 600-kVA diesel electric-power generating facility. The proposed outlying antenna stations are comprised of 37 concrete antenna pads (each sized 20-feet-by-20-feet and 18-inches thick), interconnected by dirt roads and underground cables. Proposed site access improvement includes modification of 3.6 miles of existing dirt road. The proposed repeater station is comprised of a 20 by 40 foot site located approximately 3 miles northwest of Juniper Flat.

Scoping

Alternatives to the proposed action will be developed in response to issues identified during scoping. Issues that have been identified to date include potential effects on the following: visual quality, flora and fauna, heritage resources, geology and soils, recreation, traffic and air quality. The scoping process will include the following: identification and clarification of issues; identification of significant issues; exploration and development of additional alternatives; and identification of potential environmental effects of the Proposed Action and alternatives.

Coordination With Other Agencies

In preparation of the EIS, the Forest Service will consult, at a minimum, with the University of California (a

member of the CARMA consortium, and the State of California Lead Agency under the California Environmental Quality Act—a joint EIS/EIR document will be prepared); Native American tribes (Big Pine Paiute, Bishop Paiute, Fort Independence Reservation, Lone Pine Paiute-Shoshone, and Timbisha Shoshone); the State of California Lahontan Regional Water Quality Control Board; Department of Fish and Game; US Fish and wildlife; Historic Preservation Officer; the U.S. Army Corp of Engineers; the California Department of Transportation; the Inyo County Public Works Department; the Inyo County Health & Human Services Department; and the Great Basin Unified Air Pollution Control District.

Commenting

Comments received in response to this invitation to participate in public scoping or any future solicitation for public comments on a draft EIS, including names and addresses of those who comment, will be considered part of the public record and will be available for public inspection. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Person requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted on only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for review in July-August, 2002. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, Tribes and members of the public for their review and comment. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**.

The Forest Service believes that, at this early stage, it is very important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could 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 persons interested in this proposed action participate by the close of the 45 days comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. 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 CFR 1503.3 is addressing these points.

The final EIS is scheduled to be available by November–December 2002. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period for the draft EIS. The Responsible Official is Jeffrey Bailey, Inyo National Forest Supervisor. He will decide whether to issue a Special-Use Permit for the project as described above and under what terms and conditions, or to meet the Purpose and Need for action through some other combination of management actions, or to defer any action at this time. His decision and rationale for the decision will be documented in the record of decision, which will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: May 1, 2002.

Jeffrey E. Bailey,

Forest Supervisor.

[FR Doc. 02–11353 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, ID; Upper Bear Timber Sale

AGENCY: Forest Service, USDA.

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

SUMMARY: The USDA Forest Service will prepare the Upper Bear Timber Sale environmental impact statement (EIS). The proposed action in its EIS is to reduce fuels within a ''fuels reduction zone'' (FRZ), manage forest vegetation, and manage roads. The EIS will analyze the effects of the proposed action and alternatives. The agency gives notice of the full National Environmental Policy Act (NEPA) analysis and decision making process on the proposal so interested and affected members of the public may participate and contribute to the final decision. The Payette National Forest invites written comments and suggestions on the scope of the analysis and the issues of address.

DATES: Comments must be received in writing by June 8, 2002.

ADDRESSES: Send written comments to Faye L. Krueger, Council District Ranger at P.O. Box 567, Council, Idaho, 83612.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Alan R. Dohmen, Team Leader, at the above address, or phone at (208) 253–0100.

SUPPLEMENTARY INFORMATION: The analysis area is about 25 air miles north-northwest of Council, Idaho, in Adams County. The area can be reached by taking Forest Road #110 (Bear Creek) via Forest Roads #105 (Landore Road) and #002 (Council-Cuprum Road). The project area consists of National Forest Systems lands located in all or portions of sections 1–11, 16–18, 22–19 and 32–36, Township 5S, Range 2W, Boise Meridian. It is located entirely within the 11,000-acre Upper Bear subwatershed, and a small portion of the 9,500-acre Middle Bear subwatershed. The proposed action will be in compliance with the Payette National Forest Land and Resource Management Plan (Forest Plan of 1988), as amended, which provides overall guidance for management of this area.

Purpose and Need for Action

The purpose and need for the proposed action is to: (1) Improve timber stand growth and yield; (2) Reduce the incidence and hazard of insect and disease in timbered stands through harvest and salvage, (3) Reduce

the risk of wildland fire to forestland, investments, adjacent private lands, and facilities, and (4) Reduce the potential of sediment delivery to Bear Creek from roads, and eliminate roads unneeded for future management. The proposal has three main objectives it would achieve. It would: (1) Reduce the risk of extreme fire behavior (crown fire) in the Upper and Middle Bear drainages. This in turn would: (a) Reduce the risk that wildfire would damage and/or destroy tree plantations in the Bear Creek drainage, thereby maintaining past investments; (b) protect structures located at the Bear Work Center; (c) provide an area that would allow firefighters to safely suppress an escaped wildfire; and (d) provide a foundation to expand future fuels reduction activities into other portions of the Upper Bear drainage. (2) Reduce overstocked timber stands and plantations through timber harvest and thinning. This in turn would: (a) Improve seral tree species health and decrease opportunities for insect and disease outbreaks; (b) improve tree growth by reducing the competition between trees for sunlight, moisture, and nutrients, (c) reforest with seral tree species, and (d) contribute to the Council District's portion of the Payette National Forest allowable sale quantity. (3) Design a transportation system that responds to human access needs while reducing impacts and improving watershed conditions for hydrologic function, soil productivity, and fisheries and wildlife habitat. This in turn would: (a) Improve the hydrological function and productivity on soils committed to roads that may no longer be needed for future management, (b) reduce current and potential sediment delivery to streams from roads, especially within Riparian Conservation Areas (RCAs), (c) improve fish passage at road crossings, (d) avoid management activities that have the potential to increase temperatures in Wildhorse River; a downstream; 303(d) listed Waterbody; (e) avoid additional cumulative impacts to the Snake River; a downstream 303(d) listed Waterbody, and (f) manage open densities to maintain the Forest Plan Elk Habitat Effectiveness (EHE) rating in Issue Reporting Area (IRA) 112, and improve the Forest Plan EHE rating in IRA 114.

Proposed Action

The Proposed Action would reduce fuels, manage forest vegetation, and manage roads. (1) Reduce Fuels—Use silvicultural treatments that use mechanical thinning and prescribed fire on 820 acres to create a ''fuels reduction zone'' (FRZ). Within the FRZ, thinning of trees is proposed on 643 acres and underburning on the entire 820 acre. A range of 32 to 38 trees per acre is planned to be retained in this FRZ, which would differ from that planned in other harvest units. (2) Manage Forest Vegetation—(a) Use ground-based, skyline, and helicopter yarding systems to harvest timber on appropriately 980 acres, of which 280 acres are within the FRZ. The harvest prescriptions would encompass 780 acres of reserve tree (retain 3–10 healthy seral trees per acre), 110 acres of shelterwood seed-cut (retain 10–15 healthy seral trees per acre), 90 acres of commercial thin, and an additional 680 acres of precommercial thin. Reforestation treatments would include 775 acres, of which approximately 370 acres would require plantation fencing. (b) Reduce generated fuels and/or prepare sites for planting by underburning or piling and burning of logging slash. (3) Manage Roads—(a) Construct 4.5 miles of new roads (close following project implementation), and decommission 11.9 miles of existing roads. (b) Close year-round approximately 8.5 miles of road that are currently open year-round and/or seasonally.

Responsible Official

The responsible official is the Forest Supervisor of the Payette National Forest.

Scoping Process

Public notices have placed in local and regional newspapers. A public meeting is anticipated to occur following issuance of the draft EIS. The meeting will be announced in the Payette National forest's newspaper of record, the Idaho Statesman, Boise, Idaho.

Preliminary Issues

(1) Water Quality—Prescribed fire, road construction, and timber harvest have the potential to increase erosion and sedimentation in the Upper Bear Subwatershed. Cumulative impacts from these activities also have the potential to affect beneficial uses in the 303(d) listed Water bodies downstream of the project. Increased road density reduces the geomorphic integrity of the watershed and increases the likelihood of road related erosion. (2) Fisheries—The proposed activities may increase sediment levels and affect aquatic habit for fish, particularly habitat for bull trout in the upper Bear Creek watershed. Some culverts may restrict fish passage. (3) Wildlife Habitat—Goshawks are known to nest in or around habitat similar to what is present in the project area. Prescribed fire and timer harvest activities can affect nest sites. Flammulated owls and white-headed woodpeckers are known to use old, large-diameter Ponderosa pine, and Douglas-fir habitiat, which is in short supply in the project area. Proposed activities can affect nesting and foraging areas. Historically, the project area may have provided habitat for mountain quail. Proposed activities may affect potentially limited habitat for this and other species that use forested riparian habitat. Snag habitat may be in short supply in and around previous harvests units and along roads. Sufficient snag habitat must be retained where possible. (4) Noxious Weeds—Disturbance from new road construction, timber harvest, and burning could allow noxious weeds to become established and/or spread in the project area. (5) Recreation—The public uses the Bear Creek and Council-Cuprum Roads for recreational driving during the summer and fall. The quality of this recreational experience could be affected by the removal of timer, logging activity, log truck traffic, road closures and road decommissioning, prescribed burning activities, and smoke. (6) Road Construction and Decommissioning—New road construction can allow for improved access, but may also affect other resource values such as fisheries, water quality, and wildlife habitat.

Design features for the Proposed Action will help reduce or eliminate other possible impacts (visual resource, heritage resources, water quality, soils, fisheries, wildlife, etc.).

Early Notice of Importance of Public Participation in Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016,

1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

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

Dated: May 1, 2002.

Robert S. Giles,

Acting Forest Supervisor.

[FR Doc. 02–11355 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (SAC PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on Wednesday, June 12, at Whiskeytown National Recreation Area, California. This meeting will be a field trip with discussion about water quality issues, prescribed burning and fire ecology. The field trip will begin at 9 a.m. and end at 3 p.m.

DATES: Wednesday, June 12.

LOCATION: The field trip will begin at the Whiskeytown Visitor Center at the intersection of Hwy 299 and Kennedy Memorial Dr., 7 miles East of Redding, CA.

FOR FURTHER INFORMATION CONTACT: Jackie Riley, Committee Coordinator, USDA, Shasta-Trinity National Forest, 2400 Washington Ave., Redding, CA 96001 (530) 242–2203; e-mail: *jriley01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: All PAC meetings are open to the public. Interested citizens are encouraged to attend. Opportunity will be provided for public input and individuals will have the opportunity to address the Committee at that time.

Dated: April 30, 2002.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 02–11331 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF AGRICULTURE

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Western Washington Cascades Provincial Interagency Executive Committee Advisory Committee (Provincial Advisory Committee) will meet on Tuesday, May 21, 2002, at the Mt. Baker-Snoqualmine National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, WA.

The meeting will begin at 9 a.m. and continue until about 3 p.m. Agenda items to be covered include: (1) Review of the draft Finney Adaptive Management Area Plan, (2) Forest Vegetative Management, (3) Forest Monitoring and Accomplishment Reporting, and (4) an update on Forest issues. All Western Washington Cascades Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The Provincial Advisory Committee provided advice regarding ecosystem management for federal lands within the Western Washington Cascades Province, as well as advice and recommendations to promote better integration of forest management activities among federal and non-federal entities. The Advisory Committee is a key element of implementation of the Northwest Forest Plan.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Province Liaison, USDA Forest Service, Mt. Baker-Snoqualmine National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 321).

Dated: April 23, 2002.

John Phipps,

Acting Designated Federal Official.

[FR Doc. 02–11325 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section 4 of the Iowa State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Iowa NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Iowa that changes must be made in the NRCS State Technical Guide specifically in Section 4, Practice Standards and Specifications, Residue Management, Seasonal (344), and Cross Wind Trap Strips (589C) to account for improved technology. These practices can be used in systems that treat highly erodible land.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State Conservationist, Natural Resources Conservation Service, Federal Building, 210 Walnut Street, 693 Federal Building, Des Moines, Iowa 50309; at (515) 284–4260 or fax (515) 284–4394.

SUPPLEMENTARY INFORMATION: Section 343 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 will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: April 23, 2002.

Leroy Brown,

State Conservationist.

[FR Doc. 02–11471 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Offsets in Military Reports

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 8, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Hayes, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Defense Production Act Amendments of 1992, Section 123 (Pub. L. 102558), which amended Section 309 of the Defense Production Act of 1950, requires United States firms to furnish information regarding offset agreements exceeding $5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries. The information collected on offset transactions will be used to assess the cumulative effect of offset compensation practices on U.S. trade and competitiveness, as required by statute.

II. Method of Collection

Annual report.

III. Data

OMB Number: 0694–0084.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 10 hours per response.

Estimated Total Annual Burden Hours: 270.

Estimated Total Annual Cost: No start-up costs or capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 2, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11341 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Procedure To Initiate an Investigation Under the Trade Expansion Act of 1962

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 8, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Hayes, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Upon request, the Department of Commerce shall initiate an investigation to determine the effects of imports of certain commodities on the national security, and will make the findings known to the President for possible adjustments to imports through tariffs. The findings are made publicly available and are reported to Congress. The purpose of this collection of information is to account for the public burden associated with submitting such a request from any interested party, including other government departments or by the Secretary of Commerce.

II. Method of Collection

In written form.

III. Data

A request or application shall describe how the quantity, availability, character and uses of a particular imported article, or other circumstances related to its import affect the national security.

OMB Number: N/A.

Form Number: N/A.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Businesses, or other for-profit institutions and the Federal Government.

Estimated Number of Respondents: 1.

Estimated Time Per Response: 4.0 hours.

Estimated Total Annual Burden Hours: 3,000 hours.

Estimated Total Annual Cost: $60 for respondents—no equipment or other materials will need to be purchased to comply with the requirement.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 2, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11342 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) has found no evidence that there were entries, exports, or sales of subject merchandise by respondent Kawasaki Steel Corporation (Kawasaki) during the current period of review (POR). Consequently, in accordance with 19 CFR 351.213(d)(3), the Department is rescinding this administrative review.

EFFECTIVE DATE: May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Doug Campau, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1395.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 351 (2001).

Background

On June 29, 1999, the Department published in the Federal Register the antidumping duty order on certain hot-rolled flat-rolled carbon-quality steel flat products from Japan. See Antidumping Duty Order; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 34778. In response to a timely request from petitioners, Bethlehem Steel Corporation, LTV Steel Company, Inc., and United States Steel Corporation, previously known as U.S. Steel Group, a unit of USX Corporation, filed in accordance with19 CFR 351.213(b), the Department initiated an administrative review of this antidumping duty order. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, (66 FR 38252, July 23, 2001). This review covers one manufacturer/exporter of the subject merchandise, Kawasaki, for the period of June 1, 2000 through May 31, 2001.

On September 4, 2001, Kawasaki submitted a letter to the Department stating that it did not have any reviewable or reportable U.S. sales, entries, or shipments of subject merchandise during the POR. The Department reviewed data on entries under the order during the POR from the U.S. Customs Service. Our review of this data revealed no imports of the subject merchandise produced and/or exported by Kawasaki.

Pursuant to our regulations, the Department may rescind an administrative review, ''if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.'' 19 CFR § 351.213(d)(3). On April 18, 2002, we faxed all parties a memorandum stating our intent to rescind this review because there are no reviewable sales, shipments or entries. See Memorandum from Doug Campau to The File: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Flat Products from Japan: Notification to Interested Parties of Intent to Rescind, dated April 18, 2002. We have not received any comments. Because we have found no evidence that there were entries, exports, or sales of the subject merchandise by Kawasaki during the current POR, the Department is rescinding this administrative review in accordance with 19 CFR § 351.213(d)(3). The Department will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with 19 CFR § 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 1, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11466 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–827]

Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Extension of Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Geoffrey Craig or Brian Ledgerwood at (202) 482–4161 or (202) 482–3836, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On October 1, 2001, the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to certain large diameter carbon and alloy seamless standard, line, and pressure pipe, covering the period February 4, 2000 through July 31, 2001 (66 FR 49924). The preliminary results are due no later than May 3, 2002.

Extension of Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, we are extending the time limit for completion of the preliminary results until no later than June 3, 2002. *See* Decision Memorandum from Melissa Skinner to Bernard Carreau, dated May 2, 2002, which is on file in the Central Records Unit, B–099 of the main Commerce Building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results of this review.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: May 2, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–11468 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Extension of Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Riker at (202) 482–0186, Tisha Loeper-Viti at (202) 482–7425, or Martin Claessens at (202) 482–5451, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Time Limits:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On October 1, 2001, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania, covering the period February 4, 2000, through July 31, 2001 (66 FR 49924). The preliminary results are currently due no later than May 3, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Bernard Carreau, dated April 30, 2002, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than May 24, 2002. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 30, 2002.

Bernard Carreau,

Deputy Assistant Secretary for for AD/CVD Enforcement II.

[FR Doc. 02–11465 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium from Canada: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Reviews

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

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce is conducting administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1 through December 31, 2000. We have preliminarily determined that certain producers/exporters received net subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the Customs Service to assess countervailing duties as detailed in the Preliminary Results of Reviews section of this notice. Based on information provided by Magnola Metallurgy Inc., we are rescinding the review with respect to this company.

Interested parties are invited to comment on these preliminary results (see the Public Comment section of this notice).

EFFECTIVE DATE: May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Craig Matney, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3464 or (202) 482–1778, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On August 31, 1992, the Department of Commerce (''the Department'') published in the **Federal Register** the countervailing duty orders on pure magnesium and alloy magnesium from Canada (57 FR 39392). The Department published a notice of ''Opportunity to Request Administrative Review'' of these countervailing duty orders (66 FR 39729) on August 1, 2001. We received a timely request for review of Norsk Hydro Canada, Inc. (''NHCI'') and Magnola Metallurgy Inc. (''Magnola'') from the petitioner, Magnesium Corporation of America. We initiated these reviews for calendar year 2000 on October 1, 2001 (66 FR 49924).

On October 16, 2001, we issued countervailing duty questionnaires to NHCI, Magnola, the Government of Qu'ebec (''GOQ''), and the Government of Canada (''GOC''). We received questionnaire responses from the GOQ and GOC on November 26, 2001, and from NHCI on December 10, 2001. A supplemental questionnaire was issued to NHCI on April 3, 2002, and NHCI submitted its supplemental questionnaire response on April 16, 2002.

Partial Rescission

We received letters from Magnola on November 8 and 9, 2001. Based on information presented by Magnola, on November 16, 2001, the Department notified Magnola of its intent to rescind these administrative reviews with respect to Magnola and its affiliates pursuant to 19 CFR 351.213(d). (See Letter from Susan Kuhbach to Elliott Feldman dated November 16, 2001, a public version of which is available in the Public Files of the Central Records Unit, B–099 of the main Commerce building.) Accordingly, these reviews now cover NHCI, a producer/exporter of the subject merchandise, and 16 subsidy programs.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of section 751(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA''), effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2001).

Scope of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to review is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in*Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Review

The period of review (''POR'') for which we are measuring subsidies is from January 1 through December 31, 2000.

Subsidies Valuation Information

Discount rate: As noted below, the Department preliminarily finds that NHCI benefitted from one countervailable subsidy program during the POR: Article 7 grants from the Québec Industrial Development Corporation. As in the investigations and previous administrative reviews of this case, we have used the company's cost of long-term, fixed-rate debt in the year in which this grant was approved as the discount rate for purposes of calculating the benefit pertaining to the POR.

Allocation period: In the investigations and previous administrative reviews of this case, the Department used as the allocation period for non-recurring subsidies, the average useful life (''AUL'') of renewable physical assets in the magnesium industry as recorded in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS tables''), *i.e.*, 14 years. Pursuant to section 351.524(d)(2) of the countervailing duty regulations, the Department will use the AUL in the IRS tables as the allocation period unless a party can show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry. If a party can show that either of these time periods differs from the AUL in the IRS tables by one year or more, the Department will use the company-specific AUL or the country-wide AUL for the industry as the allocation period.

Neither NHCI nor the petitioner has contested using the AUL reported for the magnesium industry in the IRS tables. We are, therefore, continuing to allocate non-recurring benefits over 14 years.

Analysis of Programs

I. *Program Preliminarily Determined to Confer Countervailable Subsidies*

A. *Article 7 Grant from the Québec Industrial Development Corporation (''SDI'')*

SDI (*Société de Développement Industriel du Québec*) administers development programs on behalf of the GOQ. SDI provides assistance under Article 7 of the SDI Act in the form of loans, loan guarantees, grants, assumptions of costs associated with loans, and equity investments. This assistance involves projects capable of having a major impact upon the economy of Québec. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers and assistance over 5 million dollars becomes a separate budget item under Article 7. Assistance provided in such amounts must be of ''special economic importance and value to the province.'' (*See Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30948 (July 13, 1992) (''*Magnesium Investigation*'').)

In 1988, NHCI was awarded a grant under Article 7 to cover a large percentage of the cost of certain environmental protection equipment. In the *Magnesium Investigation*, the Department determined that NHCI received a disproportionately large share of assistance under Article 7. On this basis, we determined that the Article 7 grant was limited to a specific enterprise or industry, or group of enterprises or industries and, therefore, countervailable. In these reviews, neither the GOQ nor NHCI has provided new information which would warrant reconsideration of this determination.

In the *Magnesium Investigation*, the Department found that the Article 7 assistance received by NHCI constituted a non-recurring grant because it represented a one-time provision of funds. In the *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada*, 61 FR 11186, 11187 (March 19, 1996), we found this determination to be consistent with the principles enunciated in the Allocation section of the *General Issues Appendix* (''GIA'') appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225, 37226 (July 9, 1993). In the current review, no new information has been placed on the record that would cause us to depart from this treatment. Therefore, in accordance with section 351.524(b)(2) of our regulations, we have continued to allocate the benefit of this grant over time. We used our standard grant methodology as described in section 351.524(d) of the regulations to calculate the countervailable subsidy. We divided the benefit attributable to the POR by NHCI's total sales of Canadian-

manufactured products in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Article 7 SDI grant to be 1.59 percent *ad valorem* for NHCI.

II. *Programs Preliminarily Determined To Be Not Used*

We examined the following programs and preliminarily determine that NHCI did not apply for or receive benefits under these programs during the POR:

• St. Lawrence River Environment Technology Development Program
• Program for Export Market Development
• The Export Development Corporation
• Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
• Opportunities to Stimulate Technology Programs
• Development Assistance Program
• Industrial Feasibility Study Assistance Program
• Export Promotion Assistance Program
• Creation of Scientific Jobs in Industries
• Business Investment Assistance Program
• Business Financing Program
• Research and Innovation Activities Program
• Export Assistance Program
• Energy Technologies Development Program
• Transportation Research and Development Assistance Program

III. *Program From Which NHCI No Longer Receives a Countervailable Benefit*

• Exemption from Payment of Water Bills

In the administrative reviews covering calendar year 1997 the Department found that NHCI's benefits from this program had been exhausted and NHCI's participation in this program had ended. We also found that no residual benefits were being provided or received and no substitute program had been implemented. In our final results, we stated that we, therefore, did not intend to continue to examine this program in the future (*see Pure Magnesium and Alloy Magnesium from Canada: Final Results of Countervailing Duty Administrative Reviews*, 64 FR 48805, 48806 (September 8, 1999)). Consistent with this determination and in the absence of any new allegation, we did not examine this program in these reviews.

Preliminary Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a subsidy rate for NHCI, the sole producer/exporter subject to these administrative reviews. For the period January 1 through December 31, 2000, we preliminarily determine the net subsidy rate for NHCI to be 1.59 percent ad valorem. We will disclose our calculations to the interested parties upon request pursuant to section 351.224(b) of the regulations.

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the Customs Service (''Customs'') to assess countervailing duties at the net subsidy rate. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at the rate of 1.59 percent on the f.o.b. value of all shipments of the subject merchandise from NHCI entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested reviews will normally cover only those companies specifically named. *See* 19 CFR 351.213(b)(2). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g), the predecessor to 19 CFR 351.212(c)). Therefore, the cash deposit rates for all companies except the company covered by these reviews, will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, (except Timminco Limited which was excluded from the orders during the investigations) at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non-reviewed companies covered by these orders is that established in *Pure and Alloy Magnesium From Canada; Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607 (September 16, 1997) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1 through December 31, 2000, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Timminco Limited which was excluded from the orders in the original investigations.

Public Comment

Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (*see* below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

The Department will publish a notice of the final results of these administrative reviews within 120 days from the publication of these preliminary results. These preliminary results are published pursuant to sections 703(f) and 777(i) of the Act.

Dated: May 1, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11467 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade

Administration, Department of Commerce.

ACTION: Notice of first request for panel review

SUMMARY: On May 1, 2002, Veg Gro Sales, Inc. (a/k/a K & M Produce Distributors Inc.); Amco Farms, Inc.; Southpoint Produce (1977) Ltd.; and all Ontario companies subject to the ''all others'' rate (collectively referred to as the ''Ontario Respondents''), filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Amended Final Results of the Final Determination of Sales at Less Than Fair Value respecting Greenhouse Tomatoes From Canada made by the United States International Trade Administration. This determination was published in the **Federal Register**, (67 Fed. Reg. 15528) on April 2, 2002. The NAFTA Secretariat has assigned Case Number USA-CDA–2002–1904–06 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 1, 2002, requesting panel review of the Amended Final Determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 31, 2002);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 17, 2002); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 2, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–11423 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–GT–U

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate the Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting porcelain-on-steel cookware from Mexico (Secretariat File No. USA–MEX–98–1904–04).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review, the panel review is terminated as of April 30, 2002. A panel has been appointed to this panel review and consented to this motion. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: May 3, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–11424 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate the Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting porcelain-on-steel cookware from Mexico (Secretariat File No. USA–MEX–99–1904–05).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review, the panel review is terminated as of April 29, 2002. A panel has been appointed to this panel review and has granted this motion. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: May 3, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–11425 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate the Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting porcelain-on-steel cookware from Mexico (Secretariat File No. USA–MEX–00–1904–04).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review, the panel review is terminated as of April 29, 2002. A panel has been appointed to this panel review and has consented to this motion. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: May 3, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–11426 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate the Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting porcelain-on-steel cookware from Mexico (Secretariat File No. USA–MEX–01–1904–02).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review, the panel review is terminated as of April 29, 2002. No panel has been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: May 3, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–11427 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050102B]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting for a stakeholders workshop.

DATES: A stakeholders workshop on bioeconomic modeling will be held beginning at 8:30 a.m. on Wednesday, May 22, 2002, and will conclude at 4 p.m. on Friday, May 24, 2002.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone 813–877–6688.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist, Gulf of Mexico Fishery Management Council, 813–228–2815.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

SUPPLEMENTARY INFORMATION: A stakeholders workshop on bioeconomic modeling will be convened to address the economic impacts of regulations proposed for red grouper under Secretarial Amendment 1 to the Reef Fish Fishery Management Plan. A bioeconomic modeling group composed of some members of the Socioeconomic Panel (SEP), a member of the Reef Fish Stock Assessment Panel, and NMFS economists will lead the workshop. The modeling group will be assisted by NMFS stock assessment experts on the biological portion of the model. Dr. Walter Keithly, a SEP member, will act as the moderator for the workshop.

The main goal of the workshop is to adapt a bioeconomic model developed by Dr. Lee Anderson to the red grouper fishery in the Gulf. The public is strongly encouraged to attend and assist the modeling group in assessing the reasonableness of various parameters that would be used in the bioeconomic model. It should be understood by the attending public that while their active participation in the discussion is encouraged, the workshop is not a public hearing on the red grouper Secretarial amendment. A copy of the agenda can be obtained by calling 813–228–2815.

Upon successful adaptation of Dr. Anderson's bioeconomic model to the Gulf red grouper fishery, the SEP will employ the model to address the economic implications of various measures proposed for the red grouper Secretarial amendment. The SEP will meet on June 12-14, 2002, to evaluate the results of the model and prepare a report for review by the Reef Fish Advisory Panel and the Standing Scientific and Statistical Committee. The SEP report and its various reviews will be presented to the Council at their July 8-12, 2002, meeting when they will make final decisions on the red grouper Secretarial amendment.

Although other non-emergency issues not on the agendas may come before the workgroup for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the workgroup will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by May 15, 2002.

Dated: May 2, 2002.

Virginia M. Fay,

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

[FR Doc. 02–11463 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043002B]

Stock Assessment of Small Coastal Sharks in the U.S. Atlantic and Gulf of Mexico

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of a stock assessment report on small coastal sharks (SCS) in the Atlantic and Gulf of Mexico, prepared by the NMFS Southeast Fisheries Science Center.

ADDRESSES: Written requests for copies of the report should be sent to Margo Schulze-Haugen, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910, or may be sent via facsimile (fax) to 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz, (301) 713–2347; fax (301) 713–1917.

SUPPLEMENTARY INFORMATION: Several species of SCS are caught in directed fisheries and as bycatch in the southeastern region of the United States. This management group presently includes the Atlantic sharpnose, bonnethead, blacknose, and finetooth sharks. The previous stock assessment of the SCS complex was conducted over a decade ago and the ensuing management plan classified this group as being fully utilized. A substantial amount of information has become available since then, including biological data, improved fisheries statistics, and bycatch estimates from the shrimp trawl fishery. Several new fishery-independent and fishery-dependent catch rate series have become available and previously developed time series have been extended. The report uses this information to assess the status of SCS stocks in the southeastern U.S. region.

The final version of the report is now available on the NMFS website (*http://www.nmfs.noaa.gov/sfa/hmspg.html*). Hard copies of the document are available upon request (see **ADDRESSES**).

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 2, 2002.

Virginia M. Fay,

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

[FR Doc. 02–11464 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–2]

In the Matter of DAISY MANUFACTURING COMPANY, Inc; d/b/a Daisy Outdoor Products, 400 West Stribling Drive, Rogers, AR 72756; Prehearing Conference

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of first prehearing conference.

DATES: This notice announces a prehearing conference to be held in the matter of Daisy Manufacturing Company, Inc. on May 15, 2002 at 10 a.m.

ADDRESSES: The prehearing conference will be in hearing room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Secretary, U.S. Consumer Product Safety Commission, Washington, DC; telephone (301) 504–0800; telefax (301) 504–0127.

SUPPLEMENTARY INFORMATION: This public notice is issued pursuant to 16 CFR 1025.21(b) of the U.S. Consumer Product Safety Commission's Rules of Practice for Adjudicative Proceedings to inform the public that a prehearing conference will be held in an administrative proceeding under section 15 of the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2064 and section 15 of the Federal Hazardous Substances

Act (''FHSA''), 15 U.S.C. 1274, captioned CPSC Docket No. 02–2, In the Matter of DAISY MANUFACTURING COMPANY, Inc. doing business as Daisy Outdoor Products. The Presiding Officer in the proceeding is United States Administrative Law Judge William B. Moran. The Presiding Officer has determined that, for good and sufficient cause, the time period for holding this first prehearing conference had to be extended to the date announced above, which date is beyond the fifty (50) day period referenced in 16 CFR 1025.21(a).

The public is referred to the Code of Regulations citation listed above for identification of the issues to be raised at the conference and is advised that the date, time and place of the hearing also will be established at the conference.

Substantively, the issues being litigated in this proceeding are described by the Presiding Officer to include: Whether certain identified models of the Daisy Powerline Airgun, designed to shoot BBs or pellets, contain defects which create a substantial product hazard defect in that, allegedly, BBs can become lodged with a ''virtual magazine,'' or fail to feed into the firing chamber, with the consequence that one may fire or shake the gun without receiving any visual or audible indication that it is still loaded. Consequently, the complaint asserts that these alleged problems can lead consumers to erroneously believe that the gun is empty and that such phenomena mean that the gun is ''defective'' within the meaning of Section 15 of the CPSA, 15 U.S.C. 2064 and Section 15 of the FHSA, 15 U.S.C. 1274. The Complaint further alleges that the gun's design, by making it difficult to determine when looking into the loading port whether a BB is present, constitutes a ''defect'' under the CPSA and the FHSA and presents a ''substantial product hazard,'' creating a substantial risk of injury to consumers, within the meaning of Section 15(a)(2), of the CPSA, 15 U.S.C. 2064(a)(2), and presents a substantial risk of injury to children under Sections 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. 1274(c)(1) and (c)(2). The public should be mindful that these are allegations only and the CPSC bears the burden of proof in establishing any violations. Should these allegations be proven, Complaint Counsel for the Office of Compliance of the U.S. Consumer Product Safety Commission seeks a finding that these products present a substantial product hazard and present a substantial risk of injury to children and that public notification of such hazard and risk of injury be made pursuant to Section 15(c) of the CPSA and that other appropriate relief be directed, as set forth in the Complaint.

Dated: May 2, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–11328 Filed 5–7–02; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–C0005]

Golden Gift, L.L.C., a Limited Liability Corporation Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with Golden Gift, L.L.C., a limited liability corporation containing a civil penalty of $125,000.

DATES: Any interested person may ask the Commission not to accept his agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 23, 2002.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 02–C0005 Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: May 2, 2002.

Todd A. Stevenson,

Secretary.

In the Matter of Golden Gift, L.L.C., a Limited Liability Corporation; Settlement Agreement and Order

1. Golden Gift, L.L.C. (hereinafter, ''Golden Gift'' or ''Respondent''), a limited liability corporation, enters into this Settlement Agreement and Order (hereinafter, ''Settlement Agreement'') or ''Agreement'') with the staff of the Consumer Product Safety Commission, and agrees to the entry to the attached Order incorporated by reference herein. The purpose of the Settlement Agreement is to settle the staff's allegations that Golden Gift knowingly violated sections 4a) and (c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1263(a) and (c).

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States government, established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

3. Golden Gift is a limited liability corporation organized and existing under the laws of the State of California. Golden Gift's address is 2944 East 44th Street, Vernon, CA 90058. Golden Gift is an importer and wholesaler of toys.

II. Allegations of the Staff

A. Toys Intended for Children Under Three Years Old

4. On eight occasions between June 15, 1999, and September 6, 2000, Golden Gift introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, eight (8) kinds of toys (92,960 retail units) intended for use by children under three years old. These toys are identified and described as follows:

Sample No.	Product	Entry date	Exporter	Quantity
99–860–5381	Cartoon Car	06/15/99	Golden Bridge	3,200
99–860–5382	School Bus	06/15/99	Golden Bridge	960
99–860–5383	Toy Tricycle	06/15/99	Golden Bridge	1,200
99–860–5990	Animal Train Piano	09/12/99	Golden Bridge	1,200
99–860–6431	Toy Phone	07/22/99	Golden Bridge	3,600
00–860–6538	Shaking Drum Window	02/23/00	Topwell	18,000
00–860–6540	Toy Bell	02/23/00	Topwell	28,800

Sample No.	Product	Entry date	Exporter	Quantity
00–860–6543	Toy Bell	03/02/00	Topwell	28,800
00–860–6668	Fruit Telephone	09/06/00	Longbao	7,200

5. The toys identified in paragraph 4 above are intended for children under three years old and are subject to the Commission's Small Parts Regulation, 16 CFR part 1501.

6. The toys identified in paragraph 4 above failed to comply with the Commission's Small Parts Regulation, 16 CFR part 1501, in that when tested under the ''use and abuse'' test methods specified in 16 CFR 1500.51 and .52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the toys fit completely within the small parts test cylinder, and set forth in 16 CFR 1501.4.

7. Because the separated parts fit completely within the test cylinder as described in paragraph 6 above, each of the toys identified in paragraph 4 above presents a ''mechanical hazard'' within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration, and/or ingestion of small parts).

8. Each of the toys identified in paragraph 4 above is a ''hazardous substance'' pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

9. Each of the toys identified in paragraph 4 above is a ''banned hazardous substance'' pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) and 16 CFR 1500.18(a)(9) because it is intended for use by children under three years of age and bears or contains a hazardous substance as described in paragraph 8 above; and because it presents a mechanical hazard as described in paragraph 7 above.

10. Golden Gift knowingly introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the banned hazardous toys, identified in paragraph 4 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. §§ 1263(a) and (c).

B. Toys Intended for Use by Children Who Are at Least Three Years Old But Less Than Six Years Old

11. On three occasions between August 31, 1999 and March 2, 2000, Golden Gift introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, three (3) kinds of toys (588,020 retail units) intended for use by children who are at least three years old but less than six years old. These toys are identified and described as follows:

Sample No.	Product	Entry date	Exporter	Quantity
99–860–6470	Marbles	08/31/99	Golden Bridge	7,220
00–860–6539	27 mm Ball	02/23/00	Topwell	268,800
00–860–6541	38 mm Ball	02/23/00	Topwell	21,600
00–860–6542	27 mm Ball	03/02/00	Topwell	268,800
00–860–6544	38 mm Ball	03/02/00	Topwell	21,600

12. The toys identified in paragraph 11 above are subject to, but failed to comply with the Labeling Requirements for Certain Toys and Games under sections 24(b)(2)(B) and (b)(2)(C) of the FHSA, 15 U.S.C. 1278(b)(2)(B) and (b)(3)(B) and 16 CFR 1500.19(b)(3)(i) and (b)(4)(i) in that the toys did not bear the required cautionary label.

13. Because they lacked the required labeling, the toys identified in paragraph 11 above are ''misbranded hazardous substances'' pursuant to sections 2(p)(1)(D) and 24(d) of the FHSA, 15 U.S.C. 1261(p)(1)(D) and 24(d) and 16 CFR §§ 1500.19(b)(3)(i) and (b)(4)(i).

14. Golden Gift knowingly introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the misbranded hazardous toys identified in paragraph 11 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. §§ 1263(a) and (c).

III. Response of Golden Gift

15. Golden Gift denies the allegations of the staff set forth in paragraphs 4 through 14 above.

IV. Agreement of the Parties

16. The Consumer Product Safety Commission has jurisdiction over Golden Gift and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.* and the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261 *et seq.*

17. This Agreement is entered into for settlement purposes only and does not constitute an admission by Golden Gift or a determination by the Commission that Golden Gift knowingly violated the FHSA.

18. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed to be finally accepted on the 16th day after the date it is published in the **Federal Register.**

19. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Golden Gift knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Golden Gift failed to comply with the FHSA as aforesaid, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

20. In settlement of the staff's allegations, Golden Gift agrees to pay a $125,000.00 civil penalty as set forth in the attached Order incorporated herein by reference.

21. The Commission may publicize the terms of this Settlement Agreement and Order.

22. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order.

23. A violation of the attached Order shall subject Golden Gift to appropriate legal action.

24. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or contradict its terms.

25. The provisions of this Settlement Agreement and Order shall apply to, and be binding upon, Golden Gift and each of its shareholders, officers, directors, employees, agents, successors, assigns, and representatives, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device, or instrumentality.

Respondent Golden Gift, L.L.C.

Dated: March 22, 2002.

Isaac Alchalel

Owner, Golden Gate, L.L.C., 2944 East 44th Street, Vernon, CA 90058.

Commission Staff

Alan H. Schoem,

Assistant Executive Director, Consumer Product Safety Commission, Office of Compliance, Washington, DC 20207–001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dennis C. Kacoyanis,

Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Golden Gift, L.L.C. (hereinafter, ''Golden Gate'' or ''Respondent''), a limited liability corporation, and the staff of the Consumer Product Safety Commission having jurisdiction over the subject matter and Golden Gift; and it appearing that the Settlement Agreement and Order is in the public interest, *it is*

Ordered, that the Settlement Agreement be and hereby is accepted, and *it is*

further ordered, that upon final acceptance of the Settlement Agreement and Order, Respondent Golden Gift, L.L.C. shall pay to the United States Treasury a civil penalty in the amount of one hundred twenty-five thousand and 00/100 dollars ($125,000.00) in three (3) payments. The first payment of forty-two thousand and 00/100 dollars ($42,000.00) shall be paid within twenty (20) days after service of the Final Order of the Commission (hereinafter, ''anniversary date''). The second payment of forty-two thousand and 00/100 dollars ($42,000.00) shall be paid within one (1) year of the anniversary date. The third payment of forty-one thousand and 00/100 dollars ($41,000.00) shall be paid within two (2) years of the anniversary date. Upon the failure of Respondent Golden Gift, L.L.C. to make a payment or on the making of a late payment by Respondent Golden Gift, L.L.C. (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. § 1961(a) and (c).

Provisionally accepted and provisional Order issued on the 2nd day of May, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

Finally accepted and final Order issued on the _day of___,

By order of the Commission.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–11329 Filed 5–7–02; 8:45 am]

BILLING CODE 6355–01–M

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 July 8, 2002.

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: May 2, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: NCES Quick Response Information System.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions; Individuals or household; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses:10,518.

Burden Hours: 7,889.

Abstract: The Quick Response Information System (QRIS) is comprised of two types of surveys, one oriented towards elementary and secondary school and library issues, the Fast Response Survey System (FRSS) and the second intended to address issues in postsecondary education, the Postsecondary Education Quick Information System (PEQIS). All the surveys conducted the QRIS are required to inform current policy issues for which there are no other timely and/or appropriate data available. In recent years, surveys have been conducted on topics as diverse as distance education in postsecondary education, services for students with disabilities in postsecondary education, advanced telecommunications in elementary and secondary schools, summer programs for migrant students, and teacher quality.

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 2029. 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 Kathy Axt at her Internet 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. 02–11323 Filed 5–7–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.365C]

Office of English Language Acquisition; Native American and Alaska Native Children in School Program, Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: The purpose of the program is to provide grants that support language instruction educational programs for limited English proficient children from Native American, Alaska Native, Native Hawaiian and Native American Pacific Islander backgrounds. Projects that are designed for children who are learning and studying Native American languages shall have, as a project outcome, increases in English proficiency and a second language.

Eligible Applicants: The following entities, which operate elementary, secondary, and postsecondary schools primarily for Native American children (including Alaska Native children), are eligible applicants under this program: Indian tribes; tribally sanctioned educational authorities; Native Hawaiian or Native American Pacific Islander native language educational organizations; elementary schools or secondary schools that are operated or funded by the Bureau of Indian Affairs (BIA), or a consortium of such schools; elementary schools or secondary schools operated under a contract with or grant from the BIA in consortium with another such school or a tribal or community organization; and elementary schools or secondary schools operated by the BIA and an institution of higher education, in consortium with elementary schools or secondary schools operated under a contract with or a grant from the BIA or a tribal or community organization.

Note: Any eligible entity that receives Federal financial assistance under this program is not eligible to receive a subgrant under section 3114 of Title III of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

(Eligible applicants seeking to apply for funds as a consortium should read and follow the regulations in 34 CFR 75.127–75.129, which apply to group applications.)

Deadline for Transmittal of Applications: June 7, 2002.

Deadline for Intergovernmental Review: August 6, 2002.

Estimated Available Funds: $5.0 million.

Estimated Range of Awards: $100,000–$225,000.

Estimated Average Size of Awards: $192,307.

Estimated Number of Awards: 26.

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

Project Period: 48 months.

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating your application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5″ x 11″, on one side only with 1″ margins at the top, bottom, and both sides.

(2) Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; the text of the selection criteria; or the one-page abstract and table of contents described below. The page limit applies only to item 14 in the Checklist for Applicants provided below.

We will reject your application if—you apply these standards and exceed the page limit; or you apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79 (Part 79, does not apply to assistance to Federally recognized Indian tribes), 80, 81, 82, 85, 86, 97, 98,and 99.

Description of Program: The statutory authority for this program, and the application requirements that apply to this competition, are set out in Subpart 1 of Part A of Title III of the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

Grants awarded under this program are to be used to develop high levels of academic attainment in English among limited English proficient children, and to promote parental and community participation in language instruction educational programs. Grants are intended for language instruction educational projects that are carefully-designed, well-implemented and rigorously evaluated.

Projects may include teacher training, curriculum development, evaluation and assessment to support the core program of student instruction and parental/community participation. Student instruction may comprise preschool, elementary, secondary, and postsecondary levels, or combinations of these.

Selection Criteria: We use the following selection criteria in 34 CFR 75.210 and sections 3115 and 3128 of the Act to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Project activities.* (18 points). The Secretary reviews each application to determine how well the applicant proposes to carry out activities that will:

(i) Increase the English proficiency of limited English proficient children by providing high-quality language instruction educational programs that are based on scientifically based research demonstrating the effectiveness of the programs in increasing English

proficiency and student academic achievement in the core academic subjects; and

(ii) Provide high-quality professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel, that is—

(A) Designed to improve the instruction and assessment of limited English proficient children;

(B) Designed to enhance the ability of such teachers to understand and use curricula, assessment measures, and instruction strategies for limited English proficient children;

(C) Based on scientifically based research demonstrating the effectiveness of the professional development in increasing children's English proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers; and

(D) Of sufficient intensity and duration to have a positive and lasting impact on the teachers' performance in the classroom (excluding activities such as one-day or short-term workshops and conferences unless the activity is a component of an established comprehensive professional development program for an individual teacher)

(iii) At the applicant's option, provide instruction, teacher training, curriculum development, evaluation, and assessment designed for Native American children learning and studying Native American languages.

(b) *Need for project.* (6 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(c) *Quality of the project design.* (22 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(iv) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(v) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(vi) The extent to which the proposed project encourages parental involvement.

(d) *Quality of project personnel.* (8 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of resources.* (6 points) (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(f) *Quality of the management plan.* (20 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the project evaluation.* (20 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers of the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79. *Note* that in Part 79, Intergovernmental Review, does not apply to assistance to Federally recognized Indian tribes.

One of the objectives of the Executive order is to foster an inter-governmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each state under the

Executive order. If you want to know the name and address of any SPOC, see the official latest SPOC list on the Web site of the Office of Management and Budget at the following address: *;http://www.whitehouse.gov/omb/grants/spoc.html.*

In States that have not established a process or chosen a program or review, State, area-wide, regional and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this application notice to the following address: The Secretary, E.O. 12372—CFDA#84.365C, U.S. Department of Education, room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing under 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Application Instructions and Forms

The appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, various assurances and certifications. Please organize the parts and additional materials in the following order:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants GEPA–427 Requirements (OMB No. 1801–0004).

e. Checklist for Applicants.

f. Application for Federal Education Assistance (ED 424) and instructions.

g. Budget Information—Non-Construction Programs (ED 524) and instructions.

h. Group Application Certification.

i. Student Data.

j. Project Documentation.

k. Assurances—Non-Construction Programs (SF 424B) and instructions.

l. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

m. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

n. Disclosure of Lobbying Activities (SF LLL) (if applicable) and instructions.

You may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. We will not award grants unless we have received a completed application form.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as ''original'' or ''copy'', No grant may be awarded unless a completed application has been received.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in this application notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–800–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on the GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

FOR FURTHER INFORMATION CONTACT: Samuel Lopez, Office of English Language Acquisition, U.S. Department of Education, 400 Maryland Avenue, SW. Room MES 5605, Washington, DC 20202–6400. Telephone: 202–401–1427, or via Internet: *samuel.lopez@ed.gov.*

If you use telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

Instructions for Transmittal of Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail*

You must mail the original and two copies of the application on or before the deadline date. Mail your application to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.365C, 7th & D Street, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: Due to recent disruptions to normal mail delivery, the Department encourages you to consider using an alternative delivery method (for example, a commercial carrier, such as Federal express or United Parcel Service; U.S. Postal Service Express Mail; or a courier service) to transmit your application for this competition. If you use an alternative delivery method, please obtain the appropriate proof of mailing under this section (a) ''If You Send Your Application by Mail,'' then follow the instructions in section (b) ''If You Deliver Your Application by Hand.''

(b) *If You Deliver Your Application by Hand*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.365C, Room 3671, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED Form 424; (exp. 11–30–2004)) the CFDA number—and suffix letter #84.365 C of the, if any—of the competition under which you are submitting your application.

Program Authority: 20USC 6821(c), 6822.

Dated: May 2, 2002.

Maria Hernandez Ferrier,

Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0551 (Expiration Date: 09/30/2002). The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, U.S. Department of Education, 400 Maryland Avenue, SW., Room (5605), Switzer Building, Washington, DC 20202–6510.

Instructions for Application Narrative

Before preparing the Application Narrative you should read carefully the description of the program and the selection criteria we use to evaluate applications.

The narrative should—

1. Begin with an abstract; that is, a summary of your proposed project;
2. Describe your proposed project in light of each of the selection criteria in the order in which we list the criteria in this notice;
3. List each function or activity for which you are requesting funds; and
4. Include any other pertinent information that might assist us in reviewing your application.

Note: The section on Mandatory Page Limit elsewhere in this application notice applies to your application.

Additional Guidance

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Table of Contents

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Education Assistance Form (ED 424).
2. Group Application Certification Form (if applicable).
3. Budget Information Form (ED 524).
4. Itemization of costs for each budget year.
5. Student Data Form.
6. Assurances—Non-Construction Programs Form (SF 424B).
7. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
8. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
9. Disclosure of Lobbying Activities Form (SF LLL).
10. Information that addresses section 427 of the General Education Provisions Act. (See the form below entitled Notice to All Applicants.)
11. One-page abstract.
12. Table of Contents.
13. Application narrative, not to exceed 35 pages.
14. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

Non-Regulatory Guidance

Purpose of the Program

Q: *What is the purpose of the English Language Acquisition, Language Enhancement, and Academic Achievement Act for Limited English Proficient Students of Title III of the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001?*

A: The purpose of Title III is to ensure that limited English proficient (LEP) students develop English proficiency and meet the same academic content and academic achievement standards that other children are expected to meet. Schools use these funds to implement language instruction programs designed to achieve the purpose of the grants. The Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English

Proficient Students (OELA) will hold grantees accountable for increasing the English proficiency and core academic content knowledge of LEP students.

Q: *May projects funded under this program support the teaching and studying of Native American Languages?*

A: Projects funded under this program may support the teaching and studying of Native American Languages, but must have, as project outcomes, increases in proficiency in English and a second language.

Q: *What instructional programs are grantees required to provide?*

A: Grantees under this program are required to provide high quality language instruction educational programs that are based on scientifically based research demonstrating effectiveness in increasing English proficiency and student academic achievement in the core academic subjects. A grantee must select one or more methods of instruction to be used in the programs and activities and provide evidence that the programs chosen are based on scientific research in teaching LEP students.

Q: *Does a grantee have flexibility in selecting the method of instruction to be used to assist LEP students to attain English proficiency and academic achievement?*

A: A grantee may select one or more methods of instruction to be used in assisting LEP students to attain English proficiency and student academic achievement. However, the language instruction curriculum used must be tied to scientifically based research on teaching LEP students and must have demonstrated effectiveness.

Role of Parents

Q: *How is the role of parents of LEP students addressed in the Title III legislation?*

A: Each grantee using funds provided under this title to provide a language instruction educational program must implement an effective means of outreach to parents of limited English proficient children to inform such parents of how they can be involved in the education of their children, and be active participants in assisting their children to learn English, to achieve at high levels in core academic subjects, and to meet the same challenging State academic content and student academic achievement standards as all children are expected to meet.

Q: *What is the length of time that a grantee has to inform parents that their child has been identified for participation in a language instruction educational program for limited English proficient (LEP) students?*

A: Grantees shall inform parent(s) that their child has been identified for participation in a language instruction educational program for LEPs not later than 30 days after the beginning of the school year. For a child who enters school after the beginning of the school year, grantees shall inform parent(s) within 2 weeks of the child's placement in such a program.

Q: *What kind of information must a grantee provide parents regarding their child's participation in a language instruction educational program for LEPs?*

A: Grantees shall provide parents (1) the reasons for identifying their child as being limited English proficient and the need to place him/her in a language instruction educational program for LEPs; (2) the child's level of English proficiency, including how the level was assessed and the status of the child's academic achievement; (3) the method of instruction that will be used in the program, including a description of other alternative programs; (4) how the program will meet the educational strengths and needs of the child; (5) how the program will help the child learn English and meet academic achievement standards; (6) the program exit requirements, including the expected rate of transition and the expected rate of graduation from secondary school; (7) how a program will meet the objectives of an individualized education program for a child with a disability; and (8) information pertaining to parental rights as prescribed by law.

Q: *Does the parent have the right to refuse placement of their child in a language instruction educational program?*

A: The grantee must provide parents with the required information under Section 3302 of ESEA Title III (parental notification). Parents have a right to have their child removed from such a program. The parents, also have the right to choose another program or method of instruction, if available.

Roles and Responsibilities of Grantees

Q: *What professional development activities are grantees encouraged to provide for teachers, administrators and others involved in language instruction educational programs?*

A: Grantees are encouraged to provide high-quality professional development to classroom teachers (including teachers in classroom settings that are not the setting of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel that is:

- Designed to improve the instruction and assessment of LEP students;
- Designed to enhance the ability of such teachers to understand and use curricula, assessment measures, and instruction strategies for LEP children;
- Based on scientifically based research demonstrating the effectiveness of the professional development in increasing children's English proficiency, or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of teachers; and
- Of sufficient intensity and duration to have a positive and lasting impact on the teachers' performance in the classroom (excluding activities such as one-day or short-term workshops and conferences unless the activity is a component of an established comprehensive professional development program for an individual teacher).

Local Reporting Requirements

Q: *What are the reporting requirements for grantees that receive a Title III, Native American and Alaskan Native Children in School grant?*

A: Grantees that receive this Title III direct grant must provide to the Secretary an annual performance report for continuation award purposes, and a final performance report (see 34 CFR 80.40(a)(1)–(4), (d), and (e) and 34 CFR 80.41). These reports must contain information regarding each objective. If possible quantified results should be reported depending on the content of the objective. An explanation is needed when an objective target for that performance year is not met. Disclosure must include a statement of the action to be taken or contemplated and any assistance needed to resolve the situation. Budgetary information in the form of a line item budget and budget narrative must also accompany the report [34 CFR 80.40(b)(2)(iii)].

Definitions

Q: *How do you define ''language instruction educational program?''*

A: ''Language instruction educational program'' means an instruction course in which LEP students are placed for the purpose of developing and attaining English proficiency, while meeting challenging State academic content and student academic achievement standards. A language instruction educational program may make use of both English and a child's native language to enable the child to develop and attain English proficiency. Programs may include the participation of English

proficient children in addition to LEP students if such a program enables participating students to become proficient in English and a second language.

Q: *What is the definition of ''Native American'' and ''Native American Language?''*

A: The terms ''Native American'' and ''Native American Language'' are defined, under Section 3301(9) of ESEA to have the same meaning as those terms have under Section 103 of the Native American Languages Act. Under that Act, these terms are defined as follows. ''Native American'' means an Indian, Native Hawaiian, or Native American Pacific Islander. ''Native American ''language'' means the historical, traditional language spoken by Native Americans.

Q: *What does the term ''Indian tribe'' mean?*

A: ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Native village or Regional Corporation or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (ESEA Section 3301(7)).

Q: *What is a ''Native Hawaiian or Native American Pacific Islander Educational Organization''?*

A: ''Native Hawaiian or Native American Pacific Islander native language educational organization'' means a nonprofit organization with—

(A) a majority of its governing board and employees consisting of fluent speakers of the traditional Native American languages used in the organization's educational programs; and

(B) not less than 5 years successful experience in providing educational services in traditional Native American languages. (ESEA Section 3301(10))

Q: *What is a tribally sanctioned education authority?*

A: The term ''tribally sanctioned educational authority'' means—

(A) Any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe; and

(B) Any nonprofit institution or organization that is—(i) chartered by the governing body of an Indian tribe to operate a school described in section 3112(a) or otherwise to oversee the delivery of educational services to members of the tribe; and approved by the Secretary for the purpose of carrying out programs under subpart 1 of part A for individuals served by a school described in section 3112(a). (ESEA Section 3301(15))

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

Organizational Unit

1. Name and Address
Legal Name: _____

Address: _____

_____
City State County ZIP Code + 4

2. Applicant's D-U-N-S Number |__|__|__|__|__|__|__|__|__|

3. Applicant's T-I-N |__|__| - |__|__|__|__|__|__|__|

4. Catalog of Federal Domestic Assistance #: **84. 3 | 6 | 5 | C |**

Title: **NATIVE AMERICAN AND ALASKA NATIVE CHILDREN IN SCHOOL PROGRAM**

5. Project Director: _____

Address: _____

City State Zip code + 4
Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address: _____

6. Novice Applicant ___Yes ___No

7. Is the applicant delinquent on any Federal debt? ___Yes ___No
(If "Yes," attach an explanation.)

8. Type of Applicant *(Enter appropriate letter in the box.)* |____|

A - State	F - Independent School District
B - Local	G - Public College or University
C - Special District	H - Private, Non-profit College or University
D - Indian Tribe	I - Non-profit Organization
E - Individual	J - Private, Profit-Making Organization

K - Other (*Specify*): _____

Application Information

9. Type of Submission:

-PreApplication	*-Application*
___ Construction	___ Construction
___ Non-Construction	___ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
___ Yes (*Date made available to the Executive Order 12372 process for review*): ____/____/_____

___ No *(If "No," check appropriate box below.)*
___ Program is not covered by E.O. 12372.
___ Program has not been selected by State for review.

11. Proposed Project Dates: ____/____/_____ ____/____/_____
Start Date: **End Date:**

12. Are any research activities involving human subjects planned at any time during the proposed project period?
___ Yes (Go to 12a.) ___ No (Go to item 13.)

12a. Are **all** the research activities proposed designated to be exempt from the regulations?
___ Yes (Provide Exemption(s) #): _____

___ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

_____

_____

Estimated Funding

14a. Federal	$ _____	.00
b. Applicant	$ _____	.00
c. State	$ _____	.00
d. Local	$ _____	.00
e. Other	$ _____	.00
f. Program Income	$ _____	.00
g. TOTAL	$ _____	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (*Please type or print name clearly.*)

_____

b. Title: _____

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address: _____

e. Signature of Authorized Representative

_____ Date: ___/___/_____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ **Prime** ☐ **Subawardee** Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $	
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 FR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (Including Area Code)	

OMB Number 1885-0551 Expires 9/30/02

Paperwork Burden Statement: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1885–0551. The time required to complete this information collection is estimated to average 4 hours (or minutes) per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Native American and Alaska Native Children in School Program,** Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, U.S. Department of Education, 400 Maryland Avenue, S.W., Switzer Building, Room 5605, Washington, D.C. 20202-4651

STUDENT DATA

Name of Local Educational Agency

SECTION A

1. Total number of limited English proficient (LEP) students in the school district	
2. Total number of students in the school district	
3. Percentage of LEP students (line 1 divided by line 2)	%

SECTION B

Name of project school	Language group(s) to be served	Grade(s) to be served	Number of students to be served		
			LEP	NON-LEP	TOTAL
Total number of students to be served					

OMB Number 1885-0551 Expires 9/30/02

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3). Washington, DC 20202-4248.

[FR Doc. 02–11308 Filed 5–7–02; 8:45 am]

BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

[Solicitation Number DE–PS36–02GO92004]

Hydrogen Research and Development

AGENCY: Golden Field Office, DOE.

ACTION: Issuance of Solicitation for Financial Assistance Applications.

SUMMARY: The U.S. Department of Energy (DOE) is announcing its intention to seek Financial Assistance Applications for research and development (R&D) projects involving technologies for the production, storage, and utilization of hydrogen.

DATES: Issuance of the Solicitation is planned for no later than early May, 2002.

ADDRESSES: To obtain a copy of the Solicitation once it is issued, interested parties should access the DOE Golden Field Office home page at *http://www.golden.doe.gov/businessopportunities.html,* click on ''Solicitations'', and then access the solicitation number identified above. The Golden home page will provide direct access to the Solicitation and provide instructions on using the DOE Industry Interactive Procurement System (IIPS) Web site. The Solicitation can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Program Office for those solicitations issued by the Golden Field Office. DOE will not issue paper copies of the Solicitation.

FOR FURTHER INFORMATION CONTACT: Beth H. Dwyer, Contract Specialist, via facsimile to (303) 275–4788, or electronically to *Beth_Dwyer@nrel.gov.* Responses to questions will be made by amendment to the Solicitation and posted on the IIPS Web site.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy is soliciting Applications for R&D projects that will advance hydrogen production, storage, and utilization technologies. The DOE intends to provide financial support to assist in the development of such technologies under provisions of the Hydrogen Future Act of 1996, Public Law 104–271.

Under this Solicitation, DOE is seeking Applications for R&D projects that will lead to the implementation of hydrogen technologies in the areas of production, storage, and utilization. Within these three hydrogen technology areas, R&D activities related only to certain processes and equipment types will be eligible for an award, as specified in the Solicitation.

Awards under this Solicitation will be Cooperative Agreements, with a three-year Project Period consisting of three one-year Budget Periods. A go/no-go decision regarding the continuation and funding into Budget Periods subsequent to the first will be made as described in the Solicitation. Eligibility for an award is not restricted to any particular category of Applicant. However, a minimum Cost Share of 20% of Total Project Costs is required in order to be considered for an award.

Although this Solicitation is being issued in Fiscal Year (FY) 2002, potential awards will not be considered until early in FY 2003 (FY 2003 begins October 1, 2002). The possibility for initial awards to be made will depend on the availability of funds in the FY 2003 congressional appropriations. The anticipated level of available DOE funding is specified in the Solicitation for FY 2003, 2004, and 2005. DOE reserves the right to make no awards under this Solicitation or to reduce the requested DOE funding commitment on any potential award through negotiated reductions in work scope.

Issued in Golden, Colorado.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 02–11398 Filed 5–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Electrical Interconnection of the Satsop Combustion Turbine Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer contract terms to integrate power from the Satsop Combustion Turbine Project, a 650-megawatt gas-fired, combined-cycle, combustion turbine power generation project, into the Federal Columbia River Transmission System (FCRTS). The project is located in Satsop, in the Satsop Development Park, in Grays Harbor County, Washington. This decision was reached after consideration of the site-specific potential environmental impacts analyzed in BPA's Resource Contingency Program Environmental Impact Statement (RCP EIS, DOE/EIS–0230, November 1995), and is consistent with BPA's Business Plan EIS (BP EIS, DOE/EIS–0183, June 1995), and Business Plan ROD (August 1995).

ADDRESSES: Copies of the ROD for the Electrical Interconnection of the Satsop Combustion Turbine Project may be obtained by calling BPA's toll-free document request line: 1–800–622–4520. The RCP EIS, BP EIS, and BP ROD are also available.

FOR FURTHER INFORMATION CONTACT: Dawn R. Boorse, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621, direct telephone 503–230–5678; toll-free telephone 1–800–282–3713; e-mail *drboorse@bpa.gov.*

Issued in Portland, Oregon, on April 30, 2002.

Steven G. Hickok,

Acting Administrator and Chief Executive Officer.

[FR Doc. 02–11397 Filed 5–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Alliance Companies et al.; Notice of Non-Decisional Status

May 2, 2002.

In the matter of: Docket No. EL02–65–000, RT01–88–016; RT01–87–000, ER01–3142–000, ER02–106–000, ER02–107–000, ER02–108–000, ER02–111–000, ER02–290–000, ER01–123–000, ER02–484–000, ER02–485–000, ER02–488–000, ER02–652–000, ER02–947–000, ER02–1420–000, ER98–1438–00, ER02–871–000, and ER02–708–000; Alliance Companies; Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company; American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company; Dayton Power and Light Company; Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.; FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., Cleveland Electric Illuminating Power Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company; Illinois Power Company; Northern Indiana Public Service Company and National Grid USA; Alliance Companies; Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company; American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power

Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company; Consumers Energy Company and Michigan Electric Transmission Company; Dayton Power and Light Company; Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.; FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., Cleveland Electric Illuminating Power Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company; Illinois Power Company; Northern Indiana Public Service Company; Virginia Electric and Power Company; Midwest Independent Transmission System Operator, Inc.

Take notice that, for purposes of the above-captioned dockets (and all subdockets in those dockets), Daniel L. Larcamp, Director of the Office of Markets, Tariffs and Rates, is a non-decisional authority and a non-decisional employee. *Cf.* 18 CFR 385.102(a) (2001) (definition of decisional authority); 18 CFR 385.2201 (2001) (definition of decisional employee).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11401 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a License Application

May 2, 2002.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare a new license application.

b. *Project No.:* 2545.

c. *Date filed:* April 24, 2002.

d. *Applicant:* Avista Corporation.

e. *Name of Project:* Spokane River Hydroelectric Project.

f. *Location:* On the Spokane River, in Spokane, Stevens, and Lincoln Counties, Washington and Kootenai and Benewah Counties, Idaho. The project occupies federal lands of the U.S. Bureau of Land Management and tribal lands of the Coeur d'Alene Indian Reservation.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)—825(r).

h. *Applicant Contact:* Bruce Howard, Spokane River License Manager, Avista Corporation, 1411 East Mission, P.O. Box 3727, MSC–1, Spokane, Washington 99220, (509) 495–2941, or e-mail: bruce.howard@avistacorp.com.

i. *FERC Contact:* Nan Allen at (202) 219–2938, or e-mail: nan.allen@ferc.gov.

j. *Deadline for Comments:* June 2, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (http://www.ferc.gov) under the ''e-Filing'' link.

k. The project consists of five developments and appurtenant facilities. The Post Falls development consists of the 48,000-acre Coeur d'Alene Lake with a useable storage capacity of 223,100 acre-feet; a 431-foot-long and 31-foot-high spillway dam across the north channel, a 127-foot-long and 25-foot-high spillway dam across the south channel, and a 215-foot-long and 64-foot-high dam across the middle channel and forming the east wall of the powerhouse; six 56-foot-long penstocks; and a powerhouse with an installed capacity of 15 megawatts (MW).

The Upper Falls development consists of a 366-foot-long, 39-foot-high dam at 1,871 feet elevation; an 800-acre-foot reservoir; a channel leading to an intake structure; a 350-foot-long penstock, and a powerhouse with an installed capacity of 10 MW.

The Monroe Street development consists of a 240-foot-long, 24-foot-high dam with crest elevation of 1,806 feet; a 30-acre-foot reservoir; a 435-foot-long penstock; and an underground powerhouse with an installed capacity of 14.82 MW.

The Nine Mile development consists of a 464-foot-long, 58-foot-high dam with a crest elevation of 1596.6 feet without flashboards and 1606.6 feet with flashboards; a reservoir with 4,600 acre-feet of storage capacity; and a powerhouse with an installed capacity of 26 MW.

The Long Lake development consists of a 593-foot-long, 247-foot-high dam; a 108,080-acre-foot reservoir with a normal pool elevation of 1,536 feet; four 216-foot-long penstocks, and a powerhouse with an installed capacity of 71 MW.

l. A copy of the request to use alternative procedures is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

m. Avista Corporation has met with federal and state resources agencies, NGOs, elected officials, flood control and downstream interests, environmental groups, business and economic development organizations, recreation groups, and members of the public regarding the Spokane River Project and believes that a consensus exists that the use of alternative procedures is appropriate in this case. Avista Corporation intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by July 31, 2005. Avista Corporation has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. Avista Corporation has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on Avista Corporation's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. Avista Corporation will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11406 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–018]

Colorado Interstate Gas Company; Notice of Compliance Filing

May 2, 2002.

Take notice that on April 23, 2002, Colorado Interstate Gas Company (CIG) tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2002:

First Revised Sheet No. 11F
First Revised Sheet No. 11H
Original Sheet No. 11N

CIG states the proposed tariff sheets are being tendered to implement negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11407 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–174–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

May 2, 2002.

Take notice that on April 26, 2002, Columbia Gas Transmission Corporation (Columbia) filed certain additional information to be provided in this proceeding. On March 28, 2002, the Commission issued an order in this proceeding accepting the tariff sheet filed as part of Columbia's March 1, 2002, annual retainage adjustment filing, subject to Columbia filing certain additional information in this proceeding. In this filing, Columbia is submitting the requested information.

Columbia states that copies of its filing have been mailed to all parties on the official service list in Docket No. RP02–174.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11415 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–048]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

May 2, 2002.

Take notice that on April 25, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction: Service Agreement No. 72659, between Columbia Gulf Transmission Company and Reliant Energy Services, Inc., dated April 18, 2002.

Transportation service is to commence May 1, 2002 and end May 31, 2002 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11411 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–234–000]

Discovery Gas Transmission LLC; Notice of Tariff Filing

May 2, 2002.

Take notice that on April 26, 2002, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet to be effective July 1, 2001:

First Revised Sheet No. 153

Discovery asserts that the purpose of this filing is to comply with the Commission's order issued March 11, 2002, in Docket RM96–1–019.

Discovery states that this filing complies with the Commission's directives as set forth in Order 587-N to adopt standardized tariff language that provides releasing shippers the ability to recall scheduled and unscheduled capacity at the Timely and Evening Nomination Cycles, as well as the ability to recall unscheduled capacity at the Intra-Day 1 and Intra-Day 2 Nomination Cycles as set forth in the adopted tariff language.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11418 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–041]

Dominion Transmission, Inc.; Notice of Negotiated Rates

May 2, 2002.

Take notice that on April 26, 2002, Dominion Transmission, Inc. (DTI) tendered for filing the following tariff sheet for disclosure of a recently negotiated transaction with Sithe Power Marketing, LP:

First Revised Sheet No. 1416

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11410 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1652–000]

Entergy Services, Inc.; Notice of Filing

May 1, 2002.

Take notice that on April 26, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing the Thirty-first Amendment to the Power Coordination, Interchange and Transmission Service Agreement between Entergy Arkansas, Inc. and Arkansas Electric Cooperative Corporation, dated March 1, 2002. The Thirty-first Amendment modifies Exhibit A and F to Appendix A of Rate Schedule No. 82.

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 Wweb site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: May 17, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11403 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–233–000]

Florida Gas Transmission Company; Notice of Tariff Filing

May 2, 2002.

Take notice that on April 26, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective July 1, 2002:

Tenth Revised Sheet No. 102B
Sixth Revised Sheet No. 102C
Sixth Revised Sheet No. 173

FGT states that on March 11, 2002, in Docket No. RM96–1–019, the Federal Energy Regulatory Commission (Commission) issued Order No. 587-N (Order). In the Order, the Commission amended its regulations governing standards for interstate pipeline business operations and communications to require that pipelines permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. The Order directs that recalls of released capacity will not be permitted to reduce (bump) already scheduled volumes for replacement shippers unless the replacement shippers are provided with at least one opportunity to reschedule any bumped volumes, which is similar to the protection afforded interruptible shippers. The Commission believes this rule creates greater flexibility for firm capacity holders on interstate pipelines by synchronizing the Commission's regulation of recalled capacity with its standards for intra-day nominations. The Order requires pipelines to make tariff filings by May 1, 2002 to implement provisions of the Order to become effective on July 1, 2002. The instant filing is made in compliance with Order No. 587-N.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11417 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–478–001]

Honeoye Storage Corporation; Notice of Compliance Filing

May 2, 2002.

Take notice that on April 29, 2002 Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, First Revised Volume 1A, revised tariff sheets to be effective June 1, 2002. The revised tariff sheets are designated as:

First Revised Sheet No. 15 Superseding Original Sheet No. 15 Original Sheet No. 15A
First Revised Sheet No. 18 Superseding Original Sheet No. 18
First Revised Sheet No. 19 Superseding Original Sheet No. 19
First Revised Sheet No. 22 Superseding Original Sheet No. 22
First Revised Sheet No. 23 Superseding Original Sheet No. 23
First Revised Sheet No. 27 Superseding Original Sheet No. 27
First Revised Sheet No. 96 Superseding Original Sheet No. 96 Original Sheet No. 96A
First Revised Sheet No. 106 Superseding Original Sheet No. 106
Original Sheet No. 106A
Original Sheet No. 106B
First Revised Sheet No. 107 Superseding Original Sheet No. 107

Honeoye states that the purpose of the filing is to substitute certain tariff sheets which comply with the Commission's Order issued March 29, 2002 in Docket Nos. RP00–478–000 and RP00–574–000, the Commission proceedings in which Honeoye's compliance with Order Nos. 637,587–G and 586–L is at issue. Honeoye states that there will be no change in rates and revenues under the proposed revisions.

Honeoye states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11413 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–231–000]

Kern River Gas Transmission Company; Notice of Tariff Filing

May 2, 2002.

Take notice that on April 24, 2002, Kern River Gas Transmission Company (Kern

River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective as shown.

Eighth Revised Sheet No. 5 (Effective 5/1/02)
Ninth Revised Sheet No. 5 (Effective 7/1/02)
Tenth Revised Sheet No. 5 (Effective 5/1/03)
Sixth Revised Sheet No. 6 Effective 5/1/02)
Seventh Revised Sheet No. 6 (Effective 7/1/02)
Eighth Revised Sheet No. 6 (Effective 5/1/03)
Original Sheet No. 110–A (Effective 7/1/02)
Original Sheet No. 110–B (Effective 7/1/02)

Kern River states that the purpose of this compliance filing is to roll-in the cost and billing determinants of its amended 2002 Expansion Project, including permanent costs arising from the California Action Project, into the rates applicable to Extended Term shippers. Kern River states that this filing is made in compliance with the Commission's prior orders and is consistent with the provisions of the general rate settlement in Docket No. RP99–274. The filing establishes rates applicable to the 2002 Expansion Project shippers, reduces rates for interruptible and authorized overrun transportation, and reduces rates applicable to Extended Term shippers.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11416 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–237–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2002.

Take notice that on April 29, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 127; First Revised Sheet No. 162; First Revised Sheet No. 163; and First Revised Sheet No. 841, with an effective date of January 1, 2003.

Kern River states that the purpose of this filing is (1) to submit proposed tariff revisions to incorporate the Commission's policy and language pertaining to recalls of released capacity, in accordance with Order No. 587–N, and (2) to request an extension of time to comply with the Order.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11421 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–036]

Northern Natural Gas Company; Notice of Negotiated Rates

May 2, 2002.

Take notice that on April 29, 2002, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on May 1, 2002:

Twenty-Third Revised Sheet No. 66
Fourteenth Revised Sheet No. 66A

Northern states that the above sheets are being filed to implement a specific negotiated rate transaction with WPS Energy Services, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and to delete terminated transactions.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11408 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–235–000]

Northern Natural Gas Company; Notice of Tariff Filing

May 2, 2002.

Take notice that on April 26, 2002, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheet in compliance with the Commission's Order No. 587-N issued on March 11, 2002, in Docket No. RM96–1–019:

Fourth Revised Sheet No. 289

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11419 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1152–004]

PacifiCorp; Notice of Filing

May 1, 2002.

Take notice that PacifiCorp on April 24, 2002, tendered for filing in compliance with the Federal Energy Regulatory Commission's (Commission) Order dated April 10, 2002 under FERC Docket No. ER01–1152–000 a refund report.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

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 ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: May 15, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11402 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–413–001]

Pine Needle LNG Company, LLC; Notice of Compliance Filing

May 2, 2002.

Take notice that on April 29, 2002, Pine Needle LNG Company, LLC (Pine Needle), submits this filing to comply with the Federal Energy Regulatory Commission's (Commission) order issued March 29, 2002 in the referenced dockets related to Order 637, 587–G and 587–L compliance. Included herein are revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1. The enclosed tariff sheets, which are enumerated in Appendix A hereto, are proposed to be effective as described more fully herein.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11412 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2145, 943, 2149, and 2114]

Public Utility District No. 1 of Chelan County, WA, Project No. 2145, Project No. 943; Public Utility District No. 1 of Douglas County, WA, Project No. 2149; Public Utility District No. 2 of Grant County, WA; Project No. 2114; Notice of Site Visits

May 2, 2002.

On Tuesday, May 21, 2002, the Office of Energy Projects staff will participate in a site visit of the Priest Rapids Hydroelectric Project on the Columbia River. The site visit will begin at about 8 a.m. at the Wanapum Heritage Center at Wanapum Dam.

On Wednesday, May 22, 2002, the Office of Energy Projects staff will participate in a site visit of the Wells and Rock Island hydroelectric projects on the Columbia River. The Wells site visit will begin at about 9 a.m. at the Wells Project Overlook Area. The Rock Island site visit will begin at about 1 p.m. in Cottage A at the Public Utility District No. 1 of Chelan County offices on the east side of the Columbia River.

On Thursday, May 23, 2002, the Office of Energy Projects staff will participate in a site visit of the Rocky Reach Hydroelectric Project on the Columbia River. The site visit will begin at about 1 p.m. at the Rocky Reach Project Visitors Center.

All interested parties and individuals are welcome to attend these site visits. Those planning to attend must provide their own transportation and should contact the following individuals for each project no later than May 17, 2002.

Project(s)—Contact, Phone

Rocky Reach and Rock Island projects—Suzanne Bacon, (509) 663–8121

Wells Project—Bob Clubb, (509) 884–7191

Priest Rapids Project—Linda Jones, (509) 754–5037

For further information, please contact Bob Easton at (202) 219–2782 or *robert.easton@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–11405 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–070]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

May 2, 2002.

Take notice that on April 29, 2002, Tennessee Gas Pipeline Company (Tennessee), submitted for filing and approval two amendments to a Gas Transportation Agreement between Tennessee and eCORP Marketing, L.L.C., that has been previously accepted as a negotiated rate agreement. Tennessee requests that the Commission accept and approve the first amendment to be effective on the later of May 1, 2002, or the date on which the Commission accepts and approves the amendment. Tennessee requests that the Commission accept and approve the second amendment to be effective on the later of November 1, 2002, the date on which certain minor facilities at the delivery point have been completed, or the date on which the Commission accepts and approves the amendment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11409 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–236–005, RP00–553–008, and RP00–481–005]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

May 2, 2002.

Take notice that on April 29, 2002, Transcontinental Gas Pipe Line Corporation(Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 266, with an effective date of March 31, 2002.

Transco states that the filing is made in compliance with the Commission's order issued on March 29, 2002 in the referenced dockets. The revised tariff sheet is proposed to be effective as described more fully therein.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11414 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–236–000]

Transwestern Pipeline Company; Notice of Tariff Filing

May 2, 2002.

Take notice that on April 29, 2002, Transwestern Pipeline Company (TW) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective July 1, 2002:

6th Revised Sheet No. 95B
5th Revised Sheet No. 95B.01
7th Revised Sheet No. 95C
2nd Revised Sheet No. 95H.01

TW states that on March 11, 2002, in Docket No. RM96–1–019, the Federal Energy Regulatory Commission (Commission) issued Order No. 587-N (Order). In the Order, the Commission amended its regulations governing standards for interstate pipeline business operations and communications to require that pipelines permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. The Commission believes this rule creates greater flexibility for firm capacity holders on interstate pipelines by synchronizing the Commission's regulation of recalled capacity with its standards for intra-day nominations. The Order requires pipelines to make tariff filings implementing provisions of the Order by May 1, 2002, to become effective by July 1, 2002. TW also states that this filing is made in compliance with Order No. 587–N.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11420 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–935–002, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 1, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Florida Power & Light Company

[Docket No. ER02–935–002]

Take notice that on April 26, 2002, Florida Power & Light Company (FPL) filed, pursuant to the Order issued on March 27, 2002 in the above-captioned proceeding, a compliance filing making the required changes to the unelected Interconnection and Operation Agreement between FPL and Broward Development, LLC.

Comment Date: May 17, 2002.

2. Buchanan Generation, LLC

[Docket No. ER02–1638–000]

Take notice that on April 25, 2002, Buchanan Generation, LLC (Buchanan) filed a market rate tariff of general applicability under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates, and to make such sales to franchised public utility affiliates at rates capped by a publicly available regional index price.

Buchanan requests an effective date of June 1, 2002.

Comment Date: May 16, 2002.

3. Illinois Power Company

[Docket No. ER02–1639–000]

Take notice that on April 25, 2002, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Non-Firm Point-to-Point Transmission Service Agreement and a Firm Short-Term Point-to-Point Transmission Service Agreement entered into by Illinois Power and US AG.

Illinois Power requests an effective date of May 1, 2002 for the Agreements and accordingly seeks a waiver of the Commission's notice requirement. Illinois Power states that a copy of this filing has been sent to the customer.

Comment Date: May 16, 2002.

4. Cleco Power LLC

[Docket No. ER02–1640–000]

Take notice that on April 25, 2002, Cleco Power LLC tendered for filing an Interconnection and Operating Agreement between Cleco Power LLC, Cleco Midstream Resources LLC, and Columbian Chemicals Company related to a new cogeneration facility to be constructed at Columbian's plant site in St. Mary Parish, Louisiana. The Interconnection and Operating Agreement sets forth the terms and conditions governing the interconnection between the new facility and Cleco Power LLC's transmission system.

Comment Date: May 16, 2002.

5. California Independent System Operator Corporation

[Docket No. ER02–1641–000]

Take notice that on April 26, 2002, the California Independent System Operator Corporation (ISO) tendered for filing the Interconnected Control Area Operating Agreement (ICAOA) between the ISO and Sacramento Municipal Utility District (SMUD). The ISO requests that the agreement be made effective as of the later of June 1, 2002, or the date that the Western Electricity Coordinating Council (WECC) and North American Electric Reliability Council (NERC) provide final certification of SMUD as a control area operator and authorize SMUD to operate the SMUD control area.

The ISO states that this filing has been served on SMUD and the Public Utilities Commission of the State of California.

Comment Date: May 17, 2002.

6. Progress Energy on Behalf of Florida Power Corporation

[Docket No. ER02–1642–000]

Take notice that on April 26, 2002, Florida Power Corporation (FPC) tendered for filing Service Agreements for Non-Firm and Short-Term Firm Point-to-Point Transmission Service with US AB, London Branch. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of FPC.

FPC is requesting an effective date of April 1, 2002 for these Service Agreements. A copy of the filing was served upon the North Carolina Utilities Commission and the Florida Public Service Commission.

Comment Date: May 17, 2002.

7. Duquesne Light Company

[Docket No.ER02–1643–000]

Take notice that on April 26, 2002, Duquesne Light Company (DLC) filed a Service Agreement dated April 25, 2002 with Dominion Energy Marketing, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Dominion Energy Marketing, Inc. as a customer under the Tariff. DLC requests an effective date of April 25, 2002 for the Service Agreement.

Comment Date: May 17, 2002.

8. PacifiCorp

[Docket No. ER02–1644–000]

Take notice that on April 26, 2002, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations, Umbrella Service Agreement No. 70 with the City of Blanding under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 12

Copies of this filing were supplied to the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment Date: May 17, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1645–000]

Take notice that on April 26, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) the Administrator of the Mid-Continent Area Power Pool (MAPP) Tariff, pursuant to Section 205 of the Federal Power Act and Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13 , submitted for filing an unelected Service Agreement for transmission service for Idaho Power Marketing under MAPP Schedule F.

A copy of this filing was sent to Idaho Power Marketing.

Comment Date: May 17, 2002.

10. New England Power Pool

[Docket No. ER02–1646–000]

Take notice that on April 26, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted revisions to NEPOOL Market Rules and Procedures Nos. 7, 7–D and 17. The proposed changes to Market Rule 7 and the addition of Appendix 7–D are intended to more accurately reflect the lost opportunity costs of providers of Automatic Generation Control (AGC) service within the NEPOOL Control Area. The proposed change to Market

Rule 17 is intended to provide a mechanism for allocating monthly fixed capacity-type payments made by ISO New England Inc. (ISO–NE) pursuant to mitigation agreements entered into by ISO–NE with the owners of generation resources. An effective date of June 1, 2002 was requested for the changes to Market Rule 7 and Appendix 7–D, and a July 1, 2002 date was requested for the change to Market Rule 17.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers, parties of record in FERC Docket No. ER02–648–000 and the New England state governors and regulatory commissions.

Comment Date: May 17, 2002.

11. San Diego Gas & Electric Company

[Docket No. ER02–1647–000]

Take notice that on April 26, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its Service Agreements Numbers 15 and 16 to its FERC Electric Tariff, First Revised Volume No. 6, two interconnection agreements. Both agreements relate to the interconnection of a new generation plant to be owned by CalPeak Power -El Cajon LLC (CalPeak El Cajon). The plant, with a capacity of 49 MW, is being constructed on an expedited basis to meet potential shortfalls in the Western states' electric supplies. It will be located within the City of El Cajon in San Diego County, California, and is expected to begin testing on April 27, 2002, and commercial operation on or about June 1, 2002.

Service Agreement No. 15 is an Expedited Interconnection Facilities Agreement dated April 26, 2002, between SDG&E and CalPeak El Cajon, under which SDG&E will construct the proposed interconnection facilities. Service Agreement No. 16, the Interconnection Agreement between SDG&E and CalPeak Enterprise dated April 26, 2002, establishes interconnection, operation and maintenance responsibilities and associated communications procedures between the parties. SDG&E requests an effective date of April 27, 2002, for both agreements.

SDG&E states that copies of the amended filing have been served on CalPeak El Cajon and on the California Public Utilities Commission.

Comment Date: May 17, 2002.

12. Duquesne Light Company

[Docket No. ER02–1648–000]

Take notice that April 26, 2002, Duquesne Light Company (DLC) filed a Service Agreement dated April 25, 2002 with Dominion Energy Marketing, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Dominion Energy Marketing, Inc. as a customer under the Tariff. DLC requests an effective date of April 25, 2002 for the Service Agreement.

Comment Date: May 17, 2002.

13. The Detroit Edison Company

[Docket No. ER02–1649–000]

Take notice that on April 26, 2002, The Detroit Edison Company (Detroit Edison) tendered for filing a notice of termination of a Detroit Edison rate schedule. The rate schedule being terminated is a lease agreement between Detroit Edison and The Toledo Edison Company (Toledo Edison), as amended. Detroit Edison requests that its notice of termination be accepted effective May 31, 2002.

Comment Date: May 17, 2002.

14. LG&E Capital Trimble County LLC

[Docket No. ER02–1650–000]

Take notice that on April 26, 2002, LG&E Capital Trimble County LLC (LCTC) tendered for filing with the Federal Energy Regulatory Commission (Commission) under Section 205 of the Federal Power Act, Rate Schedule FERC No. 1 (tariff) to make wholesale sales of test power at negotiated rates per Mwh up to, but not exceeding, the purchaser's avoided costs in such hour.

Comment Date: May 10, 2002.

15. California Independent System Operator System

[Docket No. ER02–1651–000]

Take notice that on April 26, 2002, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) regulations, 18 CFR 35.13, the California Independent System Operator Corporation (ISO) submitted for filing a pro forma Aggregated Distributed Generation Pilot Project (ADGPP) Participating Generator Agreement (PGA) and related requirements. The pro forma ADGPP PGA relates to a pilot project designed by the ISO and scheduled to be in effect from June 1, 2002, through December 31, 2002, unless terminated earlier. The pilot project will test arrangements for the aggregation of Generating Units with a rated capacity less than 1 MW for purposes of scheduling Energy with the ISO and of participation in the ISO's Supplemental Energy Market. The ISO also filed the ADGPP requirements for informational purposes. In addition, the ISO requested the Commission to extend to pilot project participants the streamlined regulatory procedures it offered until April 30, 2002, to accommodate wholesale sales within the Western Systems Coordinating Council (now WECC) area from generators providing primarily back-up or on-site generation in its March 14 and March 16, 2001, orders in Docket No. EL01–47–000.

The ISO has served copies of the filing upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and on all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO posted the filing on the ISO's Home Page.

Comment Date: May 17, 2002.

16. Illinois Power Company

[Docket No. ER02–1653–000]

Take notice that on April 26, 2002, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, filed an Interconnection and Operating Agreement entered into with Corn Belt Generation Cooperative (Corn Belt).

Illinois Power requests an effective date of April 17, 2002 for the Agreement and seeks a waiver of the Commission's notice requirement. Illinois Power has served a copy of the filing on Corn Belt.

Comment Date: May 17, 2002.

Standard Paragraph

E. 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 ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11347 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

May 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 487.

c. *Applicant:* PPL Holtwood, LLC.

d. *Name of Project:* Lake Wallenpaupack Hydroelectric Project.

e. *Location:* On Wallenpaupack Creek, in Wayne and Pike Counties, Pennsylvania.

f. *Applicant Contact:* Gary Petrewski, PPL Generation, LLC, Two North Ninth Street, Allentown, PA 18101–1179, (610) 774–5996, Email: *gpetrewski@pplweb.com*.

g. *FERC Contact:* Patrick K. Murphy (202) 219–2659, Email: *Patrick.Murphy@ferc.gov*.

h. PPL mailed a copy of the Preliminary Draft Environmental Assessment and draft application to interested parties on April 29, 2002. The Commission received a copy of the PDEA on April 30, 2002. Copies of the document are available from PPL at the above address.

i. With this notice we are soliciting preliminary terms, conditions, recommendations, prescriptions, and comments on the PDEA and draft license application. All comments on the PDEA and draft license application should be sent to the address above in item (f) with one copy filed with the Commission at the following address: Federal Energy Regulatory Commission, Magalie R. Salas, Secretary, 888 First Street, NE, Room 1A, Washington, DC 20426. All comments must include the project name and number, and bear the heading ''Preliminary Comments'', ''Preliminary Recommendations'', ''Preliminary Terms and Conditions'', or ''Preliminary Prescriptions''. Any party interested in commenting must do so before July 1, 2002.

j. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11404 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Region 2 Docket No. NJ51–241 FRL–7208–2]

Adequacy Status of the Submitted Carbon Monoxide Redesignation Request and Maintenance Plan for the New Jersey Portion of the New York-Northern New Jersey-Long Island Moderate Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets for carbon monoxide (CO) in the submitted redesignation request and maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island moderate CO nonattainment area are adequate for transportation conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the New Jersey portion of the New York-Northern New Jersey-Long Island CO nonattainment area must use the motor vehicle emission budget from this submitted redesignation request and maintenance plan for future conformity determinations.

DATES: This finding is effective May 23, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Champagne, Mobile Sources Team, Air Programs Branch, Environmental Protection Agency—Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249, *champagne.kenneth@epa.gov.*

The finding and the response to comments will be available at EPA's conformity website: *http://www.epa.gov/otaq/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to the New Jersey Department of Environmental Protection on April 22, 2002 stating that the CO motor vehicle emissions budgets for 2007 and 2014 in the submitted redesignation request and maintenance plan (dated January 15, 2002) for the New Jersey portion of the New York-Northern New Jersey-Long Island moderate CO nonattainment area are adequate for transportation conformity purposes. This finding will also be announced on EPA's conformity website: *http://www.epa.gov/otaq/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 22, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

[FR Doc. 02–11454 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0053; FRL–6836–9]

Versar Inc. and ICF Consulting; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Versar Inc. and its subcontractor, ICF Consulting, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Versar Inc. and its subcontractor, ICF Consulting, have been awarded a contract to perform work for OPP, and access to this information will enable Versar Inc. and its subcontractor, ICF Consulting, to fulfill the obligations of the contract.

DATES: Versar Inc. and its subcontractor, ICF Consulting, will be given access to this information on or before May 13, 2002.

FOR FURTHER INFORMATION CONTACT: By mail: Erik Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**''—Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under Contract No. 68-W0-1036, Versar Inc. and its subcontractor, ICF Consulting, will perform the following: Office of Pesticide Programs (OPP) has the responsibility of reviewing Product and Residue Chemistry data submitted with applications for the registration of specific pesticide products, and new petitions for proposed uses or tolerances for currently registered or for new pesticides. The contractor shall provide back up support for these activities, which may include statistical evaluation of monitoring data, the review of data submitted in support of tolerance proposals, and the preparation of a summary and index system of previously completed EPA product and residue chemistry reviews by crop, data requirement, and/or chemical to serve as a reference, policy and training guide.

For this work assignment, the Contractor shall review data summaries and reformatted existing studies to identify data gaps and any studies that indicate adverse effects and conduct a thorough, comprehensive examination of all product chemistry and residue chemistry data of pesticides, including the chemistry and metabolism of pesticides in plants and animals and the resulting dietary exposure.

The OPP has determined that access by Versar Inc. and its subcontractor, ICF Consulting, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408, and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Versar Inc. and its subcontractor, ICF Consulting, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Versar Inc. and its subcontractor, ICF Consulting, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Versar Inc. and its subcontractor, ICF Consulting, until the requirements in this document have been fully satisfied. Records of information provided to Versar Inc. and its subcontractor, ICF Consulting, will be maintained by EPA Project Officers for this contract. All information supplied to Versar Inc. and its subcontractor, ICF Consulting, by EPA for use in connection with this contract will be returned to EPA when Versar Inc. and its subcontractor, ICF Consulting, have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: April 25, 2002.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs

[FR Doc. 02–11179 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–1]

Investigator Initiated Grants: Request for Applications

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of requests for applications.

SUMMARY: This notice provides information on the availability of fiscal year 2002 investigator initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research areas within the solicitations.

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency invites research applications in the following areas of special interest to its mission: (1) Assessing the Consequences of Global Change for Air Quality: Sensitivity of U.S. Air Quality to Climate Change and Future Global Impacts; (2) Ecological Indicators for the Great Rivers of the Central Basin; (3) Corporate Environmental Behavior: Examining the Effectiveness of Government Interventions and Voluntary Incentives; and (4) Market Mechanisms and Incentives for Environmental Management.

Contacts: (1) Assessing the Consequences of Global Change for Air Quality: Sensitivity of U.S. Air Quality to Climate Change and Future Global Impacts, *Turner.Vivian@epa.gov;* (2) Ecological Indicators for the Great Rivers of the Central Basin, *Levinson.Barbara@epa.gov;* (3) Corporate Environmental Behavior: Examining the Effectiveness of Government Interventions and Voluntary Incentives, *Carrillo.Susan@epa.gov;* and (4) Market Mechanisms and Incentives for Environmental Management, *Clark.Matthew@epa.gov.*

FOR FURTHER INFORMATION CONTACT: The complete program announcement can be accessed on the Internet at *http://www.epa.gov/ncer,* under ''announcements.'' The required forms for applications with instructions are accessible on the Internet at *http://es.epa.gov/ncer/rfa/forms/downlf.html.* Forms may be printed from this site.

Dated: April 30, 2002.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 02–11452 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30124; FRL–6829–7]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30124, must be received on or before June 7, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30124 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8077; e-mail addess: cerrelli.susanne @epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—-Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30124. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any

information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30124 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30124. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received an application as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

EPA File symbol 69592-A . Applicant: AgraQuest, Inc., 1530 Drew Ave., Davis, CA 95616. Product Name: QST 2808 Technical. Active ingredient: *Bacillus pumilus* Strain QST 2808 at 2.0%. Proposed Classification/Use: Manufacturing use.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 24, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–11178 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7208–7]

Notice of Proposed de Minimis Settlements Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as Amended, 42 U.S.C. 9622(g), Great Lakes Container Corporation Superfund Site, City of St. Louis, MO, St. Louis County, MO, Docket No. CERCLA–07–2002–0124

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency (EPA) has entered into a *de minimis* administrative settlement to resolve claims against 78 *de minimis* parties under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g). These settlements are intended to resolve the liability of the following parties for: ACF Industries; A.O. Smith Corporation; Ashland, Inc.; Atlantic Richfield Company; Baker Petrolite; BASF Corporation; Bioproducts, Inc.; BP Products North America, Inc. (f/k/a Amoco Oil Co.); Brenntag Mid-South, Inc. (f/k/a PB&S Chemical Co., Inc.); Bristol-Meyers Squibb Company; Buckman Laboratories; Burkhart Foam, Inc.; Cerro Copper Products Company; Chart Automotive Group, Inc.; Chevron USA, Inc.; Conoco, Inc.; Consultant ubricants, Inc.; Crown Cork & Seal Company, Inc. on its own behalf and for Continental Can Co.; Daimler-Chrysler Corporation; Delano Oil Company; Dennis Chemical Company; deVan Sealants, Inc.; E.I. duPont de Nemours & Company; Energy Petroleum Company; Exxon Mobil Corporation (f/k/a Mobil Oil Company); Ford Motor Company; Fuchs Lubricants (f/k/a Century Lubricants, Inc.); Geldbach Petroleum Company, Inc.; General Motors Corp.; Great Lakes Chemical Corp.; Griffin L.L.C.; G.S. Robins and Company; Guth Lighting Systems, Division of JJI Lighting Group, Inc.; Harcros Chemicals, Inc.; Hartog Oil Company; H.B. Fuller Company; Healdton Oil Company, Inc.; Hicks Oils,

Inc.; Hohn Manufacturing; Ingersoll-Rand Company (f/k/a Hussman Corporation); INX International Ink Company; Jackes-Evans Manufacturing Company; J.D. Streett & Company, Inc.; Jefferson Smurfit Corporation; Jenkin-Guerin, Inc.; Koch Materials Company; Luebbering Oil Company; Mango Distributing Company; Marathon Ashland Petroleum LLC; Marconi Data Systems (f/k/a Marsh Stencil Machine Company); Marcus Research Laboratory, Inc.; McDonnell Douglas Corporation; McKesson Corporation for its subsidiary McKesson Chemical Company; Meramec Group, Inc.; Metal Container Corporation; Mid-West Industrial Chemical Company; Minnesota Mining & Manufacturing Co.; Minwax Company for Eastman Kodak; Missouri Highways and Transportation Commission and the Missouri Department of Transportation; Missouri Paint & Varnish; MO–Tac Company; Mozel, Ellis & Everard (US Holdings), Inc.; National Steel Corporation, Granite City Division; Nestles USA, Inc.; Nuway, Inc.; The P.D. George Company; Pennzoil-Quaker State Company; Performance Polymers, Inc.; Phillips Petroleum Company; P.P.G. Industries, Inc.; The Proctor & Gamble Manufacturing Company; Schaeffer Manufacturing Company; Sequa Corporation; Sieveking, Inc.; Superior Oil Company, Inc. (a/k/a Superior Solvents & Chemicals); Texaco Group, Inc.; Transchemical, Inc.; and U.S. Polymers, Inc.

DATES: EPA will receive written comments relating to the proposed *de minimis* settlements by June 7, 2002.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to: In the Matter of the Great Lakes Container Corporation Superfund Site, City of St. Louis, St. Louis County, Missouri, CERCLA Docket Nos.

FOR FURTHER INFORMATION CONTACT: Denise L. Roberts, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551–7559.

SUPPLEMENTARY INFORMATION: The *de minimis* administrative settlement is intended to resolve the liability of the following parties for: ACF Industries; A.O. Smith Corporation; Ashland, Inc.; Atlantic Richfield Company; Baker Petrolite; BASF Corporation; Bioproducts, Inc.; BP Products North America, Inc. (f/k/a Amoco Oil Co.); Brenntag Mid-South, Inc. (f/k/a PB&S Chemical Co., Inc.); Bristol-Meyers Squibb Company; Buckman Laboratories; Burkhart Foam, Inc.; Cerro Copper Products Company; Chart Automotive Group, Inc.; Chevron USA, Inc.; Conoco, Inc.; Consultant Lubricants, Inc.; Crown Cork & Seal Company, Inc. on its own behalf and for Continental Can Co.; Daimler-Chrysler Corporation; Delano Oil Company; Dennis Chemical Company; deVan Sealants, Inc.; E.I. duPont de Nemours & Company; Energy Petroleum Company; Exxon Mobil Corporation (f/k/a Mobil Oil Company); Ford Motor Company; Fuchs Lubricants (f/k/a Century Lubricants, Inc.); Geldbach Petroleum Company, Inc.; General Motors Corp.; Great Lakes Chemical Corp.; Griffin L.L.C.; G.S. Robins and Company; Guth Lighting Systems, Division of JJI Lighting Group, Inc.; Harcros Chemicals, Inc.; Hartog Oil Company; H.B. Fuller Company; Healdton Oil Company, Inc.; Hicks Oils, Inc.; Hohn Manufacturing; Ingersoll-Rand Company (f/k/a Hussman Corporation); INX International Ink Company; Jackes-Evans Manufacturing Company; J.D. Streett & Company, Inc.; Jefferson Smurfit Corporation; Jenkin-Guerin, Inc.; Koch Materials Company; Luebbering Oil Company; Mango Distributing Company; Marathon Ashland Petroleum LLC; Marconi Data Systems (f/k/a Marsh Stencil Machine Company); Marcus Research Laboratory, Inc.; McDonnell Douglas Corporation; McKesson Corporation for its subsidiary McKesson Chemical Company; Meramec Group, Inc.; Metal Container Corporation; Mid-West Industrial Chemical Company; Minnesota Mining & Manufacturing Co.; Minwax Company for Eastman Kodak; Missouri Highways and Transportation Commission and the Missouri Department of Transportation; Missouri Paint & Varnish; MO–Tac Company; Mozel, Ellis & Everard (US Holdings), Inc.; National Steel Corporation, Granite City Division; Nestles USA, Inc.; Nuway, Inc.; The P.D. George Company; Pennzoil-Quaker State Company; Performance Polymers, Inc.; Phillips Petroleum Company; P.P.G. Industries, Inc.; The Proctor & Gamble Manufacturing Company; Schaeffer Manufacturing Company; Sequa Corporation; Sieveking, Inc.; Superior Oil Company, Inc. (a/k/a Superior Solvents & Chemicals); Texaco Group, Inc.; Transchemical, Inc.; and U.S. Polymers, Inc. In January 2002, Region VII entered into a de minimis administrative settlement pursuant to section 122(g) of CERCLA, 42 U.S.C. 9622(g) with 78 *de minimis* parties previously listed for the Great Lakes Container Corporation Superfund Site.

Great Lakes Container Corporation is a former drum reclamation company who operated at the Site from 1976 to 1985. The same business was operated as Northwestern Cooperage Company from the 1950's to 1976 and then operated as Great Lakes Container Corporation. EPA conducted time-critical removals completed in 1998 that consisted primarily of soil and drum removals. The EPA incurred costs of approximately $9,127,244.30. The hazardous substances at this Site consisted primarily of lead and polychlorinated biphenyls. Liability is based on the theory that the *de minimis* parties arranged for disposal of hazardous substances at the Site by shipping drums for reclamation coated with paint containing lead. The *de minimis* parties either admitted that they sent drums for reclamation to the Site or EPA had separate evidence to prove that *de minimis* parties sent drums for reclamation to the Site.

The settlements have been approved by the U.S. Department of Justice because the response costs in this matter exceed $500,000.00. Total past costs are $8,733,482.70 and future costs will include costs of litigation for recovering costs against remaining parties. This settlement is being offered to those parties who are liable for no more than one-quarter a percent (.25%) of EPA's past costs at the Site. The majority of *de minimis* parties are each required to pay $4,839.44 or $5,133.72 depending on whether the party was required to pay prejudgment interest. Other settlements made for six parties *de minimis* varied from $3,794.19 to $22,856.56 because more volume-specific information was available for them allowing EPA to refine the calculation. The amount and toxicity of hazardous substances contributed by these parties were minimal as compared to other parties' shares of hazardous substances. The EPA determined these amounts to be the *de minimis* parties' fair share of liability based on the amount of hazardous substances generated and disposed of at the Site and the volume of waste contributed by each of the parties. These settlements include contribution protection from lawsuits by other potentially responsible parties as provided for under Section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5).

The *de minimis* settlement provides that EPA covenants not to sue the *de minimis* parties for response costs at the Site or for injunctive relief pursuant to Sections 106 and 107 of CERCLA and section 7003 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6973. The settlement contains a reopener

clause which nullifies the covenant not to sue if any information becomes known to EPA that indicates that the parties no longer meet the criteria for a *de minimis* settlement set forth in Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A). The covenant not to sue does not apply to the following matters:

(a) Claims based on a failure to make the required payment;

(b) Claims based on the future arrangement for disposal or treatment of any hazardous substance, pollutant, or contaminant at the Site after the effective date of the *de minimis* settlement;

(c) Criminal liability; or

(d) Liability for damages or injury to, destruction of, or loss of the natural resources and for the costs of any natural resource damage assessments.

The *de minimis* settlements will become effective upon the date which the EPA issues a written notice to the parties that the statutory public comment period has closed and that comments received, if any, do not require modification, of or EPA withdrawal from the settlement.

Dated: April 24, 2002.

William Rice,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VII.

[FR Doc. 02–11453 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0012; FRL–6836–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 16, 2002 to March 31, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket control number OPPT–2002–0012 and the specific PMN number, must be received on or before June 7, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPT–2002–0012 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' '' Regulations and Proposed Rules, and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPT–2002–0012. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPT–2002–0012 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in

electronic form must be identified by docket control number and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 16, 2002 to March 31, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 55 PREMANUFACTURE NOTICES RECEIVED FROM: 03/16/02 TO 03/31/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0456	03/18/02	06/16/02	CIBA Specialty Chemicals Corp., Textile Effects	(S) Exhaust dyeing of polyamide fibers	(G) Naphthalenesulfonic acid amino halo substituted triazin azo substituted phenyl sodium salt
P–02–0457	03/18/02	06/16/02	Alberdingk Boley Inc	(G) Industrial coatings	(G) Oxyalkylpropanoic acid, polymer with dimethylcarbonate, 1,2-ethanediamine, 1,6-hexanediol and 1,1′-methylenebis[4-isocyanatocyclohexane]
P–02–0458	03/18/02	06/16/02	CBI	(G) Component of lubricating composition for finishing product of fiber and yarn	(G) Fatty acid, polyoxyethylene-alkyl ether, ester
P–02–0459	03/18/02	06/16/02	Solutia Inc.	(S) Catalyst for industrial coatings	(G) Phosphoric acid ester
P–02–0460	03/19/02	06/17/02	CBI	(S) Printing press cleanup, mainly newsprint; in lithographic ink varnishes; lubricants in metalworking fluids	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, mixed esters with pentaerythritol and tall-oil fatty acids
P–02–0461	03/20/02	06/18/02	Apex Advanced Technologies, LLC	(S) Lubricant/surface agent for powder metal forming; high-temperature surface agent for an organic polymeric binder used in metal injection molding	(S) Hexanoic acid, 2-ethyl-, compound with guanidine (1:1)
P–02–0462	03/20/02	06/18/02	Apex Advanced Technologies, LLC	(S) Lubricant/surface agent for powder metal forming; high-temperature surface agent for an organic polymeric binder used in metal injection molding	(S) Octadecanoic acid, compound with guanidine (1:1)

I. 55 PREMANUFACTURE NOTICES RECEIVED FROM: 03/16/02 TO 03/31/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0463	03/19/02	06/17/02	CBI	(G) Flame/fire retardant - open non-dispersive use.	(G) 1-hydroxyethane 1,1-diphosphonic acid, diamine salt
P–02–0464	03/19/02	06/17/02	CBI	(G) Flame/fire retardant - open non-dispersive use.	(G) Amino, tris (methylene phosphonic acid), triamine salt
P–02–0465	03/19/02	06/17/02	CBI	(G) Flame/fire retardant - open non-dispersive use.	(G) Diethylene triamine penta methylene penta phosphonic acid, polyamine salt
P–02–0466	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, 1-methyl-1,2-ethanediyl esters
P–02–0467	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Glycerides, $C_{16–18}$ and C_{18}-unsaturated, branched and linear mono- and di-
P–02–0468	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Amides, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, n,n-bis(hydroxyethyl), phosphates (esters)
P–02–0469	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, sodium salts
P–02–0470	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, compounds with ethanolamine
P–02–0471	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, 2-hydroxymethylethyl esters
P–02–0472	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, compounds with isopropanolamine
P–02–0473	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, 2,2-dimethyl-1,3-propanediyl esters
P–02–0474	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, potassium salts
P–02–0475	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, compds. with triethanolamine
P–02–0476	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, tetraesters with pentaerythritol
P–02–0477	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Amides, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, n-(hydroxyethyl)
P–02–0478	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, compounds with 2-amino-2-methyl-1-propanol
P–02–0479	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, compounds with diethanolamine
P–02–0480	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Amides, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, n,n-bis(hydroxyethyl)
P–02–0481	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, esters with triethanolamine
P–02–0482	03/21/02	06/19/02	The Prince Manufacturing Company	(S) One coat resin for tpo's; adhesives for tpo's	(S) 2-propenoic acid, 2-methyl-, polymers with chlorinated maleic anhydride-polypropylene reaction products, cyclohexyl methacrylate and me methacrylate
P–02–0483	03/20/02	06/18/02	CBI	(G) Acrylic polymer for use in a coating application	(G) Copolymer of alkyl acrylates and alkyl methacrylates
P–02–0484	03/21/02	06/19/02	CIBA Specialty Chemicals Corp., textile effects	(S) Exhaust dyeing of nylon fibers	(G) Substituted naphthalenedisulfonic acid amino substituted triazine reaction products with substituted alkyl amino benzenesulfonic acid
P–02–0485	03/21/02	06/19/02	CBI	(G) Highly dispersive applications	(G) Substituted mercaptan
P–02–0486	03/21/02	06/19/02	CBI	(G) Surface coating additive	(G) Organosilane resin

I. 55 PREMANUFACTURE NOTICES RECEIVED FROM: 03/16/02 TO 03/31/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0487	03/22/02	06/20/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Vinyl polymer emulsion
P–02–0488	03/22/02	06/20/02	Houghton International Inc.	(S) Paper additive/softener	(S) Imidazolium compounds, 2-($C_{15–17}$ and C_{17}-unsaturated branched and linear alkyl)-1-[2-($C_{16–18}$ and C_{18}-unsaturated branched and linear amido)ethyl]-3-ethyl-4,5-dihydro, et sulfates
P–02–0489	03/25/02	06/23/02	CBI	(G) Detergent and cleaner additive	(G) Acrylic copolymer
P–02–0490	03/25/02	06/23/02	CBI	(G) Lubricant	(G) $C_{14–18}$ fatty acids, calcium salts
P–02–0491	03/25/02	06/23/02	CBI	(G) Pigment dispersant	(G) Aromatic polyalkoxylate
P–02–0492	03/25/02	06/23/02	CBI	(G) Lubricant additive	(G) Substituted imidoalkylcarboxylic acid
P–02–0493	03/25/02	06/23/02	CBI	(G) Lubricant additive	(G) Substituted imidoalkylcarboxylic acid
P–02–0494	03/25/02	06/23/02	CBI	(G) Lubricant additive	(G) Substituted imidoalkylcarboxylic acid
P–02–0495	03/25/02	06/23/02	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Branched alkyl ester
P–02–0496	03/25/02	06/23/02	CBI	(S) Resin for coatings	(G) Acrylic resin
P–02–0497	03/25/02	06/23/02	CBI	(S) Resin for coatings	(G) Acrylic resin
P–02–0498	03/25/02	06/23/02	CBI	(S) Resin for coatings	(G) Acrylic resin
P–02–0499	03/25/02	06/23/02	CBI	(S) Resin for coatings	(G) Acrylic resin
P–02–0500	03/26/02	06/24/02	CBI	(S) The function is as a binder for roadmarking inks	(S) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated, branched and linear, polymers with glycerol, maleic anhydride and rosin
P–02–0501	03/20/02	06/18/02	Powdertech corporation	(S) Carrier for electrophotographic developer	(S) Ferrite substances, magnetoplumbite-spinel type, magnesium manganese strontium
P–02–0502	03/26/02	06/24/02	BASF Corporation	(G) Pick-up truck bed liner	(G) Ipdi prepolymer
P–02–0503	03/27/02	06/25/02	CBI	(G) Resin for coatings and inks	(G) Aromatic urethane
P–02–0504	03/27/02	06/25/02	CBI	(G) Site limited intermediate	(G) Aromatic aminoether
P–02–0505	03/27/02	06/25/02	CBI	(G) Sizing agent for paper and paperboard	(G) Mpeg-succinate
P–02–0506	03/27/02	06/25/02	CBI	(G) Open use, substrate	(G) Aromatic pyromellitic tetrapolyimide
P–02–0507	03/28/02	06/26/02	Tomen America Inc.	(S) Black coloring agent for paper	(S) 2,7-naphthalenedisulfonic acid, 4-[[4-[[7-[[2,4(2,6 or 3,5)-diaminosulfophenyl]azo]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-5-methoxy-2-methylphenyl]azo]-5-hydroxy-, tetrasodium salt
P–02–0508	03/29/02	06/27/02	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polysiloxane
P–02–0509	03/29/02	06/27/02	The Dow Chemical Company	(S) Latex binder for ceiling tile	(G) Proprietary carboxylated styrene/acrylate polymer
P–02–0510	03/29/02	06/27/02	Hercules Incorporated	(S) Surfactant	(G) Polyethylene glycol fatty acid ester

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 32 NOTICES OF COMMENCEMENT FROM: 03/16/02 TO 03/31/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0160	03/29/02	03/04/02	(G) Modified acrylate copolymer
P–00–0306	03/26/02	01/21/02	(S) Sulfuric acid, dimethyl ester, compound with alpha,alpha′,alpha″,alpha‴-[1,6-hexanediylbis (nitrilodi-2,1-ethanediyl)] tetrakis [omega-hydroxypoly(oxy-1,2-ethanediyl)]
P–00–0363	04/01/02	03/13/02	(G) Asphatic ester
P–00–0520	03/29/02	03/11/02	(G) Perfluoroalkyl epoxide
P–00–1048	03/21/02	03/06/02	(G) Alkyl metal silicate
P–00–1145	03/26/02	01/23/02	(S) Hexanoic acid, 5-methyl-
P–01–0031	03/22/02	02/28/02	(G) Amine phosphate

II. 32 NOTICES OF COMMENCEMENT FROM: 03/16/02 TO 03/31/02—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0193	03/29/02	03/14/02	(G) Styrene-methacrylate copolymer
P–01–0319	03/18/02	03/11/02	(G) Vinyl-terminated polydimethylsiloxane
P–01–0467	03/21/02	03/07/02	(G) Organic transition metal complex
P–01–0525	03/18/02	10/10/01	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-omega-hydroxy-, polymer with 1,6-diisocyanato-2,2,4-trimethylhexane and 1,6-diisocyanato-2,4,4-trimethylhexane, 2-oxepanone homopolymer 2-[(1-oxo-2-propenyl)oxy]ethyl ester-blocked
P–01–0832	03/20/02	03/11/02	(G) Polymeric acrylic ester
P–01–0946	04/01/02	01/18/02	(G) Alkoxylated fatty amine
P–01–0947	04/01/02	03/11/02	(G) Meko blocked aromatic polyisocyanate based on tdi
P–02–0036	03/20/02	02/15/02	(S) Imidazolium compounds, 2-($C_{15–17}$ and C_{17} unsaturated branched and linear alkyl)-1-ethyl-4,5-dihydro-3-(hydroxyethyl), et sulfates (salts)
P–02–0037	03/20/02	02/22/02	(S) Imidazolium compounds, 2-($C_{15–17}$ and C_{17}-unsaturated branched and linear alkyl)-1-[2-($C_{16–18}$ and C_{18} branched and linear amido)ethyl]-3-ethyl-4,5-dihydro, et sulfates
P–02–0038	03/18/02	02/20/02	(G) Modified acrylic emulsion
P–02–0070	03/20/02	02/27/02	(S) 2-propenoic acid, polymer with sodium 4-ethenylbenzenesulfonate
P–02–0081	03/29/02	03/14/02	(G) Styrene-methacrylate copolymer
P–02–0082	03/29/02	03/14/02	(G) Styrene-methacrylate copolymer
P–02–0083	03/29/02	03/14/02	(G) Styrene-methacrylate copolymer
P–02–0084	03/29/02	03/14/02	(G) Styrene-methacrylate copolymer
P–02–0085	03/29/02	03/14/02	(G) Styrene-methacrylate copolymer
P–02–0105	03/27/02	03/18/02	(S) 1,3-benzenedicarboxylic acid, 5-sulfo-, monosodium salt, polymer with 1,3, benzenedicarboxylic acid, 1,4-benzenedicarboxylic acid, 1,2-ethanediol, 2,2′-[1,2-ethanediylbis(oxy)]bis[ethanol] and 2,2′-oxybis[ethanol]
P–02–0110	03/21/02	03/12/02	(S) Tantalum, tris(n-ethylethanaminato)[2-methyl-2-propanaminato(2-)]-, (t-4)-
P–02–0122	03/27/02	03/21/02	(G) Sodium salt of a disubstituted diazo-amino-hydroxy-naphthalenedisulfonic acid
P–02–0140	03/25/02	03/13/02	(G) Acrylic copolymer polyurethane dispersion
P–02–0148	03/25/02	03/20/02	(G) Polyester resin
P–93–0512	03/27/02	02/14/02	(G) Zinc dialkyldithiocarbamate
P–94–0991	03/18/02	02/19/02	(G) Acrylic modified epoxy ester
P–96–0066	03/21/02	03/05/02	(G) Hydroxy functional polyester
P–96–0172	04/03/02	03/14/02	(G) Mono and di-amine salt carboxylate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: April 26, 2002.

Mary Louise Hewlett,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–11455 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–S

EXPORT IMPORT BANK OF THE UNITED STATES

Committee Management; Notice of Establishment

AGENCY: Export Import Bank of the United States.

ACTION: Notice of establishment of advisory committee.

SUMMARY: The Vice Chairman and First Vice President of the Export-Import Bank of the United States (''Ex-Im Bank'') has determined that the establishment of the Sub-Saharian Africa Advisory Committee (''Committee'') is necessary and in the public interest in connection with the mission of the Ex-Im Bank, pursuant to sections 2(b)(9) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(9)). This determination follows consultation with the Committee Management Secretariat, General Service Administration.

The Committee will consist of ten member who will provide advice and recommendations to Ex-Im Bank concerning programs in Sub-Saharian Africa. Ex-Im Bank will achieve balanced membership on the Committee by inviting a broad cross-section of parties with an interest in Sub-Saharian Africa to serve on the Committee.

The Committee will operate on a continuing basis.

ADDRESSES: Export Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: James Lambright, Export Import Bank of the United States at (202) 565–3515.

Dated: February 11, 2002.

James Lambright,

Designated Federal Officer.

[FR Doc. 02–11324 Filed 5–7–02; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

April 30, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0756.

Expiration Date: 01/31/2005.

Title: Procedural Requirements and Policies for Commission Processing BOC Applications for the Provision of In-Region, InterLATA Services Under

Section 271 of the Telecommunications Act of 1996.

Form No.: N/A.

Respondents: Business or other for-profit; State, Local or Tribal Government, Federal Government.

Estimated Annual Burden: 75 respondents; 250.9 hours per response (avg.).; 18,820 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In a Public Notice released March 23, 2001 (DA 01–734) the Commission set forth the procedural requirements and policies relating to FCC processing of Bell Operating Company (BOC) applications to provide in-region, interLATA services pursuant to 47 USC 271. BOCs must file applications, which provide information on which the applicant intends to rely in order to satisfy the requirement of Section 271. State regulatory commission and Department of Justice can file written consultations relating to the applications. Interested third parties may file comments and reply comments regarding the applications. See Public Notice for details of requirements. The Public Notice may be obtained from the Commission's website at *www.fcc.gov* or by calling 202–418–0500. All of the requirements are used to ensure that BOCs have complied with their obligations under the Communications Act of 1934, as amended, before being authorized to provide in-region, interLATA services pursuant to Section 271. Obligation to respond: Mandatory.

OMB Control No.: 3060–0814

Expiration Date: 03/31/2005

Title: Section 54.301, Local Switching Support and Local Switching Support Data Collection Form and Instructions.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 195 respondents; 19.42 hours per response (avg.).; 3787 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annually.

Description: Pursuant to Section 54.301, each incumbent local exchange carrier that is not a member of the NECA common line tariff, that has been designated an eligible telecommunications carrier, and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account in Section 54.301(b). (*No. of respondents:* 157; hours per response; 24 hours; *total annual burden:* 3768 hours). Average schedule companies are required to file information pursuant to Section 54.301(f). (*No. of respondents:* 38; *hours per response:* .5 hours; *total annual burden:* 19 hours). Both respondents must provide true-up data. Carriers must file this information within 12 months after the initial report. The universal service administrator, USAC, has developed a form to collect the information specified in the Commission's rules. Copies of the forms and instructions may be obtained from the Administrator by calling 202–776–0200. Copies of the forms and instructions may also be downloaded from the Administrator's web page (*www.universalservice.org*). The data is necessary to calculate the average unseparated local switching revenue requirement. This revenue requirement is necessary to calculate the amount of local switching support that carriers will receive. Obligation to respond: Mandatory. Note that this is a re-issuance of the notice of OMB approval that appeared in the **Federal Register** on April 12, 2002. The notice failed to mention the local switching support forms and instructions.

OMB Control No.: 3060–0856

Expiration Date: 04/30/2005

Title: Universal Service—Schools and Libraries Universal Service Program Reimbursement Forms

Form No.: FCC Forms 472, 473 and 474.

Respondents: Not-for-profit institutions; business or other for-profit.

Estimated Annual Burden: 61,800 respondents; 1.42 hours per response (avg.); 88,050 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion, annually; third party disclosure.

Description: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries pursuant to the Telecommunications Act of 1996. The Universal Service Administrative Company (USAC) administers the telecommunications universal service programs. The following forms are necessary to enable USAC's Schools and Libraries Division (SLD), to pay universal service support to service providers who provide discounted service to eligible schools, libraries, and consortia of those entities. FCC Form 472, Billed Entity Applicant Reimbursement Form—The purpose of FCC Form 472 is to establish the process and procedure for an eligible entity to seek reimbursement from the service provider for the discounts on services paid in full since the actual service start date of the discounts as reported in the applicant's Form 486 Receipt of Services Confirmation Form, Column (E) of Block 2. Once the fund administrator processes the FCC Form 472, a notification will be sent to the service provider and applicant advising them of the approved amount of discounts. After receiving an invoice from the service provider, together with an FCC Form 474, the fund administrator will deliver the amount of the approved reimbursement to the service provider, and the service provider shall then remit that amount to the applicant. (*No. of respondents:* 50,000; *hours per response:* 15. hours; *total annual burden:* 75,000 hours). FCC Form 473—Service Provider Annual Certification Form—The purpose of FCC Form 473 is to establish the process and procedure for a service provider to confirm the accuracy of their Invoice Forms. This form is part of the procedure established to enable service providers to seek reimbursement for the costs of discounts they provided to eligible entities on eligible services as defined under the FCC's rules governing the schools and libraries universal service support mechanism pursuant to the Telecommunications Act of 1996. (*No. of respondents:* 9300; *hours per response:* 1 hour; *total annual burden:* 9300 hours). FCC Form 474, Service Provider Invoice Form—The purpose of FCC Form 474, is to establish the processing and procedure for a service provider to seek reimbursement for the costs of discounts it provided to eligible entities on eligible services as defined under the FCC's rules governing the schools and libraries universal service support mechanism pursuant to the Telecommunications Act of 1996. The Service Provider Invoice Form is also used by the fund administrator, the SLD, to assure that the dollars paid out by the fund administrator on a funding request number (FRN) do not exceed that FRN. An FRN is a service or group of services for which funding was requested by an applicant and for which the fund administrator issued a Funding Commitment Decision Letter to both the applicant and service provider. The letter identifies the amount of discounts that have been approved for each FRN and the SPIN for the service provider that is authorized to provide the discounts. FCC Form 474 verifies that each service provider has provided discounted services within the current funding year for which it submits an invoice to the SLD and assures that

invoices submitted from service providers for the costs of discounted eligible services do not exceed the funding year cap for each FRN. (*No. of respondents:* 2500; *hours per response:* 1.5 hours; *total annual burden:* 3750 hours). All of the forms are necessary to implement the congressional mandate for universal service. FCC Forms 473 and 474 verify that each service provider has provided discounted services within the current funding year for which it submits an invoice to the SLD and assure that invoices submitted from service providers for the costs of discounted eligible services do not exceed the funding year cap for each FRN. FCC Form 472 allows eligible entities to seek reimbursement from the service providers. Call SLD at 1–888–203–8100 for questions concerning or for copies of FCC Forms 472, 473, or 474. Copies of the forms are also available via the internet at *www.universalservice.org. Obligation to respond:* Required to obtain or retain benefits.

Public reporting burdens for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–11390 Filed 5–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 02–1026]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 3, 2002, the Commission released a public notice announcing the May 21–22, 2002, 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: The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, May 21, 2002, from 8:30 a.m. until 5 p.m., and on Wednesday, May 22, 2002, from 8:30 a.m., until 12 noon (if required).

ADDRESSES: The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov.* The address is: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: May 3, 2002.

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. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Tuesday, May 21, 2002

1. Announcements and Recent News
2. Approve Minutes
   —Meeting of March 12, 2002
3. Report of North American Numbering Plan Administrator (NANPA)
   —NPA Exhaust Projection
   —NANP Exhaust Assumptions
   —CO Code Activity
   —Intermediate Numbers
   —Returned Codes with Ported TNs
4. Report of NANP Expansion/Optimization IMG
5. Status of Industry Numbering Committee activities
6. Report of NANPA Oversight Working Group
   —Evaluation of survey results
   —Determine which industry association had best survey participation rate: each association should make its claim (award at July meeting)
7. Report of the Local Number Portability Administration (LNPA) Working Group

Wireless Number Portability Operations (WNPO) Subcommittee

   —WNPO/CTIA: Status of meeting the Nov. 24, 2002 pooling and porting deadline
8. Report of National Thousands-Block Pooling Administrator
9. Report of NAPM LLC
10. Report from NBANC
11. Report of Cost Recovery Working Group
12. Report of E-Conferencing Subcommittee
13. Steering Committee
   —Table of NANC Projects
14. Report of Steering Committee
15. Action Items
16. Public Participation (5 minutes each)
17. Other Business

Adjourn no later than 5 p.m.

Wednesday, May 22, 2002 (if required)

18. Complete any unfinished Agenda Items
19. Other Business

Adjourn (no later than 12 Noon)

Next Meeting: July 17–18, 2002

Federal Communications Commission.

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 02–11469 Filed 5–7–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2548]

Petitions for Reconsideration of Action in Rulemaking Proceeding

April 30, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 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 May 23, 2002. 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 has expired.

Subject: Amendment of part 22 of the Commission's rules to provide for filing and processing of applications for unserved areas in the cellular service and to modify other cellular rules (CC Docket No. 90–6).

Cellular service and other commercial mobile radio services in the gulf of Mexico (WT Docket No. 97–112).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–11391 Filed 5–7–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 67 FR 22084, May 2, 2002.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 A.M., Wednesday, May 8, 2002.

CHANGE OF MEETING TIME: Notice is hereby given that the Board of Directors meeting scheduled for 10 a.m. on Wednesday, May 8, 2002 has been changed to 2 p.m. on Wednesday, May 8, 2002.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 02–11548 Filed 5–3–02; 5:08 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011800.

Title: Dole Ocean Cargo Express/Maersk Sealand Slot Charter Agreement.

Parties: A.P. Møller-Maersk Sealand, Dole Ocean Cargo Express, Inc.

Synopsis: Under the proposed agreement, Maersk Sealand will be chartering space to Dole in the trade between Port Everglades, Florida, and Puerto Limon, Costa Rica.

Agreement No.: 011801.

Title: Maersk Sealand/P&O Nedlloyd U.S. East Coast/Indian Subcontinent Slot Charter Agreement.

Parties: A.P. Møller-Maersk Sealand, P&O Nedlloyd Limited/P&O Nedlloyd BV.

Synopsis: Under the proposed agreement, Maersk Sealand will charter space to P&O Nedlloyd in the trade between U.S. East Coast ports and Mediterranean, Mideast, and Indian Subcontinent ports. The parties request expedited review.

Agreement No.: 011802.

Title: The Evergreen/Lloyd Triestino/Hatsu Marine Alliance-WTSA Bridging Agreement.

Parties:

Evergreen Marine Corp. (Taiwan) Ltd.

Lloyd Triestino Di Navigazione S.p.A.

Hatsu Marine Limited, American President Lines, Ltd.

APL Co. PTE Ltd.

A.P. Moller-Maersk Sealand,

Cosco Container Lines Ltd.,

Hanjin Shipping Company, Ltd.,

Hapag-Lloyd Container Linie GmbH

Hyundai Merchant Marine Co., Ltd.

Kawasaki Kisen Kaisha, Ltd.

Mitsui O.S.K. Lines, Ltd.

Nippon Yusen Kaisha

Orient Overseas Container Line Limited

P&O Nedlloyd B.V.

P&O Nedlloyd Limited

Yangming Marine Transport Corp.

Synopsis: The proposed agreement authorizes a ''bridge'' agreement between the Evergreen/Lloyd Triestino/Hatsu Marine Alliance Agreement and the Westbound Transpacific Stabilization Agreement (''WTSA''). The agreement will permit Lloyd Triestino and Hatsu, as well as their affiliate Evergreen, to discuss, share information, and reach voluntary agreements with WTSA and its members.

Agreement No.: 201133.

Title: TraPac Terminal Link of California Terminal Agreement.

Parties:

CMA CGM, S.A.

Trans Pacific Container Service Corporation

Terminal Link, S.A.

TraPac Terminal Link of California LLC.

Synopsis: Under the proposed agreement, the parties will discuss, agree, organize, and operate as a marine terminal operator through or with a limited liability company in Los Angeles County.

By Order of the Federal Maritime Commission.

Dated: May 3, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–11460 Filed 5–7–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 22, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Gary F. Pribyl, Cedar Rapids, Iowa, as trustee to vote shares of Herky Hawk Financial Corp., Monticello, Iowa, and thereby indirectly retain voting shares of Citizens State Bank, Monticello, Iowa. Herky Hawk Financial Corp., also has applied to merge with Biggsville Financial Corporation, Biggsville, Illinois, and thereby acquire 100 percent of the outstanding voting shares of First State Bank, Biggsville, Illinois, and to acquire 100 percent of the outstanding voting shares of Casey State Bank, Casey, Illinois, and New Vienna Savings Bank, New Vienna, Iowa, pursuant to Section 3 of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, May 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–11345 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 23, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Mack V. Colt and Sara C. Colt, both of Prairie Village, Kansas; to acquire control of Gower Bankshares, Inc., Gower, Missouri, and thereby indirectly acquire voting shares of The Farmers Bank of Gower, Gower, Missouri.

Board of Governors of the Federal Reserve System, May 3, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–11482 Filed 5–7–02; 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 June 3, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. MOW/RPW II, Ltd., Victoria, Texas; to become a bank holding company by acquiring 15.66 percent of the voting shares of FVNB Corp., Victoria, Texas, and thereby indirectly acquire voting shares of FVNB Delaware Corp., Wilmington, Delaware, First Victoria National Bank, Victoria, Texas, and Citizens Bank of Texas, National Association, New Waverly, Texas.

2. MOW/RPW Management II, Inc., Victoria, Texas; to become a bank holding company by serving as the corporate general partner of and holding a 0.10 percent interest in MOW/RPW II, Ltd., Victoria, Texas.

Board of Governors of the Federal Reserve System, May 3, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–11483 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 22, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Black Diamond Financial Group, Inc., Tampa, Florida; to engage *de novo* through its subsidiary, Black Diamond Wealth Management, Inc., Tampa, Florida, in investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, May 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–11344 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 02-10621) published on pages 21242 and 21243 of the issue for Tuesday, April 30, 2002.

Under the Federal Reserve Bank of Richmond heading, the entry for Royal Bank of Canada, Montreal Canada; RBC Centura Banks, Inc., Rocky Mount, North Carolina, and peach Acquisition Sub, Inc., Atlanta, Georgia, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Royal Bank of Canada, Montreal, Canada; and RBC Centura Banks, Inc., Rocky Mount, North Carolina; to acquire Eagle Bancshares, Inc., Tucker, Georgia, and thereby indirectly acquire Tucker Federal Bank, Tucker, Georgia, and thereby engage in operating a savings association; Eagle Bancshares Capital Group, Inc., Tucker, Georgia, and thereby engage in lending and lending-related activities; Prime Eagle Mortgage Corporation, Tucker, Georgia, and thereby engage in lending and lending-related activities; Eagle Service Corporation, Tucker, Georgia, and thereby engage in discount brokerage, lending and lending-related activities; TFB Management, Inc., TFB

Management (NC), Inc., and TFB Management (RE), Inc., all of Wilmington, Delaware, and thereby engage in lending and lending-related activities; and Hampton Oaks, LLP., Tucker, Georgia, and thereby engage in community development activities, pursuant to §§ 225.28(b)(1); 225.28(b)(2)(ii); 225.28(b)(2)(iv); 225.28(b)(4)(ii); 225.28(b)(7)(i), and 225.28(b)(12)(i) of Regulation Y.

Comments on this application must be received by May 24, 2002.

Board of Governors of the Federal Reserve System, May 3, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–11484 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. South Central Bancshares, Inc., Russellville, Kentucky; to acquire Citizens Corporation, Franklin, Tennessee, and thereby engage in making, acquiring, brokering, or servicing loans or other extensions of credit, and Citizens and Peoples Insurance, Inc., Grant, Alabama, and thereby engage in general insurance agency services in a town of less than 5,000 in population, pursuant to §§ 225.28 (b)(1), (b)(4), and (b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, May 3, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.02–11485 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 021 0067]

Solvay S.A.; 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 June 3, 2002.

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 below.

FOR FURTHER INFORMATION CONTACT: Richard Liebeskind, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2441.

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 May 2, 2002), on the World Wide Web, at ''*http://www.ftc.gov/os/2002/05/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 email messages directed to the following email 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 To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Solvay S.A. (''Solvay'' or the ''Respondent''). The Consent Agreement is intended to resolve anticompetitive effects stemming from Solvay's proposed acquisition of Ausimont S.p.A. (''Ausimont'') from Italenergia S.p.A. The Consent Agreement includes a proposed Decision and Order (the ''Order'') which would require Respondent to divest Solvay's U.S. polyvinylidene fluoride (''PVDF'') operations (the ''Solvay Fluoropolymers Business''), including its Decatur, Alabama plant and its interest in the Alventia LLC joint venture, which manufacturers the main raw material for PVDF. The Consent Agreement also includes an Order to Hold Separate and Maintain Assets which requires Respondents to preserve the Solvay Fluoropolymers Business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Consent Agreement, if finally accepted by the Commission, would settle charges that Solvay's proposed acquisition of Ausimont may have substantially lessened competition in two markets: PVDF, and melt-processible PVDF. The Commission has reason to believe that Solvay's proposed acquisition of Ausimont would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the Commission's proposed complaint, there are two relevant lines of commerce in which to analyze the effects of Solvay's proposed acquisition of Ausimont: the production and sale of all graded of PVDF; and the production and sale of melt-processible grades of PVDF. PVDF is a fluoropolymer used in a wide variety of applications, including highly durable architectural coatings, wire and cable jacketing, fiber optic raceways, chemical processing equipment, semiconductor manufacturing equipment, and other miscellaneous applications. The melt-processible grades include all PVDF grades except those used in coatings.

The proposed complaint alleges that the markets for PVDF and melt-processible PVDF are highly concentrated, and that the proposed acquisition of Ausimont by Solvay would increase concentration in those markets. The proposed complaint also alleges hat entry into the relevant markets would not be timely, likely, or sufficient to deter or offset the acquisition's adverse competitive effects. Producers employ proprietary technology to manufacture PVDF, and new entry would likely required entry into the production of VF_2, which is a necessary raw material to produce PVDF. Entry would likely take as long as three years.

The proposed complaint alleges that Solvay's acquisition of Ausimont would lessen competition by making coordinated interaction among the remaining producers more likely. The proposed compliant alleges that the acquisition would leave only two significant PVDF producers, that reliable pricing information is available from customers, and that the large number of customers in the industry would make cheating on any coordination easy to detect. The proposed complaint further alleges that Ausimont has been expanding its sales of melt-processible PVDF, and that the acquisition would limit the growing competition between Solvay and Ausimont in melt-processing grades of PVDF.

The proposed Order is designed to remedy the anticompetitive effects of the acquisition in the market for PVDF and melt-processible PVDF by requiring the divestiture of Solvay's fluoropolymers business in the U.S. That business includes Solvay's PVDF manufacturing plant in Decatur, Alabama, and its interest in Alventia LLC (''Alventia''), a VF_2 manufacturing joint venture. As part of the divestiture, the proposed Order would also require Solvay to provide to the Acquirer of the Solvay PVDF business a royalty-free license to Solvay's intellectual property, including detailed information about Solvay's production of PVDF at both Solvay's two plants, in Alabama and France. The scope of the license would allow the acquirer to manufacture or sell PVDF anywhere in the world. The proposed Order would further require the Respondent to divest other assets related to the Solvay PVDF business, including real property, customer lists, contracts, patents, inventories, and other intangible assets and goodwill used to operate the business.

The proposed Order requires that Respondents divest the Solvay Fluoropolymers Business to an acquirer approved by the Commission within one-hundred and eighty (180) days from the date upon which Solvay consummates its acquisition of Ausimont. The proposed Order also provides that if Solvay does not complete its divestiture within that period, the Commission may appoint a Divestiture Trustee to divest the Solvay Fluoropolymers Business in a manner acceptable to the Commission, or may require divestiture of Ausimont's PVDF business, including its VF_2 and PVDF manufacturing operations in Thorofare, New Jersey. The proposed Order also provides for the Commission to appoint a Monitor Trustee to oversee Solvay's compliance with the terms of the proposed Order and the divestiture agreements that Solvay enters pursuant to the proposed Order.

The proposed Order to Hold Separate and Maintain Assets that it also included in the Consent Agreement requires that Respondent hold separate and maintain the viability of Solvay's PVDF business as a viable and competitive operation, and to maintain the viability of Ausimont's PVDF business, until either business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between Respondent and the Solvay PVDF business (except as otherwise provided in the Order to Hold Separate and Maintain Assets) and measures designed to prevent interim harm to competition in the PVDF market pending divestiture. The Order to Hold Separate and Maintain Assets provides for the Commission to appoint a Hold Separate Trustee who is charged with the duty of monitoring Respondent's compliance with the Order to Hold Separate and Maintain Assets.

The proposed Order requires Respondent to provide the Commission, within thirty (30) days from the date the Order becomes final, a verified written report setting forth in detail the manner and form in which the Respondent intends to comply, is complying, and has complied with the provisions relating to the proposed Order and the Order to Hold Separate and Maintain Assets. The proposed Order further requires Respondent to provide the Commission with a report of compliance with the Order every thirty (30) days after the date when the Order becomes final until the divestiture has been completed.

The proposed Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement's proposed Order and Order to Hold Separate and Maintain Assets.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Assets or in any way to modify the terms of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Assets.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–11386 Filed 5–7–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in

compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1

Protection of Human Subjects: Quality Assurance Self-Assessment Tool—NEW—The Office of Human Research Protections is establishing a new Quality Improvement Program (QIP) for human subjects protection programs of institutions and independent Institutional Review Boards to cooperatively work toward the strengthening of these programs. A major component of QIP will be the Quality Assurance Self-Assessment Tool, a voluntary mechanism which may be used by institutions to assure compliance with Federal regulations and assess a program's strengths and weaknesses. The information will be used by OHRP to identify technical assistance needs. *Respondents:* Businesses or other for-profit, non-profit institutions; State, Local or Tribal governments; Federal government; *Annual Number of Respondents:* 720; *Burden per Response:* 2 hours; *Total Burden:* 1,440 hours.

Please send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: April 26, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–11428 Filed 5–7–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 11¾% for the quarter ended March 31, 2002. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 29, 2002.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 02–11429 Filed 5–7–02; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Food and Drug Administration

National Institutes of Health

A Public Health Action Plan To Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report

The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH) announce an open meeting concerning antimicrobial resistance.

Name: A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report.

Time and Date: 10 a.m.–5 p.m., June 26, 2002.

Place: Holiday Inn Select, Versailles Ballroom, 8120 Wisconsin Avenue, Bethesda, Maryland, 20814. (Toll-Free: 1–877–888–3001; Tel: 1–301–652–2000; Fax: 1–301–652–4525).

Status: Open to the public, limited only by the space available.

Purpose: To present the first annual report of progress by Federal agencies in accomplishing activities outlined in *A Public Health Action Plan to Combat Antimicrobial Resistance* (*Part I: Domestic Issues*) and solicit comments from the public regarding the annual report. The *Action Plan* serves as a blueprint for activities of Federal agencies to address antimicrobial resistance. The focus of the plan is on domestic issues.

Matters To Be Discussed: The agenda will consist of welcome, introductory comments, followed by discussion of each focus area in sequential plenary sessions lasting about 75 minutes each. The four focus areas are: Surveillance, Prevention and Control, Research, and Product Development. Session leaders will give a 10 to 15 minute overview at the beginning of each session, then open the meeting for general discussion.

Comments and suggestions from the public for Federal agencies related to each of the focus areas will be taken under advisement by the Antimicrobial Resistance Interagency Task Force. The agenda does not include development of consensus positions, guidelines, or discussions or endorsement of specific commercial products.

The Action Plan, Annual Report, and meeting agenda are available at *http://www.cdc.gov/drugresistance.* The public meeting is sponsored by the CDC, FDA, and NIH in collaboration with seven other Federal agencies and departments involved in developing and writing *A Public Health Action Plan to Combat Antimicrobial Resistance* (*Part I: Domestic Issues).*

Agenda items are subject to change as priorities dictate.

Limited time will be available for oral questions, comments, and suggestions from the public. Depending on the number wishing to comment, a time limit of three minutes may be imposed. In the interest of time, visual aids will not be permitted, although written material may be submitted for subsequent review by the Task Force. Written comments and suggestions from the public are encouraged and should be received by the contact person or email listed below prior to the opening of the meeting or no later than the end of July 2002.

Persons anticipating attending the meeting are requested to send written notification by June 22, 2002, including name, organization (if applicable), address, phone, fax, and e-mail address.

CONTACT PERSON FOR MORE INFORMATION: Vickie Garrett, Antimicrobial Resistance, Office of the Director, NCID, CDC, Mailstop C–12, 1600 Clifton Road, NE, Atlanta, GA 30333; telephone 404–639–2603; fax 404–639–4197; or e-mail *aractionplan@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 11, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

Dated: April 16, 2002.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

Dated: April 26, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11361 Filed 5–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02127]

Grants for Acute Care, Rehabilitation and Diability; Prevention Research; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a grant program for Grants for Acute Care, Rehabilitation and Disability Prevention Research. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the heading, ''Program Requirements.''

2. Build the scientific base for the prevention and control of injury and disability.

3. Encourage professionals from a wide spectrum of disciplines such as medicine, health care, public health, health care research, behavioral and social sciences, and others, to undertake research to prevent and control injuries.

4. Encourage investigators to propose research that involves intervention development and testing as well as research on methods, to encourage individuals, organizations, or communities to adopt and maintain effective intervention strategies.

B. Eligible Applicants

Applications may be submitted by public and private non-profit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private non-profit and for-profit organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, and women-owned businesses.

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.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration. The following are applicant requirements:

1. 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.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury control research in peer-reviewed journals.

3. Effective and well defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

4. The ability to carry out injury control research projects as defined under Attachment 2 (1.a–c). The attachment is contained in the application package.

5. The overall match between the applicant's proposed theme and research objectives, and the program priorities as described under the heading, ''Program Requirements.''

C. Availability of Funds

Approximately $500,000 is available in FY 2002 to fund approximately two awards.

It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. The maximum funding level will not exceed $250,000 (including both direct and indirect costs) per year or $750,000 for the three-year project period.

Consideration will also be given to current grantees who submit a competitive supplement requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant, and are based on the availability of end of fiscal year funds.

Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Continuation awards within the project period will be made based on satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops (travel expenses for this annual one day meeting should be included in the applicant's proposed budget), and the achievement of work plan milestones reflected in the continuation application.

Note: Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for either Research Activity 1 or Research Activity 2:

1. Develop and evaluate protocols that provide onsite interventions in acute care settings or linkages to off-site services for patients at risk of injury or psychosocial problems following injury (See Attachment 3 in the application kit).

2. Develop and apply methods for calculating population-based estimates of the incidence, costs, and long-term

consequences of nonhospitalized traumatic brain injury (TBI) and spinal cord injury (SCI) (See Attachment 3 in the application kit).

E. Content

Letter of Intent (LOI)

A LOI is optional for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two pages, double-spaced, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to enable CDC to determine the level of interest in the announcement and should include the following information: Name of the principal investigator and a brief description of the scope and intent of the proposed research work.

Application

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should consist of, at a minimum, a plan, objectives, methods, evaluation, and budget. Applications should follow the PHS–398 (Rev. 5/2001) application and Errata Sheet (*see* Attachment 4 in the application kit), and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in ''Healthy People 2010'' and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff, regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries within three to five years from project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: On the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Letter of Intent (LOI)

On or before May 31, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5 PM Eastern Time, June 14, 2002, submit the application to: Technical Information Management-PA02127, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: letters of intent and applications shall be considered as meeting the deadline if they are received before 5 PM Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received 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, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Application

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the ''Eligible Applicants'' Section (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/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.

If end of fiscal year funds are available to support research work or activities not previously approved by the IRGRC, competitive supplemental grant awards may be made. Competitive

supplement applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. *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?

b. *Approach.* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. *Innovation.* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator.* Is the principal investigator appropriately trained and well-suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

e. *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? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. *Ethical Issues.* What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.,* suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (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.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

i. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

ii. The proposed justification when representation is limited or absent.

iii. A statement as to whether the design of the study is adequate to measure differences when warranted.

iv. 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.

g. *Study Samples.* Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination.* What plans have been articulated for disseminating findings?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Committee (SPRS) from the ACIPC. The ACIPC Federal ex officio members 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). Federal *ex officio* members 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 Federal *ex officio* members 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 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 delineated in the National Research Agenda.

d. Budgetary considerations.

3. *Continued Funding.* Continuation awards made after FY 2002, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress report,
2. A financial status report, no more than 90 days after the end of the budget period,
3. Final financial report and performance report, no more than 90 days after the end of the project period,
4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific [laymen's] terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, *etc.* The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (*e.g.,* state injury prevention program staff, community groups, public health injury prevention practioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each *see* Attachment 1 of the application kit.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirement
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, and section 391(a) [42 U.S.C. 280(b)] of the Public Service Health Act, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding Opportunities'' then ''Grants and Cooperative Agreements.''

For business management technical assistance, contact: Van A. King, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146. Telephone number (770) 488–2751. e-mail address: *vbk5@cdc.gov.*

For program technical assistance, contact: Sharon Martin, Deputy Director, Office of Research Grants, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–58, Atlanta, GA 30341–3724. Telephone number: (770) 488–4265. e-mail address: *sat5@cdc.gov.*

Dated: May 2, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11360 Filed 5–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02126]

Grants for Dissemination Research of Effective Interventions To Prevent Unintentional Injuries; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for Grants for Dissemination Research of Effective Interventions to Prevent Unintentional Injuries. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the heading, ''Program Requirements.''
2. Build the scientific base for the prevention of unintentional injuries.
3. Encourage professionals from a wide spectrum of disciplines such as medicine, health care, public health, health care research, behavioral and social sciences, and others, to undertake research to prevent and control injuries.
4. Encourage investigators to propose research that involves the development and testing of dissemination strategies to stimulate individuals, organizations, or communities to adopt and maintain effective interventions.
5. Advance the practice of public health and policy in order to promote health and prevent injury with findings from this these projects.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions and institutes, hospitals, managed care organizations, other public and private nonprofit and for-profit organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small minority, and women-owned businesses.

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.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration. The following are applicant requirements:

1. 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.
2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury

prevention and dissemination research in peer-reviewed journals.

3. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

4. The ability to carry out injury prevention and dissemination research projects as defined under Attachment 2 (1.a–d). The attachment is contained in the application kit.

5. The overall match between the applicant's proposed theme and research objectives, and the program interests as described under the heading, ''Program Requirements.''

C. Availability of Funds

Approximately $500,000 is available in FY 2002 to fund approximately 2–3 awards for unintentional injury research grant projects addressing dissemination research on home, community, sports/recreation or transportation injury prevention interventions. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12 month budget period within a project period of up to three years. The maximum funding level for each project will not exceed $250,000(including both direct and indirect costs) per year or $750,000 for a three year project period. The National Center for Injury Prevention and Control (NCIPC) will also consider applications with project periods of one and two years, and for smaller funding amounts.

Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Continuation awards within the project period will be made based on satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops (travel expenses for this annual one day meeting should be included in the applicant's proposed budget), and the achievement of work plan milestones reflected in the continuation application.

Note: Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

D. Program Requirements

The NCIPC is soliciting research applications that will help expand and advance our understanding of dissemination practices that maximize the uptake, use, and maintenance of effective injury prevention practices and policies. In conducting activities to achieve the purpose of this program, the recipient will be responsible for either Research Activity 1 or Research Activity 2:

1. Evaluate barriers and facilitators to increase the dissemination and use of effective interventions to prevent injuries at home, in the community, in motor vehicle transportation or in sports and recreation (See Attachment 3 entitled ''Programmatic Interests'' in the application kit for additional information).

2. Design and test theory-based strategies for dissemination of effective interventions (See Attachment 3 entitled ''Programmatic Interests'' in the application kit for additional information).

E. Content

Letter of Intent (LOI)

A LOI is optional for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two pages, double-spaced, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to enable CDC to determine the level of interest in the announcement and should include the following information: name of the principal investigator and a brief description of the scope and intent of the proposed research work.

Applications

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should consist of, at a minimum, a plan, objectives, methods, evaluation, and budget. Applications should follow the PHS–398 (Rev. 5/2001) application and Errata Sheet (see Attachment 4 in the application kit), and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in ''Healthy People 2010'' and should seek creative approaches that will contribute to a national program for injury prevention and control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each person will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries within three to five years from the project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups.

To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Letter of Intent (LOI)

On or before May 31, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata

Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm* Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5:00 PM Eastern Time, June 14, 2002, submit the application to: Technical Information Management—PA02126, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Letters of intent and applications shall be considered as meeting the deadline if they are received before 5:00 PM Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received 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, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified at of their failure to meet the submission requirements.

G. Evaluation Criteria

Application

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the Eligible Applicants Section (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/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.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. A committee of no less that three reviewers with appropriate expertise will review all applications for scientific merit using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. *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?

b. *Approach*. Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. *Innovation*. Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator*. Is the principal investigator appropriately trained and well-suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

e. *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? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. Ethical Issues. What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, e.g., suspected child abuse? Does the application adequately address the requirements of 45 CFR 46 for the protection of human subjects? (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.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: i. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

ii. The proposed justification when representation is limited or absent.

iii. A statement as to whether the design of the study is adequate to measure differences when warranted.

iv. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or communities and recognition of mutual benefits.

g. *Study Samples.* Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination.* What plans have been articulated for sharing the research findings?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Committee (SPRS) from the ACIPC. The ACIPC Federal ex officio members 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). Federal ex officio members 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 Federal ex officio members 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 the factors that the SPRS considered.

The 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'' and the Institute of Medicine report, ''Reducing the Burden of Injury.''

d. Budgetary considerations.

3. Continued Funding

Continuation awards made after FY 2002, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress reprts.

2. A financial status report, no more than 90 days after the end of the budget period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific [laymen's] terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (e.g., state injury prevention program staff, community groups, public health injury prevention practioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each see Attachment 1 of the application kit.

AR–1 Human Subjects Certification

AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research

AR–3 Animal Subjects Requirement

AR–9 Paperwork Reduction Requirements

AR–10 Smoke-Free Workplace Requirement

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities

AR–21 Small, Minority, and Women-owned Business

AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 (a) [42 U.S.C. 241(a)] of the Public Health Service Act and section 391 (a) [42 U.S.C. 280(b)] of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on ''Funding Opportunities'' then ''Grants and Cooperative Agreements.''

For business management technical assistance, contact:

Van A. King, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone number (770) 488–2751, e-mail address: vbk5@cdc.gov.

For program technical assistance, contact: Sharon Martin, Deputy Director, Office of Research Grants, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–58, Atlanta, GA 30341–3724, Telephone number: (770) 488–4265, e-mail address: sat5@cdc.gov.

Dated: May 2, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11362 Filed 5–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02073]

Traumatic Brain Injury(TBI) Follow-Up Registry and Surveillance of TBI in the Emergency Department (ED); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) and the Social Security Administration (SSA), announce the availability of fiscal year (FY) 2002 funds for a cooperative agreement for a TBI Follow-up Registry and Surveillance of TBI in the ED. This Program addresses the ''Healthy People 2010'' focus area for Injury and Violence Prevention. For a copy of ''Healthy People 2010'', visit the Internet site: *http://www.health.gov/healthypeople.*

The purpose of this program is to fund a follow-up registry that collects and analyzes information on outcomes of TBI and develop existing surveillance of TBI in the ED. The goal of both programs is to produce data of demonstrated quality that will be useful to State injury control programs and other State agencies, and document the longer term effects of TBI, including disability.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian Tribal Governments, Indian Tribes, or Indian Tribal organizations, small, minority, and women-owned businesses.

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.

C. Availability of Funds

Approximately $565,000 (including direct and indirect costs) is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 1, 2002 and will be made for a 12 month budget period, within a project period of up to three years. Funding estimates may change.

A continuation award within the approved project period will be on the basis of satisfactory progress as evidenced by required reports, the achievement of work plan milestones, and the availability of Federal funds.

1. Use of Funds

Funds awarded may not be used to supplant funds available from other sources to the recipient to conduct similar activities, not be used to provide patient care or management and, not to be used for construction purposes, rental of office space, or for the purchase or rental of furniture. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop and implement a system for collecting data on pre-injury characteristics, information about acute and other care received and post-injury outcomes for a sample of people, including prisoners, identified through an existing TBI Surveillance System, and assess these outcomes at annual intervals. This includes identifying the sample, locating prospective participants and tracking them over time, abstracting pertinent medical record data, developing or modifying an existing questionnaire, and conducting telephone interviews.

b. Conduct hospital-based ED surveillance of TBI, consistent with standard definitions and methods for CNS surveillance, described in the current CDC ''Annual Data Submission Standards for Central Nervous System Injury Surveillance.'' (See Section J) This includes linking and unduplicating data obtained from emergency departments, including data elements that describe diagnosis, demographics, external cause, and survival status.

c. Convene meeting(s) of experts and others to advise on study goals, objectives, methods, and analysis of the data.

d. Compile follow-up data each year.

e. Analyze and interpret the data and report findings.

f. Evaluate the quality and completeness of the data.

g. Conduct yearly evaluations of the surveillance system to assess the predictive value positive and sensitivity of case ascertainment as well as the completeness and validity of the data collected.

h. Link surveillance activities and findings to State injury prevention and control activities.

i. Document the study methods.

j. Develop a research protocol with assistance from CDC for Institutional Review Board (IRB) reviews by all cooperating institutions participating in the research project.

2. CDC Activities

Provide technical assistance in conjunction with SSA where applicable and as necessary for effective project planning and management. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project.

a. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

d. Collaborate in the analysis of data and reporting of findings.

e. Provide technical assistance, as requested, to evaluate the surveillance system for completeness and validity.

f. Convene monthly conference calls with the recipient and SSA representative(s) to review progress.

g. Collaborate with the recipient and SSA representative(s) in the analysis of data on employment after TBI.

h. Participate in discussions with the recipient and SSA representative(s) on the feasibility of (a) tracking people with TBI who receive SSA, and (b) adding new questions on employment to the follow-up registry telephone interview.

E. Content

Applications The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the evaluation criteria listed, so it is important to follow the criteria in laying out your program plan. The narrative (excluding budget narrative and any appendices) should be no more than 30 double spaced pages, printed on one side, with one inch margins, and no smaller than 12 point unreduced fonts.

Number each page consecutively and provide a complete table of contents.

The narrative should include:

1. Executive Summary (one page, may be single spaced). This section should briefly summarize:

a. Amount of federal assistance requested;

b. Existing capacity;

c. Key objectives and activities proposed.

2. Proposal Narrative.

a. Introduction, statement of need, proposed goals and objectives, and program plan.

b. Existing program and capacity.

c. Proposed methods and activities.

d. Project management and project staff.

e. Proposed methods to evaluate the attainment of objectives.

3. Budget Narrative.

4. Human Subjects.

5. Appendices, which may include letters of commitment from key collaborators, resumes of key staff, brief summary reports of analyses of TBI surveillance data.

F. Submission and Deadline

Application

Submit the original and 2 copies of PHS 5161–1 (OMB Number 0920–0428). Forms are in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm* Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5 p.m. Eastern Time, June 15, 2002, submit the application to the Technical Information Section 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline

Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received 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, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Application

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC or Agency for Toxic Substance and Disease Registry ATSDR). Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not 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.) Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

A. The proposed plan for the inclusion of both sexes and racial and the ethnic minority populations for appropriate representation.

B. The proposed justification when representation is limited or absent.

C. A statement as to whether the design of the study is adequate to measure differences when warranted.

D. 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.

Applications judged to be noncompetitive will be withdrawn from further consideration and CDC will promptly notify the principal investigator/Program director and the official signing or the applicant organization.

Awards will be determined by the Director of the National Center for Injury Prevention and Control (NCIPC) based on priority scores assigned to applications by the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP), consultation with NCIPC senior staff, and the availability of funds. All proposals will be reviewed using the current National Institutes of Health (NIH) priority scoring system to determine the technical and scientific quality of the proposal. Factors to be considered will include:

1. Need for data on TBI incidence and outcomes: The extent to which the applicant documents the need for the project to address a key public health issue and inform prevention and/or service activities.

2. Goals and objectives: The extent to which the project goals and objectives are relevant, specific, achievable, measurable, time-linked and can be addressed through the proposed methods.

3. Existing TBI Surveillance Program and Capacity: The extent to which the applicant describes an effective incidence surveillance system for TBI and provides the following:

a. Case definition for TBI.

b. Description of the source(s) of TBI case reporting.

c. Documentation of the timeliness and completeness of case ascertainment and other qualitative attributes of the system.

d. Summary of current surveillance data (i.e., 1999 or 2000).

e. Description of the prior usefulness of the system.

4. Capacity for conducting collaborative activities:

a. The analysis of employment data.

b. Adding employment questions.

c. The potential for tracking people with TBI receiving SSA assistance.

5. Methods and Activities:

a. The extent to which the proposed methods and activities can achieve the proposed objectives, consistent with the purposes of this Program Announcement.

b. The extent to which clear explanations of appropriate methods are described for the following: addressing case definition(s), case ascertainment, including identification and contacting of prisoners, TBI participant tracking, data elements, sources and availability of data, data collection, including methods for interviewing prisoners, protection of confidentiality, data processing and analysis, and a brief summary of methods for collaborative activities with the SSA.

c. The extent to which the operational plan and timetable are realistic, given available resources.

6. Management and Staffing:

a. The extent to which the scientific resources for project planning and data management/analysis are demonstrated within the applicant's organization or through collaboration with universities or other agencies.

b. The extent to which proposed staffing, staff qualifications and experience, and project organization indicate ability to accomplish the objectives of the program.

7. Evaluation:

a. The degree to which the applicant includes plans to evaluate the attainment of proposed objectives and the quality of the data collected.

b. The SEP shall assure that measures set forth in the application are in accordance with CDC's performance plans.

8. Human Subjects:

The extent to which the applicant adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects, including those in subpart C dealing with the protection of prisoners as research participants. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

C. A statement as to whether the design of the study is adequate to measure differences when warranted.

D. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or communities and recognition of mutual benefits.

9. Budget:

a. The extent to which the budget is reasonable, clearly justified, and consistent with stated objectives and proposed activities described in this announcement.

b. The extent to which the budget for collaborative activities with the SSA is clearly justified.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with:

1. An original, plus two copies, and a diskette copy of semi-annual progress reports.

2. Financial status reports, no more than 90 days after the end of each budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
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–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317(k)(2) of the Public Health Service Act, [42 U.S.C.247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

The current CDC Annual Data Submission Standards for Central Nervous System Injury Surveillance can be obtained from Jacqui Butler at (770) 488–1496.

To obtain business management technical assistance contact: Nancy Pillar, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2721, Fax: (770) 488–2777, Email address: *nfp6@cdc.gov.*

For program technical assistance, contact: Joseph Russel, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop F41, Atlanta, GA 30341–3724, Telephone: (770) 488–1042, Fax: (770) 488–4338, Email address: *nzr4@cdc.gov*.

Dated: May 2, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Center for Disease Control and Prevention.

Addendum

Background

TBI, a preventable disabling condition, is an important public health problem in the United States that is estimated to result in the annual occurrence of approximately 1,000,000 ED visits, 250,000 hospital admissions, 50,000 deaths, and the onset of long-term disability in more than 80,000 people.

TBI surveillance provides essential information for primary prevention (avoiding the occurrence of TBI) and valuable information for secondary prevention (mitigating the severity and sequelae of TBI). TBI surveillance also can provide a foundation for population-based TBI registries. Such registries enable the assessment of the burden of TBI related disability and provide essential information for planning programs to provide medical care and services for people with TBI sequelae. CDC has promoted TBI surveillance through funds provided to four States since 1995 (Program Announcement 526 in 1995 and Program Announcement 98022 in 1998) and eleven more States since 1997 (Program Announcement 716).

Although there are increasing data to describe the current incidence and etiology of TBI, little is known, on a population basis, about the outcomes and secondary conditions experienced by persons who survive traumatic brain injury. These outcomes include: their impairments, disabilities (also known as functional limitations or decreased activities), and participation restrictions, (including major roles such as work or school); the occurrence of secondary conditions (i.e., additional physical or mental health conditions that occurs as a result of having a primary disabling condition); and the need for and use of post-acute medical, rehabilitation, and other services. In fact, most of what is known about outcomes is based on studies that rely on case series methodology, small regional samples, and anecdotal reports. Greater understanding of these issues is important for several reasons: First, a better understanding of outcomes will add to our knowledge about the public health impact and societal costs associated with disabling injuries. Second, a better understanding of factors associated with increased risk of disability and decreased participation could lead to improved acute care and rehabilitation interventions aimed at reducing these adverse outcomes and secondary conditions. Third, little is known about the needs for services and barriers to receiving them following TBI.

In 1995, under Announcement 526—Part II, CDC funded one State (Colorado) to develop a full-scale population-based registry and follow-up study of persons with TBI (aged 16 years or older) to assess a wide range of outcomes and the need for, and barriers to receiving services in the year following injury, and in subsequent years. In 1998, under Announcement 98022—Part II, funding to Colorado was continued and a second state, South Carolina was funded to develop a similar registry, in collaboration with the Colorado project. In 2000, the Colorado project was completed and the SC project was continued.

Key References

U.S. Department of Health and Human Services. Healthy People 2010. Tracking.

Healthy People 2010. Conference Edition November 30, 1999.

Institute of Medicine. Enabling America Assessing the Role of Rehabilitation Science and Engineering. Brandt EN, Pope AM, Editors. National Academy Press, Washington, DC 1997. Published epidemiological studies of TBI are also reviewed in the section entitled ''Epidemiology of Traumatic Brain Injury in the United States'' located at the Internet Website of the CDC National Center for Injury Prevention and Control <*http://www.cdc.gov/ncipc/dacrrdp/tbi.htm*>.

Definitions:

Traumatic brain injury (TBI) and essential data elements for TBI surveillance are fully defined in CDC's Guidelines for Surveillance of Central Nervous System Injury. (For ordering a copy of the Guidelines, see Section J.—Where to Obtain Additional Information.)

Surveillance is the ongoing, systematic collection, analysis, and interpretation of health data necessary for designing, implementing, and evaluating public health programs.

Impairment: Any loss or abnormality of physiological, or anatomical structure or function.

Restriction in Activity (Disability): Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.

Restriction in participation (Handicaps): a disadvantage for a given individual, resulting from an impairment or a disability, that limits or prevents the fulfillment of a role that is normal (depending on age, sex, and social and cultural factors) for that individual.

A population-based follow-up system is defined as a system of ongoing registration of, and collection of information about, all or a representative sample of all cases of a condition in a defined population, such that cases can be related to the population base.

Elements of Disability:

Impairment: Any loss or abnormality of physiological, or anatomical structure or function.

Restriction in Activity (Disability): Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.

Restriction in participation (Handicaps): a disadvantage for a given individual, resulting from an impairment or a disability, that limits or prevents the fulfillment of a role that is normal (depending on age, sex, and social and cultural factors) for that individual.

[FR Doc. 02–11359 Filed 5–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics; ICD–9–CM E Code Revisions

AGENCY: National Center for Health Statistics, Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice.

SUMMARY: The National Center for Health Statistics has approved the following expansion to the External Cause Codes in the International Classification of Diseases, Ninth-Revision, Clinical Modification (ICD–9–CM). These ICD–9–CM E-Code revisions will become effective October 1, 2002. The official government version of the ICD–9–CM that will include all of the code revisions can be found on the ICD–9–CM CD–ROM available through the Government Printing Office. Guidelines for the use of the new E-codes will appear on the CD–ROM and on the NCHS website *http://www.cdc.gov/nchs/icd9.htm.*

E885.0 Fall from (nonmotorized) scooter
E922.5 Accidental injury caused by paintball gun
E955.7 Suicide/self-inflicted injury caused by paintball gun
E979.0 Terrorism involving explosion of marine weapons
E979.1 Terrorism involving destruction of aircraft
E979.2 Terrorism involving other explosions and fragments
E979.3 Terrorism involving fires, conflagration and hot substances
E979.4 Terrorism involving firearms
E979.5 Terrorism involving nuclear weapons
E979.6 Terrorism involving biological weapons
E979.7 Terrorism involving chemical weapons
E979.8 Terrorism involving other means
E979.9 Terrorism, secondary effects
E985.7 Injury caused by paintball gun, undetermined whether accidentally or purposely inflicted
E999.0 Late effect of injury due to war operations
E999.1 Late effect of injury due to terrorism

FOR FURTHER INFORMATION CONTACT: Donna Pickett, R.H.I.A., Co-chair, ICD–9–CM Coordination and Maintenance Committee, National Center for Health Statistics, CDC, telephone (301)–458–4200.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 2, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11358 Filed 5–7–02; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); National Institute of Environmental Health Sciences (NIEHS)

The NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) *Expert Panel Report on the Developmental and Reproductive Toxicity of Methanol:* Notice of Availability and Request for Public Comments

Summary

Notice is hereby given of the availability of the *Expert Panel Report on the Developmental and Reproductive Toxicity of Methanol.* This report includes the summaries and conclusions of the expert panel's evaluation of the scientific data for potential reproductive and/or developmental hazards associated with exposure to methanol. The CERHR held this expert panel meeting in October 2001. CERHR is seeking public comment on these reports and additional information about recent, relevant toxicology or human exposure studies.

Availability of Reports

The expert panel report is available electronically on the CERHR web site (*http://cerhr.niehs.nih.gov*) and in printed copy by contacting the CERHR (PO Box 12233, MD EC–32, Research Triangle Park, NC 27709; telephone: (919) 541–3455; fax: (919) 316–4511; or e-mail: *shelby@niehs.nih.gov*).

Request for Public Comments

The CERHR invites public comments on the expert panel report and input regarding any recent, relevant toxicology or human exposure studies. The CERHR asks that all comments and other information be submitted to the

CERHR at the address above by July 8, 2002.

All public comments received by this date will be reviewed and included in the final NTP–CERHR report on methanol to be prepared by NTP staff. The NTP–CERHR report will include the expert panel report, public comments received on the report, and an NTP brief. The brief will provide the NTP's interpretation of the potential for adverse reproductive and/or developmental effects to humans from exposure to methanol. The NTP will transmit the NTP–CERHR report to the appropriate federal and state agencies, the public, and the scientific community.

Background

A 12-member expert panel composed of scientists from state and federal governments, universities, and industry conducted an evaluation of the reproductive and developmental toxicities of methanol (**Federal Register** Vol. 66, No. 136, pp. 37047–37048, July 16, 2001). Public deliberations by the panel took place October 15–17, 2001 at the Radisson Hotel Old Town in Alexandria, Virginia. Following the October meeting, the draft expert panel report was revised to incorporate the panel's conclusions and subsequently reviewed by the Methanol Expert Panel, NTP scientists, and CERHR personnel.

Methanol (CASRN: 67–56–1) is a commercially important, high production volume chemical (2.2 billion gallons, US production, 1998), with high potential for occupational, consumer, and environmental exposure. Methanol is used in chemical syntheses and as an industrial solvent. It is found in a variety of consumer products such as paints, antifreeze, cleaning solutions, and adhesives and is a by-product of sewage treatment, fermentation, and paper production. Methanol is used in racing car fuels, and there is the potential for future, expanded use of methanol as a vehicle fuel or fuel additive.

Additional Information About CERHR

The NTP and the NIEHS established the NTP CERHR in June 1998 (**Federal Register** Vol. 63, No. 239, p. 68782, December 1998). The purpose of the CERHR is to provide scientifically based, uniform assessments of the potential for adverse effects on reproduction and development caused by agents to which humans may be exposed. Further information on the CERHR's chemical review process including how to nominate chemicals for evaluation and scientists for the expert registry can be obtained from its web site (*http://cerhr.niehs.nih.gov*) or by contacting the CERHR directly (see address above). The CERHR also serves as a resource for information on various environmental exposures and their potential to affect pregnancy and child development. The web site has information about common concerns related to fertility, pregnancy and the health of unborn children and links to other resources for information about public health.

Dated: May 1, 2002.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 02–11522 Filed 5–7–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 2003 National Survey on Drug Use and Health—(0930–0110, Revision)—The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA), is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2003 NSDUH, additional questions are being planned regarding types of schooling (e.g., public versus private). Several questions using ''item count'' methodology to estimate use of specific hard-core drugs are slated to be removed. The remaining modular components of the questionnaire will remain essentially unchanged except for minor modifications to wording.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the survey for 2003 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is shown below:

	Number of respondents	Responses per respondent	Average burden per response (in hrs.)	Total burden (hrs.)
Household Screening	202,500	1	0.083	16,808
Interview	67,500	1	1.0	67,500
Screening Verification	6,176	1	0.067	414
Interview Verification	10,125	1	0.067	678
Total	202,500			85,400

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 2, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–11363 Filed 5–7–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting of the Advisory Committee for Women's Services

Pursuant to Public Law 92–463, notice is hereby given of the teleconference meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in May 2002.

The teleconference meeting of the Advisory Committee for Women's Services will include a discussion of SAMHSA's June 19–20, 2002 Joint Council Meeting, SAMHSA's Delayering and Restructering activities, policy and program issues relating to women's substance abuse and mental health service needs, HIV/AIDS Data Collection processes and other policy issues.

A summary of the meeting and/or a roster of committee members may be obtained from: Nancy P. Brady, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date(s): May 7, 2002.

Place: 5600 Fishers Lane, Room 12C–06, Rockville, MD 20857.

Type: Open: May 7, 2002—4–5:30 p.m.

Contact: Nancy P. Brady, Executive Secretary, Telephone: (301) 443–5184 and Fax: (301) 443–8964.

This notice is being published less than 15 days prior to the meeting due to the urgent need for the Advisory Committee to be notified of the Restructering Delayering activities of SAMHSA and the immediate impact of these activities on the Committee.

Dated: May 2, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–11379 Filed 5–7–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–03]

Notice of Proposed Information Collection for Public Comment—Public Housing Financial Management Template

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: *Comments Due Date:* July 8, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20110–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information 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; (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 collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Financial Management Template.

OMB Control Number: 2577– (Formerly 2535–0107).

Description of the need for the information and proposed use: The Uniform Financial Reporting Standards (UFRS) for HUD Housing Programs requires Public Housing Agencies (PHAs) to submit financial data electronically, using Generally Accepted Accounting Principles (GAAP), in a prescribed format. Electronic submission of this data requires the use of a template. The Public Housing Financial Management template includes updates that increase the efficiency of data collection and reduces the burden hours for the respondents. HUD will continue to use the financial information it collects from PHAs to evaluate their financial condition. Requiring PHAs to report electronically, in a prescribed HUD format, and using the GAAP basis of accounting has enabled HUD to provide a more comprehensive financial assessment of the PHAs receiving federal funds from HUD. The Real Estate Assessment Center responsibility for this collection of information was transferred to the Assistant Secretary for Public and Indian Housing.

Agency form numbers, if applicable: Not applicable.

Members of affected public: Public Housing Financial Management Template: Local, State, or Tribal Governments, Not-for-profit Institutions.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Public Housing Financial Management Template: 3,173 PHAs; annual submission per PHA;

average hours for PHA response is 10 hours; the total reporting burden is 31, 961 hours.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 30, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–11322 Filed 5–7–02; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Office of Wildland Fire Coordination

[FA 108 2810 HT 001R]

Notice of Meeting, Joint Fire Science Program Stakeholder Advisory Group

AGENCY: Office of Wildland Fire Coordination, Interior.

ACTION: Notice of meeting.

SUMMARY: The Joint Fire Science Program Stakeholder Advisory Group will conduct a meeting to assess past and current research and to identify priorities for future research. The meeting is open to the public.

DATES: The meeting will convene on Monday, June 10, 2002 at 8 a.m. and continue until 4:30 p.m. The meeting will resume Tuesday, June 11, 2002 from 8 a.m. to 3:30 p.m. Written material and requests to make oral presentations should reach the Department of the Interior, at the address below, on or before June 3, 2002.

ADDRESSES: The meeting will be held at the Westcoast ParkCenter Suites Hotel, 424 East ParkCenter Boulevard, Boise, ID 83706. Written material and requests to make oral presentations should be sent to Tim Hartzell, Office of Wildland Fire Coordination, MS–3060 MIB, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Tim Hartzell, Designated Federal Official; telephone (202) 606–3447; fax: (202) 606–3150; email: *Erica_Kim@blm.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Joint Fire Science Program Stakeholder Advisory Group, including any revised agenda for the June 10 and 11 meeting that occurs after this **Federal Register** notice is published, may be found on the World Wide Web at *http://www.nifc.gov/joint_ fire_—sci/SHAG/facaind.htm.*

Draft Agenda of the June 10 and 11, 2002 Meeting

A. Welcome to Boise meeting.

B. Preliminary results from Joint Fire Science Program (JFSP) review.

C. JFSP Governing Board response to previous Stakeholder Group recommendations.

D. Results of JFSP Principal Investigator workshop (held March 10–14, 2002).

E. Additional Stakeholder Group recommendations for the Governing Board.

F. JFSP research project presentations.

G. Discussion of fire-related specialties (i.e. prevention and education, preparedness and suppression, fuels management, land stabilization & rehabilitation, and the state view.

H. National Fire Plan.

I. *Discussion:* Cohesive Strategy (needs for fuels work).

J. *Discussion:* Landfire (one method to achieve this need).

K. *Discussion:* How to use the data and compile the information (possible solution for need).

L. Social science report (*Burning Questions*) to the National Wildfire Coordinating Group, implementation plan for social science report, and Interagency Fire Research Coordination Council.

M. Awareness strategy for JFSP.

N. Technology transfer for JFSP-funded products.

O. Time for public input (presentations will be limited to 5 minutes).

This meeting is open to the public. At the discretion of the Designated Federal Official, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify Tim Hartzell no later than June 3, 2002. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 40 copies to Tim Hartzell no later than June 3, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Tim Hartzell.

Dated: May 2, 2002.

Tim C. Hartzell,

Director, Office of Wildland Fire Coordination, Department of the Interior.

[FR Doc. 02–11456 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–DW–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Minnesota Valley National Wildlife Refuge and Minnesota Valley Wetland Management District, Bloomington, MN

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published a draft Comprehensive Conservation Plan and Environmental Assessment for Minnesota Valley national Wildlife Refuge (Refuge), which includes the Minnesota Valley Wetland Management District (District). This combined Plan describes how the Service intends to manage the Refuge and District for the next 15 years.

DATES: Submit written comments by July 1, 2002. All comments should be addressed to Minnesota Valley National Wildlife Refuge, Attn: CCP Comment, 3815 East 80th Street, Bloomington, Minnesota 55425–1600, or direct e-mail to *r3planning@fws.gov.* Comments may also be submitted through the Service's regional Web site at *http://midwest.fws.gov/planning.*

ADDRESSES: A draft Plan or summary may be obtained by writing to the Refuge or submitting a request electronically. These documents will also be made available in portable document format (pdf) on the U.S. Fish and Wildlife Service Web site at: *http//midwest.fws.gov/planning.* Address requests to: Minnesota Valley National Wildlife Refuge, 3815 East 80th Street, Bloomington, Minnesota 55425–1600, or direct e-mail to *r3planning @fws.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information on the Draft Minnesota Valley NWR and Wetland Management District Comprehensive Conservation Plan, contact Rick Schultz, Refuge Manager, at the address above or call the Refuge at 952/858–0701.

SUPPLEMENTARY INFORMATION: In 1997, Congress mandated that the Service prepare a comprehensive conservation plan for each refuge within the National

Wildlife Refuge System. Comprehensive conservation plans guide management decisions over the course of 15 years. The Minnesota Valley NWR and District Plan identifies goals and objectives for habitat management, land protection and wildlife-dependent recreation, as well as strategies for achieving those goals and objectives.

Dated: April 12, 2002.

William F. Hartwig,

Regional Director.

[FR Doc. 02–11332 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by June 7, 2002.

ADDRESSES: 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 to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (*see* **ADDRESSES**). You may also comment via the internet to ''*victoria_davis@fws.gov.*'' Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to the Service office listed below (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

TE051013–0

Applicant: Jeff Glitzenstein, Tallahassee, Florida.

The applicant requests authorization to remove and reduce to possession seeds of *Schwalbea americana*, American chaffseed, for the purposes of re-establishing a population at Roy's Place, Francis Marion National Forest, Berkeley, South Carolina. After a control burn, one capsule will be taken from twenty plants at the donor site (intersection of Roy's Place Road and Witherbee Road).

TE054524–0

Applicant: Environmental Laboratory, U.S. Army Corps of Engineers, Research and Development Center, Chester O. Martin, Vicksburg, Mississippi.

The applicant requests authorization to take (survey, capture, identify, and release) the gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*) to investigate the impacts of military noise on the auditory systems and behavior of endangered bat species. The study will use a combination of sampling and data collection techniques, including mist netting, radio telemetry, thermal infrared imaging, and ultrasonic sound detection. The proposed activities will take place on the following two installations: Fort Knox, Meade, Bullit, and Jefferson Counties, Kentucky and Fort Campbell, Trigg County, Kentucky.

Applicant: USDA, Forest Service, South Research Station, Susan Loeb, Clemson, South Carolina, TE055190–0.

The applicant requests authorization to take (survey, capture, identify, band, radio-tag, and release) the gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*) for the following reasons: To determine characteristics of trees used as primary and alternate Indiana bat maternity roost sites; to determine stand and landscape characteristics associated with roost trees; to determine tree, stand, and landscape characteristics that may be important in roost site selection; and to develop models of Indiana bat roosting habitat using both logistic regression and Mahalanobis distance statistics. The proposed activities will take place in North Carolina, South Carolina, Kentucky, Georgia, Florida, Virginia, Arkansas, Alabama, and Tennessee.

Applicant: Nick Haddad, North Carolina State University, Raleigh, North Carolina, TE054973–0.

The applicant requests authorization to take (survey, capture, mark, recapture, and release) the Saint Francis' Satyr (*Neonympha mitchellii francisci*) to identify the plants used for food, to monitor efforts to determine the long-term viability of existing populations, to assess the importance of habitat corridors, and to assess the importance of large populations to sustain smaller populations outside of the impact areas. The proposed activities will take place on the Fort Bragg military base, Cumberland and Hoke Counties, North Carolina.

Applicant: Alabama Division of Wildlife and Freshwater Fisheries, Jeffery T. Garner, Florence, Alabama, TE054999–0.

The applicant requests authorization to take (remove, tag, exam, measure, sex, and translocate) the Anthony's riversnail (*Athearnia anthonyi*), Dromedary pearlymussel (*Dromus dromas*), Oystershell pearlymussel (*Epioblasma capsaeformis*), and Birdwing pearlymussel (*Lemiox rimosus*) to test the suitability of habitat for these species, prior to wide-scale introductions of cultured juveniles and/or transplanted adults. The proposed collection activities will take place from Limestone Creek, Limestone County, Alabama; Clinch River, Hancock County, Tennessee; and the Duck River, Marshall County, Tennessee. The release activities will take place in the Tennessee River, downstream of Wilson Dam, Lauderdale and Colbert Counties, Alabama.

Applicant: Phyllis Jean Deitschell, Clinic for the Rehabilitation of Wildlife, Inc., Sanibel, Florida TE054963–0.

The applicant requests authorization to take (receive, hold temporarily, transport, rehabilitate medically for injury or illness, release, and euthanize) the Loggerhead sea turtle (*Caretta caretta*), Green sea turtle (*Chelonia mydas*), Leatherback sea turtle (Dermochelys coriacea), Kemp's ridley sea turtle (*Lepidochelys kempii*), and Hawksbill sea turtle (*Eretmochelys imbricata*). The rehabilitation activities will take place at the Clinic for the Rehabilitation of Wildlife, Inc., Sanibel, Florida.

TE055698–0.

Applicant: Alabama Natural Heritage Program, James C. Godwin, Montgomery, Alabama.

The applicant requests authorization to take (survey, mark nest, and nest manipulation) the Alabama red-bellied turtle (*Pseudemys alabamensis*) to identify the factors that affect nest success of the Alabama red-bellied turtle, to recommend methods to improve nest success, and to locate new nesting sites. The proposed activities will take place in the Tensaw River, Mobile River Basin, north end of Gravine Island, Baldwin County, Alabama.

TE055179–0

Applicant: Michael David Warriner, Arkansas Natural Heritage Commission, Little Rock, Arkansas.

The applicant requests authorization to take (survey, capture, determine sex, mark, and release) the American burying beetle (*Nicrophorus americanus*) to monitor existing populations and to conduct searches for additional populations. The proposed activities will occur in the Cherokee Prairie Natural Area and the H.E. Flanagan Prairie Natural Area, Franklin County, Arkansas.

TE054974–0

Applicant: EcoScience Corporation, Gerald Mc Crain, Raleigh, North Carolina.

The applicant requests authorization to take (harass, capture, and release) the Saint Francis' satyr (*Neonympha mitchellii francisci*) to conduct presence/absence of species in areas where development is proposed or to determine species presence/absence in areas where a faunal inventory has been requested. The proposed activities will occur throughout the state of North Carolina.

TE055089–0

Applicant: Western Kentucky University, Scott A. Grubbs, Bowling Green, Kentucky.

The applicant requests authorization to take (remove, tag, exam, measure, sex, and translocate) the fanshell (*Cyrogenia stegaria*), Northern riffleshell (*Epioblasma torulosa rangiana*), ring pink (*Obovaria retuse*), clubshell (*Pleurobema clava*), and rough pigtoe (*Pleurobema plenum*) to continue the long-term biological monitoring program initiated by Schuster et al. and to assess the impact of Lock and Dam #6 on the structure of the macro-invertebrate community inhabiting the Green River and Nolin River in Mammoth Cave National Park, Kentucky.

Dated: April 22, 2002.

Thomas M. Riley,

Acting Regional Director.

[FR Doc. 02–11365 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by June 7, 2002.

ADDRESSES: 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: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–056064

Applicant: Wayne G. Lyster, III, Versailles, KY

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–056065

Applicant: Wesley K. Winn, Baytown, TX, PRT–056065.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: April 26, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–11399 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Initial Restoration and Compensation Determination Plan (RCDP) for the August 27, 1998, Clinch River Chemical Spill in Tazewell County, VA

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (FWS), on behalf of the U.S. Department of the Interior (DOI), announces the release for public review of the Initial Restoration and

Compensation Determination Plan (RCDP) for the August 27, 1998, Clinch River Chemical Spill in Tazewell County, Virginia. The RCDP describes the trustee's proposal to restore natural resources injured as a result of a release of hazardous substances.

DATES: Written comments must be submitted on or before June 30, 2002.

ADDRESSES: Requests for copies of the RCDP may be made to the U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

Written comments or materials regarding the RCDP should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: John Schmerfeld, U.S. Fish and Wildlife Service, 6669 Short Lane, Gloucester, Virginia 23061. Interested parties may also call 804–693–6694 x107 for further information.

SUPPLEMENTARY INFORMATION: On August 27, 1998, a tanker truck overturned on U.S. Route 460 in Tazewell County, Virginia. The truck released approximately 1,350 gallons of Octocure 554-revised, a rubber accelerant, into an unnamed tributary about 530 feet from its confluence with the Clinch River. The spill turned the river a snowy white color and caused a significant fish kill. The spill also killed aquatic benthic macroinvertebrates for about 6.6 miles downstream. Using a conservative correction factor, an estimated 18,600 or more freshwater mussels were killed by the spill, including 750 individuals of 3 federally endangered mussel species. This spill is likely the single largest take of federally listed endangered species since the enactment of the Endangered Species Act. This spill destroyed one of the last two known remaining reproducing populations of the critically endangered tan riffleshell mussel.

Under the authority of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.,* ''natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages.'' Natural resource damage assessments (NRDA) are separate from the cleanup actions undertaken at a hazardous waste or spill site, and provide a process whereby the natural resource trustees can determine the proper compensation to the public for injury to natural resources. The NRDA process seeks to: (1) Determine whether injury to, or loss of, trust resources has occurred; (2) ascertain the magnitude of the injury or loss; (3) calculate the appropriate compensation for the injury, including the cost of restoration; and (4) develop a restoration plan that will restore, rehabilitate, replace and/or acquire equivalent resources for injured or lost resources.

The DOI is the sole acting federal natural resource trustee for this case. The DOI has designated the FWS to act as its authorized official with regard to this case. An assessment plan (AP) was developed by the FWS with public input in April 2001. The AP outlined a set of studies that were designed to identify and quantify natural resource injuries that resulted from the August 27, 1998 release. The assessment phase of this NRDA has been completed and the results of all injury assessment studies have been reviewed by the FWS. This RCDP has been developed in order to publish the results of the injury assessment studies and to consider a number of restoration alternatives that will make the public whole again for their natural resource loss. Cost estimation methodologies and general environmental consequences of each restoration alternative are considered and a preferred restoration alternative is proposed. The proposed preferred alternative includes propagation of freshwater mussels, riparian habitat protection, and community education.

Interested members of the public are invited to review and comment on the RCDP. Copies of the RCDP are available for review at the FWS's Virginia Field Office in Gloucester, Virginia and at the FWS's Southwestern Virginia Field Office located at 330 Cummings Street, Suite A, Abingdon, Virginia 24210. Written comments will be considered and addressed in the final RCDP.

Author: The primary author of this notice is John Schmerfeld, U.S. Fish & Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*) and the Natural Resource Damage Assessment Regulations found at 43 CFR, part 11.

Dated: April 24, 2002.

Mamie A. Parker,

Regional Director, Region 5, U.S. Fish and Wildlife Service, DOI Designated Authorized Official.

[FR Doc. 02–11364 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Proposed Safe Harbor Agreement for Robert Mondavi Winery, San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that Robert Mondavi Winery (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicant and the Service. The Agreement provides for management measures to aid in the conservation of the threatened California red-legged frog (*Rana aurora draytonii*), the endangered least Bell's vireo (*Vireo bellii pusillus*), and the endangered Southwestern willow flycatcher (*Empidonax traillii extimus*) on a vineyard property operated by the Applicant in San Luis Obispo County, California. The proposed duration of both the Agreement and permit is 33 years.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination is contained in an Environmental Action Statement, which also is available for public review.

DATES: Written comments must be received by 5:00 p.m. on June 7, 2002.

ADDRESSES: Comments should be addressed to Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Ventura, California 93003, facsimile number (805) 644–3958 (see Public Review and Comment section below).

FOR FURTHER INFORMATION CONTACT: Valary Bloom, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to

implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c). The Applicant has developed the proposed Agreement for the conservation of the California red-legged frog, least Bell's vireo, and Southwestern willow flycatcher on Mondavi's Cuesta Ridge Vineyard in San Luis Obispo County, California. The Agreement calls for the implementation of a riparian restoration project along an approximately 2-kilometer segment of an ephemeral stream known as Taco Creek.

The proposed riparian restoration program consists of efforts to reduce or eliminate yellow starthistle and other non-native vegetation, establish native riparian vegetation in which least Bell's vireos and Southwestern willow flycatchers may nest, and enhance pools to create desirable breeding conditions for the California red-legged frog. The Agreement also contemplates the possibility of measures to reduce competition from non-native bullfrogs and nest parasitism by brown-headed cowbirds.

Although no least Bell's vireos, Southwestern willow flycatchers, or California red-legged frogs are currently known to be in the immediate vicinity of the project area, the proposed project is designed to produce a conservation benefit for each of these species. The least Bell's vireo and Southwestern willow flycatcher are both threatened with loss and degradation of the riparian habitats with which they are obligatorily (vireo) and strongly (flycatcher) associated. Both species are likely to benefit through the provision of suitable habitat into which dispersing individuals from expanding populations elsewhere can move. The California red-legged frog is threatened by the loss or degradation of native riparian habitat, and predation by or competition with non-native species, most especially the bullfrog. The Agreement is likely to result in enhanced breeding habitat for the frog, improved cover in and near that habitat, and reduced threats from bullfrogs.

The conservation measures set forth in the Agreement are expected to result in the following net conservation benefits to the covered species: (1) Increased availability of suitable breeding and foraging habitat through planting of native riparian vegetation and control of non-native weedy species; (2) reduced fragmentation, and increased connectivity of populations in the general area; (3) reduced numbers of non-native bullfrogs in the general vicinity of the project; (4) reduced threat of nest parasitism by brown-headed cowbirds; (5) likelihood of increased population sizes of the covered species in the general area; and (6) insurance against the loss of these species in the general area as a result of habitat loss or other factors elsewhere.

Consistent with the Service's Safe Harbor policy and regulations, the Service proposes to issue a permit to the Applicant authorizing incidental take as a result of normal viticultural activities on the enrolled property. Normal viticultural activities include planting, harvesting, weed and insect control, pruning, mowing, discing, operation of vehicles and farm equipment, and similar activities. The permit would also authorize take incidental to the habitat restoration and maintenance activities planned for the Taco Creek project area, including weed control and planting of native vegetation, pool enhancement, bullfrog control, etc.

This Agreement and permit will also allow the Applicant to remove the habitat improvements and return the area to its prior, or baseline condition at the end of the term of the Agreement, if so desired by the Applicant.

The Service has made a preliminary determination that approval of the Agreement qualifies as a categorical exclusion under the NEPA, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) based on the following criteria: (1) Implementation of the Agreement would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Agreement would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Agreement, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. This is more fully explained in our Environmental Action Statement.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above. Documents also will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office (**ADDRESSES** section above).

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). All comments received on the permit application and Agreement, including names and addresses, will become part of the Administrative record and may be released to the public. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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, are available for public inspection in their entirety.

We will evaluate the permit application, the Agreement, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act and NEPA regulations. If the requirements are met, the Service will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of the three covered species incidental to otherwise lawful activities of the project. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: May 1, 2002.

Mary Ellen Mueller,

Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–11340 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Impact Statement for Back Bay National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act and its implementing regulations. A CCP will be prepared for Back Bay National Wildlife Refuge (NWR) located within the City of Virginia Beach, Virginia. A Wilderness Review of Back Bay NWR will also be completed concurrently in accordance with the Wilderness Act of 1964, as amended and Refuge Planning Policy 602 FW Chapters 1, 2, and 3. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*): (1) To advise other agencies and the public of our intentions; and (2) to obtain suggestions and information on the scope of issues to include in the environmental documents.

ADDRESSES: Address comments, questions, and request for more information to the following: Refuge Manager, Back Bay National Wildlife Refuge, 4005 Sandpiper Road, Virginia Beach, VA 23456–4325, 757–721–2412.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuges purposes. The planning process will consider many elements including habitat and wildlife management, habitat protection and acquisition, public uses, and cultural resources. Public input into this planning process is essential. The CCP will provide other agencies and the public with a clearer understanding of the desired future conditions for Back Bay National Wildlife Refuge and how the Service will implement management strategies.

The Service has already held a series of local public meetings in Virginia Beach during January 2002 to solicit comments. The Service will continue to solicit public input via open houses, public meetings, workshops, and written comments. Special mailings, newspaper articles, and announcements will inform people of the time and place of additional opportunities for public input to the CCP. Back Bay NWR encompasses over 8,700 acres of beach, dunes, woodland, farm fields, and marsh habitats. Comments on the protection of threatened and endangered species and migratory birds, and the protection and management of their habitats will be solicited as part of the planning process. A Draft CCP and EIS are planned for public review in 2003.

Review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR Parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Mamie A. Parker,

Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 02–11326 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of letters of authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that the following Letters of Authorization to take polar bears incidental to oil and gas industry exploration activities in the Beaufort Sea and adjacent northern coast of Alaska have been issued to the following companies:

Company	Activity	Location	Date issued
ExxonMobil	Exploration	Gwydyr Bay	April 2, 2002.
Phillips Alaska, Inc.	Exploration	Puviaq	April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Schliebe at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3812.

SUPPLEMENTARY INFORMATION: The Letter of Authorization is issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities (65 FR 16828; March 30, 2000).''

Dated: April 11, 2002.

David B. Allen,

Regional Director.

[FR Doc. 02–11382 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal to extend the collection of information described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How 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 forms of information technology.

Title: Annual National Earthquake Hazards Reduction Program Announcement.

OMB approval number: 1028–0051.

Abstract: Respondents submit proposals to support research in earthquake hazards and earthquake prediction to earth-science data and information essential to mitigate earthquake losses. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual or final reports are required on each selected performance.

Bureau form number: None.

Frequency: Annual proposals, annual or final reports.

Description of respondents: Educational institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.

Annual responses: 300.

Annual burden hours: 12,000 hours.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: April 23, 2002.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 02–11366 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal to extend the collection of information described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive., Reston, Virginia, 20192, telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How 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 forms of information technology.

Title: Earthquake Report.

OMB approval number: 1028–0048.

Abstract: Respondents supply information on the effects of the shaking from a earthquake—on themselves personally, buildings and their effects, other man-made structures, and ground effects such as faulting or landslides. This information will be used in the study of the hazards from earthquakes and used to compile and publish the annual USGS publication ''United States Earthquakes''.

Bureau form number: 9–3013.

Frequency: After each earthquake.

Description of respondents: State and local employees; and, the general public.

Estimated completion time: 0.1 hours.

Annual responses: 750.

Annual burden hours: 75 hours.

Bureau clearance officer: John Cordyack 703–648–7313.

Dated: April 23, 2002.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 02–11367 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

A request extending the information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How 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 forms of information technology.

Title: Frogwatch USA.

Current OMB Approval Number: 1028–0072.

Summary: The collection of information referred herein applies to a World-Wide Web site that permits individuals to submit records of the number of calling amphibians at wetlands. The Web site is termed Frogwatch USA. Information will be used by scientists and federal, state, and local agencies to identify wetlands showing significant declines in populations of amphibians.

Estimated Annual Number of Respondents: 500.

Estimated Annual Burden Hours: 3,625 hours.

Affected Public: Primarily U.S. residents.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313, or see the website at *www.mp2-pwrc.usgs.gov/frogwatch/.*

Dated: April 24, 2002.

Dennis B. Fenn,

Associate Director for Biology.

[FR Doc. 02–11368 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Indian Affairs has submitted to the Office of Management Budget a request for approval and renewal of information collections, OMB Control No. 1076–0094, Law and Order on Indian Reservations, 25 CFR part 11, subpart F.

DATES: Written comments must be submitted by June 7, 2002.

ADDRESSES: Written comments are to be mailed to Office of Management and Budget, Docket Library, Room 10102, Attn.: Desk Officer for the Department of the Interior, 725 17th Street NW, Washington, DC 20503. Please send a copy to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW, MS 4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ralph Gonzales, (202) 208–4401.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs, Department of the Interior, must collect personal information to carry out the requirements of Title 25, § 11.600 (c)—Marriage, and Title 25, § 11.606 (c)—Dissolution of Marriage. Basic information is requested of applicants for the issuance of a marriage license or for the dissolution of a marriage by a Court of Indian offenses under 25 CFR part 11. Information is collected by the Clerk of the Court of Indian Offenses in order for the Court to issue a marriage license or dissolve a marriage. The information is collected on an application requesting only basic information necessary for the Court to properly dispose of the matter.

II. Method of Collection

The information is collected on an application for the marriage license or for a dissolution of marriage.

III. Information Collected

Courts of Indian Offenses (CFR Courts) have been established on certain Indian reservation under the authority vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' See Tillett v. Hodel, 730 F.Supp. 381 (W.D. Okla. 1990), aff'd 931 F.2d 636 (10th Cir. 1991) United States v. Clapox, 13 Sawy. 349, 35 F. 575 (D.Ore. 1888). The CFR Courts provide adequate machinery for the administration of justice for Indian tribes in those areas where tribes retain jurisdiction over Indians and is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction. Accordingly, CFR Courts exercise jurisdiction under part 11 of Title 25 Code of Federal Regulations. Domestic Relations are governed by 25 CFR 11.600 which authorizes the CFR Court to conduct marriages and dissolve marriages. In order to be married in a CFR Court a marriage license must be obtained (25 CFR 11.600, 601). To comply with this requirement an applicant must respond to the following six questions found at 25 CFR 11.600(c):

(c) A marriage license application shall include the following information:

(1) Name, sex, occupation, address, social security number, and date and place of birth of each party to the proposed marriage;

(2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship; and

(5) The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(6) A certificate of the results of any medical examination required by either applicable tribal ordinances, or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located.

For the purposes of § 11.600, Marriage, Social Security number information is requested to confirm identity. Previous marriage information is requested to avoid multiple simultaneous marriages, and to ensure that any pre-existing legal relationships are dissolved. Information on consanguinity is requested to avoid conflict with state or tribal laws against marriages between parties who are related by blood as defined in such laws. Medical examination information may be requested if required under the laws of the state in which the Court of Indian offenses is located.

To comply with the requirement for dissolution of marriage an applicant must respond to the following six questions found at 25 CFR 11.606(c):

(1) The age, occupation, and length of residence within the Indian country under the jurisdiction of the court of each party;

(2) The date of the marriage and the place at which it was registered;

(3) That jurisdictional requirements are met and that the marriage is irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is a serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) The names, age, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) The relief sought.

For the purposes of § 11.606, Dissolution proceedings, information on occupation and residency is necessary to establish court jurisdiction. Information on the status of the parties, whether they have lived apart 180 days or if there is serious marital discord warranting dissolution, is necessary for the court to determine if dissolution is proper. Information on the children of the marriage, their ages and whether the wife is pregnant is necessary for the court to determine the appropriate level of support that may be required from the non-custodial parent.

Description of the need for the information and proposed use of the information: The information is submitted in order to obtain or retain a benefit, namely, the issuance of a marriage license or a decree of dissolution of marriage from the Court of Indian Offenses.

Affected entities: Indian applicants that are under the jurisdiction of one of the 24 established Courts of Indian Offenses are entitled to receive the benefit of this action by the Court.

Estimated number of respondents: Approximately 260 applications for a marriage license or petition for dissolution of marriage will be filed in the 24 Courts of Indian Offenses annually.

Proposed frequency of responses: On occasion as needed.

Burden: The average burden of submitting a marriage license or petition for dissolution of marriage is 15 minutes per application. The total annual burden is estimated as 65 hours.

Estimated cost: There are no costs to consider, except estimated costs of $100 per court annually, for the material supplies and staff time required by the Court of Indian Offenses.

IV. Request for Comments

The Department of the Interior invites comments sent to the Office of Management and Budget on:

(a) 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;

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Our request for comments was published in the **Federal Register** on January 23, 2002 (67 FR 3226). No comments were received.

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 Office of Management and Budget control number.

Dated: April 30, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–11470 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Determination of Trust Land Acquisition; Correction and Clarification

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of correction and clarification.

SUMMARY: The Bureau of Indian Affairs published in the **Federal Register** of March 11, 2002, a notice on the Wyandotte Tribe of Oklahoma. This document corrects a discrepancy and clarifies language in the notice published in the **Federal Register** on March 11, 2002 (67 FR 10926).

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, MS–2070 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066 (this is not a toll-free number); Telefax (202) 273–3153.

Correction

In the **Federal Register** of March 11, 2002, in FR Doc. 02–5760, on page 10926, in the second column under the heading ''Background,'' the notice incorrectly stated in the last paragraph that ''* * * the initial $100,000 investment was $121,170 at the time of the land purchase.'' The sentence is corrected to read ''* * * the initial $100,000 investment was $212,170 at the time of the land purchase.''

Clarification

In the first column under the heading ''Summary,'' the words ''land settlement claim'' are removed from the text. In the second column under the heading ''Determination,'' the first sentence is modified to read as follows: The Secretary of the Interior has determined that Public Law 98–602 funds were used to purchase the Shriner's Property in Kansas City, Kansas. This clarification is necessary to underscore that the notice should not be interpreted as a determination by the Secretary of the Interior that the Wyandotte Tribe is entitled to conduct gaming activities on the Shriner's Property pursuant to the ''settlement of a land claim'' exception to the gaming prohibition on land acquired in trust after October 17, 1988, contained in Section 20 of the Indian Gaming Regulatory Act. Attorneys for the Wyandotte Tribe have advised attorneys for the Department of the Interior and the Department of Justice that the Wyandotte Tribe intends to request the Department of the Interior and the National Indian Gaming Commission to decide whether the Shriner's Property comes within the ''settlement of a land claim'' exception in 25 U.S.C. 2719(b)(1)(B)(i).

Dated: April 26, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–11380 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–02–1320–EL; COC 66126]

Colorado; Notice of Invitation for Coal Exploration License Application, Bowie Resources, Limited

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Bowie Resources, Limited in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Delta County, Colorado:

T. 12 S., R. 91 W., 6th P.M.
- Sec. 14, lots 7, 8, excluding HES 58, S½S½, NE¼SW¼, and NW¼SE¼;
- Sec. 22, S½;
- Sec. 23, lots 1–7, inclusive, excluding HES 133 & 161, W½, and NW¼SE¼;
- Sec. 26, lots 1–5, inclusive, excluding HES 133 & 134, W½, and N½SE¼;
- Sec. 27, all;
- Sec. 28, S½;
- Sec. 29, SE¼;
- Sec. 32, lots 1,2, 7–10, inclusive, 15,16, and NE¼;
- Sec. 33, lots 4,5,12,13, N½N½, and SW¼NW¼;
- Sec. 34, N½N½.

The area described contains approximately 3,788.18 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 66126 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Uncompahgre Field Office, 2505 So. Townsend Ave., Montrose, Colorado 81641.

Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after publication of the Notice of Invitation in the **Federal Register:** Karen Magallanes, Solid Minerals Staff, Resource Services, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and Keith Seiber, President, Bowie Resources, Limited, P.O. Box 483, Paonia, Colorado 81428. Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and

with any other party or parties who elect to participate.

Dated: March 25, 2002.

Karen Magallanes,

Solid Minerals Staff, Resource Services.

[FR Doc. 02–11438 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–02–1320–EL–P; NDM 91647]

Notice of Coal Lease Application—NDM 91647—The Falkirk Mining Co.

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: Notice of The Falkirk Mining Company's Coal Lease Application NDM 91647 for certain coal resources within the Falkirk Mine.

The land included in Coal Lease Application NDM 91647 is located in McLean County, North Dakota, and is described as follows:

T. 146 N., R. 82 W., 5th P. M.

Sec. 34: NW¼SW¼.

The 40.00-acre tract contains an estimated 298,914 tons of recoverable coal reserves.

The application will be processed in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, *et seq.*), and the implementing regulations at 43 CFR part 3400. A decision to allow leasing of the coal reserves in said tract will result in a competitive lease sale to be held at a time and place to be announced through publication pursuant to 43 CFR part 3422.

SUPPLEMENTARY INFORMATION: The Falkirk Mining Company is the operator of the Falkirk Mine. The entire area included within this lease application lies within the Falkirk Mine's NAFK–8705 permit area.

The area applied for would be mined as an extension of the Falkirk Mine and would utilize the same methods as those currently being used. The lease being applied for can extend the life of the mine by about 1 month and enable recovery of coal that might never be mined if not mined as a logical extension of current pits.

Notice of Availability: The application is available for review between the hours of 9 a.m. and 4 p.m. at the Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, and at the Bureau of Land Management, Dakotas District Office, whose address is 2033 Third Avenue West, Dickinson, North Dakota 58601–2619, between the hours of 8 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Rebecca Good, Coal Coordinator, at telephone 406–896–5080, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: April 10, 2002.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 02–11430 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1990–EX]

Record of Decision; South Operations Area Project Amendment, Eureka Co., NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 202 of the National Environmental Policy Act of 1969, an Environmental Impact Statement (EIS) has been prepared, under third party contract, by the Bureau of Land Management (BLM), Elko Field Office. The EIS was prepared to analyze impacts and alternatives for Newmont Mining Corporation's proposed South Operations Area Project Amendment. The proposed project expansion would result in disturbance of an additional 1392 acres of federal and private lands located in Eureka County, Nevada. The Final EIS was released for public review April 26, 2002. The Record of Decision (ROD) was signed by the Elko Field Office Manager May 31, 2002, approving the proposed project and incorporating mitigating modifications analyzed under the proposed action.

Copies of the ROD can be obtained from the Elko Field Office at 3900 Idaho Street, Elko, Nevada, or by calling (775) 753–0200 and requesting a copy of the document. It may also be downloaded from the Elko Field office internet site at www.nv.blm.gov/elko. Additionally, a copy of the ROD will be mailed to individuals, agencies or companies that commented during the scoping process, or on the Draft and Final EIS.

EFFECTIVE DATES: Parties adversely affected by the Record of Decision have 30 days, from the date of publication of this notice, to file a Notice of Appeal in the office which issued this decision (43 CFR 4.411 and 4.413). The decision to approve the mining operation is in full force and effect, effective on the date of signing of the Record of Decision. A petition for a stay of the decision must be filed in accordance with the above cited regulations.

ADDRESSES: A copy of the Record of Decision can be obtained from: Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada 89801. A notice of Appeal should be addressed to: Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, NV 89801, and a copy to: Office of the Regional Solicitor, Salt Lake City Federal Building, 125 South State Street, Salt Lake City, UT 84138.

FOR FURTHER INFORMATION CONTACT: Roger Congdon, Project Coordinator, Elko Field Office, Bureau of Land Management, 3900 Idaho Street, Elko, Nevada 89801, (775) 753–0200.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 02–11443 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–1310–DO]

Inland Resources, Inc. Monument Butte-Myton Bench Oil Field Development, Duchesne and Uintah Counties, UT, Intent To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Vernal Field Office, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the Inland Resources, Inc. Monument Butte-Myton Bench Oil Field Development, Duchesne and Uintah Counties, Utah.

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Vernal Utah Field Office will be writing an EIS on proposed expansion of existing oil field development operations. The EIS area encompasses approximately 65,500 acres in the greater Monument Butte-Myton Bench oil and gas production region. The project is located primarily on BLM administered lands (59,757 acres). The project area also includes lands administered by the State of Utah (5,777 acres), and several private landowners (41 acres). Inland operates the majority of the mineral lease rights underlying both the public and private lands.

As part of a successful application of waterflood technology, the proponent proposed to expand its waterflood operations by drilling 600 to 900 additional wells within the Monument Butte-Myton Bench oil field through the year 2015. Based on a 40 acre spacing pattern, Inland Resources, Inc. would drill approximately 50 percent of the wells as producing wells and 50 percent as water injection wells. The water injection wells would allow reservoir pressure to be managed and oil recovery to be maximized. Estimated new surface disturbance for the project would include 1,710 acres. The existing road network within the project area would provide the primary access routes to the new well sites. No additional compression facilities is expected to be required to accommodate the new wells.

Major issues include potential impacts to status plants and animals, air quality, and soils. Alternatives identified at this time include the proposed action and the no action alternatives.

DATES: This notice announces the public scoping process. Comments on issues can be submitted in writing to the address listed below. All public meetings will be announced through the local news media, and the BLM Vernal Field Office web site (*www.blm.gov/utah/vernal*) at least 15 days prior to the event.

Public Participation: Public meetings will be held during the scoping period. In order to ensure local community participation and input, public meeting locations will be in Duchesne and Uintah Counties, Utah. In addition, formal opportunities for public participation will be provided through comment on the alternatives and upon publication of the BLM draft EIS.

ADDRESSES: Written comments should be sent to the Environmental Coordinator, Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078; Fax 435–781–4410. Documents pertinent to this proposal may be examined at the Vernal Field Office located in Vernal, Utah. Comments, including names and street addresses of respondents, will be available for public review at the Vernal Field Office located in Vernal, Utah during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays , and may be published as part of the EIS. Individual respondents may request confidentially. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Duane De Paepe, Telephone 435–781–4403, or e-mail *ddepaepe@ut.blm.gov.*

SUPPLEMENTARY INFORMATION: The management of BLM public lands and resources encompassed by the project area is directed and guided by the BLM's Record of Decision for the Diamond Mountain Resource Management Plan. The majority of the proposed project lies within an area that was previously partially developed for oil and gas production and is designated as Category 2 for oil and gas leasing by the BLM. Category 2 areas are those that are open to oil and gas leasing with stipulations to protect sensitive surface resources.

Authority: Pub. L. 94–579, 43 CFR 8364.1.

Dated: March 18, 2002.

Sally Wisely,

State Director.

[FR Doc. 02–11435 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–029–02–1610–DO–082L]

Notice of Intent To Prepare Plan Amendments to the 1995 Fort Greely Resource Management Plan and 1995 Fort Wainwright Resource Management Plan and Associated Environmental Assessments (EAs)

AGENCY: Northern Field Office, Bureau of Land Management, Fairbanks, Alaska, Interior.

ACTION: Notice of intent to prepare plan amendments to the 1995 Fort Greely Resource Management Plan (RMP) and 1995 Fort Wainwright RMP and associated Environmental Assessments (EAs).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare two plan amendments with associated EAs. BLM will work closely with the U.S. Army, Alaska (USARAK) while developing the amendments. The amendments will encompass approximately 624,000 acres for Fort Greely and 248,000 acres for Fort Wainwright. The affected lands are on the Fort Greely military withdrawal near the town of Delta Junction, Alaska, and on the Fort Wainwright withdrawal near Fairbanks, Alaska. The amendments will fulfill the needs and obligations set forth by the National Environmental Policy Act, the Federal Land Policy and Management Act, and Pub. L. 106–65, BLM and USARAK management policies. The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. This notice initiates the public scoping process to identify planning issues and to develop planning criteria.

DATES: The scoping comment period will commence with the publication of this notice. Formal scoping will end 60 days after publication of this notice. Comments on issues and planning criteria should be received on or before the end of the scoping period at the address listed below.

Public Participation: Two public meetings will be held during the scoping and preparation period. These meetings will be held in Fairbanks and Delta Junction, Alaska. Early participation by all those interested is encouraged. At least 15 days public notice will be given for activities where the public is invited to attend. Written comments will be accepted throughout the amendment process at the address shown below. Meetings will be announced through the local news media.

ADDRESSES: Written comments should be sent to Northern Field Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709–3844, attention Gary Foreman. Documents pertinent to these amendments may be examined at the Northern Field Office located in Fairbanks, Alaska. Comments, including names and street addresses of respondents, will be available for public review at the Northern Field Office during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EAs. Individual respondents may request confidentiality. If you wish BLM to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and

from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Gary Foreman, Telephone (907) 474–2339.

SUPPLEMENTARY INFORMATION: The RMPs for Fort Greely and Fort Wainwright were signed in 1995. Recently evaluations of the RMPs were performed and three issues were found that require amendments to the 1995 RMPs. These issues are: (1) The withdrawals have been extended for an additional 25 years; (2) Through their planning, USARAK is recommending some changes to vehicle access designations within the withdrawal areas; (3) BLM has drafted new land health standards and will implement them if they are approved in time for these amendments.

Additional issues to be addressed in these amendments can be submitted to the BLM by interested agencies, groups, and individuals throughout the planning process.

Robert W. Schneider,

Field Manager, Northern Field Office, Bureau of Land Management.

[FR Doc. 02–11440 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 050–02–1610–DO]

Notice of Intent to Prepare a Resource Management Plan Revision/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Intent to prepare a Resource Management Plan (RMP) revision and associated Environmental Impact Statement (EIS), Socorro Field Office, New Mexico.

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA) and section 102 (2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM), Socorro Field Office will prepare an RMP Revision and complete an EIS on the Revision for approximately 1.5 million acres of public lands managed by the Socorro Field Office in west-central New Mexico, located within Socorro and Catron Counties. The revised land use plan will guide resource management in these areas into the foreseeable future. The RMP Revision will be prepared under guidance provided through 43 CFR part 1600 (BLM Planning Regulations). The BLM will work closely with interested parties to identify issues, resolve disputes, and develop management actions that are best suited to the management of the resources and the needs of the public. This collaborative process will take into account local, regional, and national concerns. This Notice formally initiates the public Scoping process to identify planning issues and to review preliminary planning criteria.

DATES: The Scoping comment period will commence with the publication of this Notice and Scoping comments would be most effective if received not later than 30 days after the last public meeting. Meetings and comment closing dates will be announced through local news media, newsletters, and the BLM Web site: *http://www.nm.blm.gov.*

ADDRESSES: Written comments should be sent to ''RMP COMMENTS'', BLM, Socorro Field Office, 198 Neel Ave., NW, Socorro, NM, 87801, Fax: 505–835–0223. Documents pertinent to this proposal may be examined at the Socorro Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Socorro Field Office during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the RMP/EIS. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Charles Carroll, Planning and Environmental Coordinator, BLM, Socorro Field Office, 198 Neel Ave., NW, Socorro, NM, 87801, phone: 505–838–1278.

SUPPLEMENTARY INFORMATION: Opportunities to participate will occur throughout the planning process. To ensure local community participation and input, public scoping meetings will be held, at a minimum, in three towns strategically located in or near the planning area. Early participation by all interested parties is encouraged and will help guide the planning process and determine the future management of public lands. At least 15 days public notice in local news media will be given for activities where the public is invited to attend. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify their views. Written comments will be accepted throughout the planning process at the address shown above. Additional formal opportunities for public participation and comment will be provided upon publication of the draft RMP Revision and draft EIS.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. The preliminary issues are: Management of public land resources at the watershed level; off-highway vehicle management; fluid and solid mineral development; effects of urban interface; land tenure adjustments; status of Areas of Critical Environmental Concern; identification of resource values on recently acquired public lands; and public interest/benefits with regard to recent cultural/recreation initiatives—*e.g.,* El Camino Real International Heritage Center, Fort Craig, El Camino Real National Historic Trail, etc.

Preliminary Management Concerns include: Management of current/future special status species; maintaining government-to-government relationships with tribal governments; effect on disproportionate impacts to disadvantaged communities resulting from execution of land management decisions (Environmental Justice Executive Order 12898); the potential for the spread of noxious weeds; and the management of designated streams (Clean Water Act, Section 303–d). Public comments on the issues will be placed in one of three categories: (1) Issues to be resolved in the plan; (2) issues resolved through policy or administrative action; or (3) issues beyond the scope of this plan. The public is encouraged to help identify issues, questions, and concerns during the scoping phase.

Planning Criteria will be developed during public scoping to help guide the planning effort. Preliminary Planning Criteria being considered for the Socorro planning effort include: Recognize valid existing rights; comply with existing law, executive orders, regulation, and BLM policy and program guidance; seek public input; consider adjoining non-public lands when making management

decisions to minimize land use conflicts; consider planning jurisdictions of other federal agencies, and state, local and tribal governments; develop reasonable and sound alternatives; use current scientific data to evaluate appropriate management strategies; analyze socioeconomic effects of alternatives along with the environmental effects; carry forward valid analysis from existing documents; and consider public welfare and safety.

The Socorro Field Office borders the Cibola, Apache, and Gila National Forests, the Alamo Navajo Reservation, the White Sands Missile Range, and the Sevilleta and Bosque del Apache National Wildlife Refuge. Elevations in the area range approximately 4,600 feet along the Rio Grande to over 8,500 feet on Pelona Mountain.

The Socorro Field Office is presently managed under the Socorro RMP (1989, as amended). Information and decisions from the existing Socorro RMP will be reviewed and incorporated in this plan revision to the extent possible.

Management will continue under the Socorro RMP until the revised RMP is approved.

Dated: March 27, 2002.

Richard A. Whitley,

New Mexico Associate State Director.

[FR Doc. 02–11442 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–110–1060–JJ]

Public Hearings Addressing the Use of Helicopters and Motorized Vehicles During the Capture of Wild Horses

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public hearings.

SUMMARY: Two public hearings addressing the use of motorized vehicles and helicopters during the capture of wild horses have been scheduled in Colorado in 2002. One hearing will address use in the Piceance-East Douglas Herd Management Area, White River Field Office, Meeker, Colorado; a second hearing will address use in the Little Book Cliffs Wild Horse Range, Grand Junction Field Office, Grand Junction, Colorado.

DATES: The public hearings will be held in May and June, 2002. The White River and Grand Junction field offices will publish exact dates and times for these hearings through public notices, local newspaper announcements and mailings.

ADDRESSES: The hearings will be held at the following locations:

1. White River Field Office; 73544 Highway 64; Meeker, Colorado
2. Grand Junction Field Office; 2815 H Road, Grand Junction, Colorado

SUPPLEMENTARY INFORMATION: The Piceance-East Douglas wild horse gather is scheduled for completion between June 15, 2002 and September 30, 2002.

The Bookcliffs Wild Horse Range wild horse gather is scheduled for completion between June 15, 2002 and September 30, 2002.

For additional information regarding the Meeker, Colorado public hearing contact James Cagney, Associate Field Manager, at 970–878–3803. For further information regarding the Grand Junction, Colorado public hearing contact Gerald Thygerson, Wild Horse Specialist, at 970–244–3000.

Dated: March 15, 2002.

Vernon Rholl,

Acting Field Office Manager.

[FR Doc. 02–11437 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–59476]

Expiration of Public Land Order No. 7253 and Opening of Land; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Public Land Order No. 7253, which withdrew 21,969.012 acres of public land from surface entry and mining, expired on April 7, 2002. The withdrawal was not extended because land use planning to demonstrate a need for continuation of the withdrawal was not completed. This notice will open the land to surface entry and mining.

EFFECTIVE DATE: June 7, 2002.

FOR FURTHER INFORMATION CONTACT: Jo Ann Hufnagle, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701, 775–885–6000.

SUPPLEMENTARY INFORMATION: On April 7, 2002, Public Land Order No. 7253 expired under it own terms. The purpose of this withdrawal was to protect recreational, cultural, wildlife, riparian, and watershed values in the Pah Rah Range while the Bureau of Land Management completed land use planning for the land. The withdrawal was not extended because land use planning to demonstrate a need for continuation of the withdrawal was not completed. The land included in the withdrawal was described in the public land order published as FR Doc. 97–8960, 62 FR 16866–16867, April 8, 1997.

At 9 a.m. on June 7, 2002, the land described in Public Land Order No. 7253 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. June 7, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9 a.m. on June 7, 2002, the land described in Public Land Order No. 7253 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 5, 2002.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 02–11444 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–074–1210–PA–241E]

Final Recreation Use Restrictions, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Final Supplementary Rules: Restrictions adjacent to and within the Sand Mountain WSA, Idaho.

SUMMARY: In accordance with 43 CFR 8341.1 and 8365.1–6, the Bureau of Land Management (BLM) proposes to make permanent the temporary restrictions currently in place within the

Sand Mountain Wilderness Study Area. The temporary restrictions have been in place since 1992 for motor vehicle use, and since 1999 for uses at Egin Lakes Access and Red Road Recreation sites.

DATES: Comments on the direct final rule must be received or postmarked by June 7, 2002 to be assured consideration. If the BLM does not receive any substantive comments in opposition (i.e., comments showing that the regulatory revisions will adversely impact an individual or entity, the environment, or the public interest), the proposed revisions will become a final rule at the end of the designated comment period on June 7, 2002 without further notice. If we receive any adverse comments, BLM will review the comments, make any appropriate changes and republish the revisions as a proposed rule.

ADDRESSES: Bureau of Land Management, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401. Telephone (208) 524–7500.

SUPPLEMENTARY INFORMATION: A direct final rule means the rule will be a final rule at the end of the published comment period, unless we receive substantive comment during the comment period indicating that the direct final rule will adversely affect an individual or entity, the environment, or the public interest (5 U.S.C. 553). If we receive any substantive adverse comments, this rule will not become final. BLM will respond to all such comments in a further rulemaking and make a decision regarding the contentious parts of the rule at a later time. Otherwise, this rule will become effective without further notice on June 7, 2002. These rules have been in place for several years, with ample opportunity for the public to raise concerns to BLM about them.

The Sand Mountain Wilderness Study Area (WSA) includes 21,000 acres of public land that is part of the larger St. Anthony Sand Dunes Special Recreation Management Area (SRMA) in Fremont and Jefferson Counties, ID. BLM established various restrictions within the WSA and SRMA by publishing several **Federal Register** notices, as listed below. The temporary restrictions were extended in July 2001 (66 FR 35661). They include the following notices:

- Notice of restricted motor vehicle use (57 FR 36405)
- Notice of Recreation Use Restrictions and Regulations for Egin Lakes Access and Red Road Recreation Sites Adjacent and Within the Sand Mountain Wilderness Study Area, Idaho (64 FR 27804)
- Notice of Recreation Use Restrictions and Regulations for Egin Lakes Access and Red Road Recreation Sites Adjacent and Within the Sand Mountain Wilderness Study Area, Idaho (64 FR 46935)

Supplementary Rules for the Sand Mountain Wilderness Study Area (WSA)

The following supplementary rules apply within the WSA:

1. Lands within the WSA are restricted to unlicenced off-road vehicles, including ATVs (3 and 4-wheelers), off-road motorcycles, off-road jeeps, sand dune buggies/rails and other off-road sand vehicles. All licensed vehicles are prohibited, including passenger automobiles, passenger pick-ups, pick-up campers, camp trailers, self-contained campers and similar vehicles.
2. All permitted use must occur on the open sand areas or on designated roads or trails.
3. Glass containers for food and beverages are prohibited within the WSA boundaries.
4. Safety equipment such as helmets, boots, and protective clothing, are strongly recommended.
5. Each vehicle is required to have a ''whip flag'' not less than 6 feet in length with brightly colored material on the end of the flag.
6. Open campfires are prohibited within the WSA, except in the designated Red Road Open Sand Campfire Area. Within the Red Road Open Sand Campfire Area, burning any foreign material other than wood in all campfires is prohibited. This prohibition includes, but is not limited to pallets, treated lumber, tires, glass, aluminum, etc.
7. Use of personal water craft or other motorized vehicle or craft is prohibited on any body of water within the WSA.

The following supplementary rules apply within the SRMA:

1. Quiet hours will be observed within the Egin Lakes Access Site and Red Road Recreation Area from 11 p.m. to 7 a.m. nightly.
2. Burning any foreign material other than wood in all campfires is prohibited. This prohibition includes, but is not limited to pallets, treated lumber, tires, glass, aluminum, etc.
3. Engaging in fighting is prohibited.
4. Addressing any offensive, derisive, or annoying communication that has a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed, is prohibited.
5. No person under the age of twenty-one (21) shall possess or consume any alcoholic beverage, as defined by Idaho Code Title 23–105.

These restrictions are intended to reduce the possibility of injury to individuals, or damage to the natural resources within the WSA and the SRMA. Recreational use on the St. Anthony Sand Dunes has increased more than 1000 percent since 1984, with an estimated 150,000 visitors last season. The restrictions will be cited under Title 43 CFR 8364.1, Access Restrictions; and 8365.1–6, Visitors Services, Rules of Conduct, Supplementary Rules. Violations of these restrictions is punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months.

Maps of the areas where the restrictions and regulations apply are available at the Idaho Falls Field Office. Signs with the rules and regulations are posted at all entrances into the WSA as well as at the recreation sites and areas. For more complete information on these restrictions, please refer to the previously mentioned **Federal Register** notices.

FOR FURTHER INFORMATION CONTACT: Bill Boggs, Bureau of Land Management, Upper Snake River District, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524–7527.

Dated: December 19, 2001.

Joe Kraayenbrink,

Idaho Falls Field Manager.

[FR Doc. 02–11439 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–090–1430EU]

Notice of Intent To Prepare an Amendment to the Judith-Valley-Phillips Resource Management Plan and Associated Environmental Assessment, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Judith-Valley-Phillips Resource Management Plan and associated Environmental Assessment, Montana.

SUMMARY: The Bureau of Land Management's Malta Field Office will consider amending the September 1994 Judith-Valley-Phillips Resource Management Plan (RMP), (RMP) to address a land exchange with the Valley County Commissioners. An environmental assessment (EA) will

analyze the categorization of 0.179 acres of public land within the city limits of Glasgow, MT as a disposal parcel which would be exchanged for 640 acres of county land.

DATES: Comments and recommendations on the amendment under consideration should be received on or before June 7, 2002. Comments, including names and street addresses of respondents, will be available for public review at the Malta Field Office, during regular business hours. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

ADDRESSES: Address all written comments to Bureau of Land Management, Malta Field Office, 501 South 2nd Street East, HC 65, Box 5000, Malta, Montana 59538–0047.

FOR FURTHER INFORMATION CONTACT: Bruce W. Reed, 406–654–5100.

SUPPLEMENTARY INFORMATION: The public land to be addressed in the EA is within the City of Glasgow, MT at 731 1st Avenue South. Valley County intends to use the site which contains a metal building as a bus barn for the Valley County Transit system which is primarily for the benefit of senior citizens. The public land is not currently identified for disposal in the RMP. The county land is located adjacent to the Bitter Creek Wilderness Study Area and the proposed Bitter Creek Area of Critical Environmental Concern.

Dated: February 21, 2002.

(Authority: Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712))

Bruce W. Reed,

Field Manager, Bureau of Land Management.

[FR Doc. 02–11432 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–1430–DB–24–1A]

Notice of intent to Amend the Mountain Valley Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to amend the Mountain Valley Management Framework Plan and prepare an environmental assessment.

SUMMARY: This Notice of Intent is to advise the public that the Utah Richfield Field Office, Bureau of Land Management (BLM) intends to consider a proposal which would require amending an existing planning document.

The BLM is proposing to amend the Mountain Valley Management Framework Plan which includes public lands in Sevier County, Utah. The purpose of the amendment would be to identify certain lands as suitable for direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976. The lands under consideration for being identified for direct sale comprise 440.85 acres described as follows: T. 22 S., R. 1 W., SLB&M, Section 1, Lots 1–4, S½N½, N½SW¼, SW¼SW¼.

DATES: The comment period for this proposed plan amendment will commence with publication of this notice. Comments must be made within 30 days of this publication in the **Federal Register**.

ADDRESSES: Comments on the proposed plan amendment should be sent to Jerry Meredith, Acting Richfield Manager, 150 East 900 North, Richfield, Utah 84701. Comments, including names and address of respondents will be available for public review at the BLM Richfield Field Office and may be published as part of the Environmental Assessment and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written request. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Jerry Meredith, Acting Richfield Field Office Manager,150 East 900 North, Richfield, Utah 84701. Existing planning documents and information are available at the above address or telephone (801) 896–1500.

SUPPLEMENTARY INFORMATION: The existing plan does not identify these lands for disposal. However, because of the resource values and public values and objectives involved, the public interest may well be served by sale of these lands. An environmental assessment will be prepared by an interdisciplinary team to analyze the impacts of this proposal and alternatives.

Dated: March 29, 2002.

Robert A. Bennett,

Acting State Director.

[FR Doc. 02–11434 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–2824–DD]

Notice of Intent To Prepare a Fire and Fuels Management Plan and Amend the San Luis Resource Management Plan

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent To prepare a Fire and Fuels Management Plan Amendment and an Environmental Assessment (EA) for the San Luis Resource Management Plan (RMP).

SUMMARY: This document provides notice that BLM intends to prepare a Fire and Fuels Management Plan Amendment, with an associated EA, for the San Luis Valley. The Del Norte, La Jara, and Saguache Field Offices administer approximately 530,000 acres of public lands in Alamosa, Conejos, Rio Grande, and Saguache Counties in south-central Colorado. The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. This notice initiates public review of the proposed issues to be addressed and the planning criteria.

DATES: The review period will last 45 days from the publication of this notice. To be most useful, comments should be received on or before the end of the review period at the addresses listed below. To ensure local community participation and input, public workshops will be held during the

review period in Alamosa and Saguache. Specific dates and locations for public participation will be published in local papers and broadcast on local community calendars at a later date.

ADDRESSES: If you wish to comment, request additional information, or request to be put on the mailing list, you may do so by any of several methods. You may mail, hand deliver, or call your comments or requests to: Tom Goodwin, Field Manager, Saguache Field Office, 46525 Highway 114, PO Box 67, Saguache, CO 81149, (719) 655–2547; or Neal Beetch, Project Manager, La Jara Field Office, 15571 County Road T5, La Jara, CO 81140, (719) 274–6301. You may also comment via email to: *rgfo_comments@blm.gov.* Please submit email comments avoiding the use of special characters and any form of encryption. Please include your name and address in your email message.

Comments, including names and street addresses of respondents, will be available for public review at the BLM offices listed above during regular business hours. Individual respondents may request confidentiality. If you wish to withhold your name and/or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. 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.

FOR FURTHER INFORMATION CONTACT: Tom Goodwin, Field Manager, or Neal Beetch, Project Manager at the addresses or phone numbers listed above.

SUPPLEMENTARY INFORMATION: The proposed plan amendment will: establish resource area-wide objectives for fire and fuels; delineate fire management areas; identify broad vegetation treatments; and identify general restrictions on fire management practices. BLM has identified general issues anticipated for this planning effort, including: protection of human life; protection of property; protection of natural/cultural resources; integration of fire and resource management; air quality; and wildlife habitat. These issues, along with others that may be identified through public participation, will be considered during the planning process. BLM has also identified preliminary planning criteria to guide the planning process, including compliance with all legal mandates of the Federal Land Policy and Management Act of 1976 (FLPMA), the National Environmental Policy Act of 1969 (NEPA), the Federal Advisory Committee Act, the Administrative Procedures Act, and the BLM planning regulations in 43 CFR part 1600, as well as consistency with fire plans of other agencies and State and local jurisdictions.

Existing information will be used to develop the plan amendment and EA. Selectable alternatives must contribute to the achievement of public land health standards and to the protection of communities at risk from catastrophic wildfire.

The planning process will utilize a collaborative approach. This will allow the public, tribes, State and Federal agencies, local elected officials, and BLM specialists to participate in identifying issues and developing and analyzing alternatives. In addition to the initial public comment period and workshops, the public will also be invited, through a **Federal Register** notice, local newspapers, and mailings, to review the proposed plan and provide comments. The Governor of Colorado, County Commissioners for Alamosa, Conejos, Rio Grande, and Saguache counties, and potentially affected members of the public will be notified of all meetings and comment periods. Agency representatives and interested persons are invited to visit with BLM officials at any time during the planning process.

Roy L. Masinton,

Front Range Center Manager.

[FR Doc. 02–11436 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; N–75209]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw a 2,303.61 acres of public lands from surface entry and mining for a period of 20 years to protect public health and safety from lands contaminated by previous mining operations. This notice closes the lands from surface entry and mining for up to 2 years while various studies and analyses are made to make a final decision on the withdrawal application.

DATES: Comments and requests for a meeting should be received on or before August 6, 2002.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 775–861–6532.

SUPPLEMENTARY INFORMATION: On March 25, 2002, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T 10 N., R. 35 E.,
  Sec. 1, lots 1, 8, 9, 16, 17, and E½SE¼;
T. 10 N., R. 36 E.,
  Sec. 4, lots 9 to 14, inclusive, lots 16 to 20, inclusive, W½SW¼, W½E½SW¼, N½NE¼NE¼SW¼, N½SE¼SE¼SW¼, and S½NE¼SE¼SW¼;
  Sec 6;
  Sec. 9, lots 1 to 4, inclusive, SW¼NE¼NE¼, SE¼NE¼, S½NE¼SW¼NE¼, S½SE¼SW¼NE, W½NW¼NE¼NW¼, SW¼NE¼NW¼, NW¼NW¼, N½SW¼NW¼, N½SE¼NW¼, SW¼SW¼NW¼, NE¼SE¼SW¼NW¼, NW¼SE¼SW¼NW¼, SW¼SE¼SW¼NW¼, NW¼NE¼NW¼SW¼, SW¼NE¼NW¼SW¼, SE¼NE¼NW¼SW¼, NW¼NW¼SW¼, S½ NW¼SW¼, SW¼SW¼, S½N½SE¼SW¼, and S½SE¼SW¼;
  Sec. 10, NW¼SW¼, NE¼SW¼SW¼, N½NW¼SW¼SW¼, S½SW¼SW¼, and SE¼SW¼;
  Sec. 15, N½;
  sec. 16, N½NW¼SW¼, SE¼NE¼NE¼, W½SW¼NE¼, SE¼SW¼NE¼, SE¼SE¼NE¼, and E½SE¼NE¼.

The areas described aggregate 2,303.61 acres in Nye and Mineral Counties, Nevada.

The purpose of the proposed withdrawal is to protect the public safety as well as to prevent the filing of mining claims which would interfere with the reclamation of the Paradise Peak Mine site. The Paradise Peak Mine was the site of mining and milling operations for many years. Operations have ceased and the operator has filed for bankruptcy. This area is known to contain residue of mercury and other

heavy metals that can be hazardous to public users. The Bureau of Land Management has collected the bond money and intends to reclaim the site. A withdrawal would preclude the filing of mining and mill site claims while the site is being reclaimed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Other uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

Dated: April 10, 2002.

Jim Stobaugh,

Lands Team Lead.

[FR Doc. 02–11433 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[OMB Control Number 1010–0107]

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0107).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are submitting to OMB for review and approval an information collection request (ICR) titled ''30 CFR part 218, Subpart B—Oil and Gas, General'' (formerly titled ''Designation of Royalty Payment Responsibility''). We are also soliciting comments from the public on this ICR.

DATES: Submit written comments on or before June 7, 2002.

ADDRESSES: Submit written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0107), 725 17th Street, NW, Washington, DC 20503. Also, submit copies of your written comments to Carol Shelby, Regulatory Specialist, Minerals Management Service, MS 320B2, P.O. Box 25165, Denver, Colorado 80225. If you use an overnight courier service, MMS's courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Carol Shelby, Regulatory Specialist, phone (303) 231–3151 or FAX (303) 231–3385.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 218, Subpart B—Oil and Gas, General.

OMB Control Number: 1010–0107.

Bureau Form Numbers: Forms MMS–4425 and MMS–4280.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions for the Secretary.

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Public Law 104–185, as corrected by Public Law 104–200, established that owners of operating rights or lease record title (referred to as ''lessees'') are responsible for making royalty and related payments on Federal oil and gas leases. It is common, however, for a payor rather than a lessee to make these payments. When a payor makes payments on behalf of a lessee, RSFA requires that the lessee designate the payor as its designee and notify MMS of this arrangement in writing. These RSFA requirements are codified in 30 CFR 218.52. MMS designed Form MMS–4425, Designation Form, to contain all the information necessary for lessees to comply with these RSFA requirements. We are proposing a minor revision to Form MMS–4425 to remove the field for revenue source code. This revision is necessary to make Form MMS–4425 compatible with other forms, such as the Form MMS–2014, Report of Sales and Royalty Remittance, that were revised as a result of a major reengineering of MMS's financial and compliance processes and the procurement of a new computer system.

Regulations at 30 CFR 218.53 provide requirements that payors must follow to recoup overpayments on Indian mineral leases. These regulations are necessary for MMS to carry out its Indian trust responsibilities. Generally, a payor may recoup an overpayment on Form MMS–2014 against the current month's royalties or other revenues owed on the same Tribal lease. However, 30 CFR 2l8.53(b) allows payors with written permission from the Tribe to recoup overpayments in the same month against a different lease for which the Tribe is the lessor. The payor must furnish a copy of the Tribe's written permission to MMS.

The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) at 30 U.S.C. 1723, authorizes the Secretary of the Interior to pay a reward to certain individuals who provide information to the Government leading to the recovery of royalty or other payments owed to the United States from oil and gas leases on Federal lands or the Outer Continental Shelf. Criteria and procedures covering claims for, and payment of, rewards are provided at 30 CFR 218.57. In order to claim a reward, individuals must voluntarily, and of their own initiative, submit Form MMS–4280, Application for Reward for Original Information, to MMS.

Submission of the information in this collection is necessary to comply with FOGRMA and RSFA requirements and to carry out MMS's Indian trust responsibilities. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 1,607 oil and gas reporters.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,207 hours. See the following chart for a breakdown of the burden estimate by CFR section and paragraph.

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
218.52(a), (c), and (d) ...	If you are a lessee under 30 U.S.C. 1701(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf * * * you must notify MMS * * * in writing of such designation * * *. If you want to terminate a designation * * * you must provide [notice] to MMS in writing * * *. MMS may require you to provide notice when there is a change in your record title or operating rights ownership.	.75	1,600	1,200
218.53(b)	With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed * * * under other leases * * * A copy of the tribe's written permission must be furnished to MMS * * *.	1	6	6
218.57(a) and (b)	If a person has any information he or she believes would be valuable to MMS, that person * * * should submit the information in writing, in the form of a letter * * * The informant should provide all data * * * To file a claim for reward, the informant must: (i) Notify the Director, MMS * * * that he/she is claiming a reward. (ii) Request an Application for Reward for Original Information'' (Form MMS–4280) * * * File a claim for reward by completing Form MMS–4280, sign it * * * and mail or deliver it in person to the Director * * * The person should attach proof to the claim that he or she is the person who gave the information * * *.	1	1	1
Total	.....	.....	1,607	1,207

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Burden: We have identified no ''non-hour cost'' burden.

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 January 16, 2002, we published a **Federal Register** notice (67 FR 2235) with the required 60-day comment period announcing that we would submit this ICR to OMB for approval. We did not receive any comments on the notice. We will provide a copy of the ICR to you without charge upon request.

If you wish to comment in response to this notice, please send your comments directly 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 your comments by June 7, 2002. The PRA provides 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 OMB control number.

Public Comment Policy: We will make copies of these comments, including names and home addresses of respondents, available for public review during regular business hours at our offices in Lakewood, Colorado.

Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, telephone (202) 208–7744

Dated: April 12, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–11478 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Review)]

Fresh Market Tomatoes From Mexico

AGENCY: International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the suspended antidumping duty investigation on fresh market tomatoes from Mexico.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether termination of the suspended antidumping duty investigation on fresh market tomatoes from Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: May 2, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2002, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (67 FR 3229, January 23, 2002). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Review and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the review will be placed in the nonpublic record on July 12, 2002, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on August 2, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 29, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 31, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is July 24, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is August 13, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before August 15, 2002. On September 4, 2002, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 6, 2002, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: May 3, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11481 Filed 5–7–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1010 (Preliminary)]

Lawn and Garden Steel Fence Posts From China

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1010 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an

industry in the United States is materially retarded, by reason of imports from China of lawn and garden steel fence posts, provided for in subheading 7326.90.85 or 7308.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by June 17, 2002. The Commission's views are due at Commerce within five business days thereafter, or by June 24, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 1, 2002, by Steel City Corporation Youngstown, OH.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 22, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than May 20, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 28, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 3, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11480 Filed 5–7–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–995 (Preliminary)]

Oil Country Tubular Goods From Columbia

AGENCY: International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigation.

SUMMARY: On April 11, 2002, the Department of Commerce and the Commission received a letter from petitioners in the subject investigation (IPSCO Tubulars, Inc., Koppel Steel Corp., a division of NS Group; Maverick Tube Corp.; Newport Steel Corp., a division of NS Group; and United States Steel Corp.) withdrawing their petition on Colombia. Commerce did not initiate an investigation on Colombia as provided for in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigation concerning oil country tubular goods from Colombia (Investigation No. 731-TA–995 (Preliminary)) is discontinued.

EFFECTIVE DATE: April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

Issued: May 3, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11479 Filed 5–7–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Division

Agency Information Collection Activities Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: reinstatement with change, of a previously approved collection for which approval has expired; claims under the Radiation Exposure Compensation Act.

The Department of Justice (DOJ), Civil Division 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** on March 1, 2002, Volume 67, Number 41, Pages 9467–9468 allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 7, 2002. 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 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:

(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 the 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 the appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Claims Under the Radiation Exposure Compensation Act

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Torts Branch, Civil Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals who resided near the Nevada Test Site; former uranium miners and millers; individuals formerly employed in the transport of uranium or vanadium-uranium ore; and, individuals who participated onsite in an atmospheric nuclear test. *Other:* None. *Abstract:* This form collects information to determine whether an individual is entitled to compensation under the Radiation Exposure Compensation Act, 42 U.S.C.A. section 2210 note (West Supp. 2001).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3000 responses are estimated annually with an average of 2.5 hours per response.

(6) *An estimation of the total public burden (in hours) associated with the collection:* 7500 hours annually.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, D. Street, NW., Washington, DC 20530.

Dated: May 1, 2002.

Robert B. Briggs,

Department Clearance Officer; Department of Justice.

[FR Doc. 02–11422 Filed 5–7–02; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (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 the collection requirements on respondents can be properly assessed. Through this notice, the Employment and Training Administration is soliciting comments concerning a proposed new collection of data on self-services provided by states and local workforce areas under the Workforce Investment Act and Wagner-Peyser.

A copy of the proposed survey 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 July 8, 2002.

ADDRESSES: Esther Johnson, U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, 200 Constitution Ave, NW., Room N–5637, Washington, DC 20210, (202) 693–3165 (this is not a toll free number), *ERJOHNSON@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor's Employment and Training

Administration (ETA) seeks to collect data from local workforce investment areas on the self-services they make available under the Workforce Investment Act (WIA) and Wagner-Peyser Act (W–P). The data ETA seeks to collect will provide a national snapshot of the self-service tools and resources available in local workforce areas and the systems and mechanisms that areas use to track customers' usage, outcomes, and satisfaction with those services. The data will also be used to select a sample of states and local areas for subsequent in-depth scrutiny, so that the quality and cost-effectiveness of self-services can be analyzed.

Collecting this information is important because self-services—including informational and self-help core services authorized by WIA and self-directed labor exchange services provided as part of W–P—have become an important feature of the nation's workforce development system. Over the past decade, substantial amounts of resources have been expended in developing the infrastructure to support self-services, such as by establishing physical facilities in which ''Resource Rooms'' can be housed, developing an array of tools and resources to meet diverse needs, ensuring that these resources are user-friendly and are accessible from remote locations, and promoting access and use for customers with special needs. Moreover, the pace of investments has dramatically quickened since the enactment of WIA. It is expected that self-services must be an essential feature of every one of the nation's comprehensive One-Stop centers. WIA requires that access to these services must be universally available without eligibility restrictions.

Moreover, self-services are expected to play a critical role in meeting the nation's workforce development needs. The vision at the heart of WIA is that all adults should have easy access to an array of high-quality resources and information tools that they can use to make informed career decisions and that, more generally, will improve the efficiency of the labor market. Given WIA's emphasis on universal access and the limited public funding available to support staff-intensive workforce development systems, self-services become a critical means by which this vision can be realized.

Currently, however, little is known about the types of self-service systems that have been established, how frequently customers use self-services and for what purposes, whether they are satisfied with the tools at their disposal, and whether use of these services improves their employment outcomes. This information vacuum occurs partly because users of self-services are not required to become registrants under either WIA or W–P, and these services are thus not covered by the programs' reporting requirements.

To fill the information gap, ETA is embarking on two data collection efforts focused on self-services. One, covered by a previous **Federal Register** notice (67 FR 2244, January 16, 2002), is designed to yield a national estimate of the number of job seekers who use self-services. A second effort, to which this notice applies, will entail a questionnaire administered to the largest One-Stop operator in each of the nation's local workforce areas to determine the self-service tools and resources they have available and identify which of them have mechanisms in place to track customer usage and outcomes. In addition to being important information in its own right, the results will be used to select a sample of local areas for further scrutiny through site visits (so that the quality of self-services can be assessed), and so that a quantitative analysis of the outcomes associated with self-services can be conducted.

II. Review Focus

The Department of Labor is particularly interested in comments that: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the utility, quality and clarity of the information to be collected; and (d) 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.

III. Current Actions

The Department of Labor's Employment and Training Administration will be seeking Office of Management and Budget (OMB) approval to administer a questionnaire to the largest One-Stop operator in each of the nation's local workforce investment areas on the types of self-services they offer and whether they have mechanisms in place to track customers' usage patterns and outcomes. The data will be used to provide a national snapshot of self-service systems and to select a sample of states and local areas for subsequent in-depth study, through site visits and a quantitative analysis of customers' outcomes.

Agency: Employment and Training Administration.

Type of Review: New.

Title: Local Area Survey of Self-Services.

Affected Public: Local workforce investment areas.

Total Respondents: 605.

Frequency: Twice.

Total Responses: 1,210.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 605.

Total Burden Cost for Capital and Startup: $0.

Total Burden Cost for Operation and Maintenance: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC this 2nd day of May, 2002.

Gerard F. Fiala,

Administrator.

[FR Doc. 02–11385 Filed 5–7–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL4–93]

Underwriters Laboratories Inc., Renewal and Expansion of Recognition

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

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Underwriters Laboratories Inc. for renewal of its recognition as a Nationally Recognized Testing Laboratory, under 29 CFR 1910.7, and the related applications of Underwriters Laboratories Inc. for expansion of its recognition to include additional sites and test standards.

EFFECTIVE DATE: The renewal is effective on May 8, 2002 and will be valid until May 8, 2007, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7. The renewal incorporates the expansion.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and

Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC. 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the renewal and expansion of recognition of Underwriters Laboratories Inc. (UL) as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion covers the use of two additional sites and additional test standards. The NRTL's scope of recognition may be found in the following OSHA informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html.* The information on this page will be updated in the very near future to include the recognitions granted in this notice.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

When OSHA published its regulations for the NRTL Program at 29 CFR 1910.7, it temporarily recognized UL as a nationally recognized testing laboratory for a five year period from June 13, 1988, through June 13, 1993 (see Appendix A to 1910.7). In Appendix A, OSHA also required that UL apply for renewal of its OSHA recognition at the end of this temporary period. UL did apply for the renewal, which OSHA announced in March 29, 1995 (60 FR 16171). In its renewal application, UL stated that it was founded in 1894. It also stated that its ''principal activity is investigating the safety of many kinds of products, including electrical and electronic equipment and products,'' and a number of other products and systems. The Agency granted UL's renewal for a period of five years ending on June 29, 2000.

Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. UL submitted a request, dated September 17, 1999 (see Exhibit 23), to renew its recognition, within the time allotted, and UL retains its recognition pending OSHA's final decision in this renewal process. UL's existing scope of recognition consists of the facilities already recognized and the supplemental programs, as listed below, and the test standards listed under *Renewal of Recognition* below.

UL also submitted requests, dated June 6, and October 5, 2000 (see Exhibits 23–1 and 23–2), to expand its recognition to include the two additional sites listed below. Moreover, UL submitted a request, dated March 29, 2001 (see Exhibit 23–3), to expand its recognition to include 142 additional test standards. The OSHA NRTL Program staff determined that 64 of those test standards, listed below under *Expansion of Recognition*, will be included in UL's scope of recognition. We could not approve the remaining test standards for various reasons, primarily because we determined that they did not meet our approval criteria or our requirements for ''appropriate test standards,'' within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing applications from any NRTL.

In processing UL's renewal request, OSHA NRTL Program staff performed an on-site review of UL's Northbrook facility on July 16–20, 2001. In processing UL's expansion requests to include the additional sites, OSHA NRTL Program staff performed an on-site review of the facility in Ontario on January 22–25, 2001, and a similar review of the facility in Tokyo on March 12–15, 2001. In the on-site review reports (see Exhibits 24, 24–1, and 24–2), the program staff recommended a ''positive finding,'' which means a positive recommendation to the Assistant Secretary regarding the applications.

OSHA published the required notice in the **Federal Register** on March 18, 2002 (67 FR 12054), to announce UL's renewal and expansion requests. This notice included a preliminary finding that UL could meet the requirements in 29 CFR 1910.7 for renewal and expansion of its recognition and invited public comment by April 2, 2002. OSHA received no comments concerning this notice.

The previous notice published by OSHA for UL's recognition covered an expansion of recognition to include additional sites, which became effective on December 7, 1999 (64 FR 68389). The other **Federal Register** notices related to UL's recognition that OSHA has published since UL's previous renewal addressed an expansion for additional standards, which OSHA announced on November 21, 1997 (62 FR 62359) and granted on June 24, 1999 (64 FR 33913). The renewal incorporates all of these recognitions granted to UL, including the expansion being granted in this notice.

You may obtain or review copies of all public documents pertaining to the UL applications by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL4–93, the permanent record of public information on the UL recognition.

The current address of the UL facilities (sites) already recognized by OSHA are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062

Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York 11747

Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050

Underwriters Laboratories Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709

Underwriters Laboratories Inc., 2600 N. W. Lake Road, Camas, Washington, 98607

UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong

UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou District Taipei City, Taiwan

UL International Demko A/S, Lyskaer 8, P.O. Box 514, DK–2730, Herlev, Denmark

Underwriters Laboratory International (U.K.) Ltd., Wonersh House, The

Guildway, Old Portsmouth Road, Guildford, Surrey GU3 1LR, United Kingdom

Underwriters Laboratory International Italia S.r.l., Via Archimede 42, 1–20041 Agrate Brianza, Milan, Italy; Testing facility: Z.I. Predda Niedda st. 18, I–07100, Sassari, Italy

The current addresses of the two additional UL sites covered by the expansion requests and now being recognized are:

Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada MIR 3A9

UL Japan Co., Ltd., Shimbashi Ekimae Bldg.—1 Gohkan, 4th floor, Room 402, 2–20–15 Shimbashi Minato Ku, Tokyo 105–0004, Japan

Programs and Procedures

The renewal of recognition includes UL's continued use of the following supplemental programs and procedures based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA has already recognized UL for these programs. See *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html.*

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

Program 7: Acceptance of continued certification following minor modifications by the client.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC-CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Final Decision and Order

The NRTL Program staff has examined the applications, the assessor's reports, and other pertinent information. Based upon this examination and the assessor's recommendations, OSHA finds that Underwriters Laboratories Inc. has met the requirements of 29 CFR 1910.7 for renewal and expansion of its NRTL recognition. The renewal and expansion apply to the sites listed above. In addition, the renewal and expansion cover the test standards listed below and are subject to the limitations and conditions, also listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews and expands the recognition of UL, subject to these limitations and conditions.

Limitations

Renewal of Recognition

OSHA limits the renewal of recognition of UL to the 10 sites listed above. In addition, similar to other NRTLs that operate multiple sites, the Agency's recognition of any UL testing site is limited to performing testing to the test standards for which OSHA has recognized UL and for which the site has the proper capability and control programs. OSHA further limits the renewal of recognition of UL to testing and certification of products for demonstration of conformance to the following 638 test standards, which OSHA has previously recognized for UL. Except as explained below (see paragraph immediately following listing of standards), all these standards are ''appropriate,'' within the meaning of 29 CFR 1910.7(c).

ANSI C37.013 (1) AC High-Voltage Generator Circuit Breakers Rated on a Symmetrical Current Basis

ANSI C37.13 (1) Low Voltage AC Power Circuit Breakers Used in Enclosures

ANSI C37.14 (1) Low Voltage DC Power Circuit Breakers Used in Enclosures

ANSI C37.17 (1) Trip Devices for AC and General Purpose DC Low-Voltage Power Circuit Breakers

ANSI C37.18 (1) Enclosed Field Discharge Circuit Breakers for Rotating Electric Machinery

ANSI C37.20.1 (1) Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear

ANSI C37.20.2 (1) Metal-Clad and Station-Type Cubicle Switchgear

ANSI C37.20.3 (1) Metal-Enclosed Interrupter Switchgear

ANSI C37.21 (1) Control Switchboards

ANSI C37.29 (1) Low-Voltage AC Power Circuit Protectors Used in Enclosures

ANSI C37.38 (1) Gas-Insulated, Metal-Enclosed Disconnecting, Interrupter and Grounding Switches

ANSI C37.42 (1) Distribution Cutouts and Fuse Links

ANSI C37.44 (1) Distribution Oil Cutouts and Fuse Links

ANSI C37.45 (1) Distribution Enclosed Single-Pole Air Switches

ANSI C37.46 (1) Power Fuses and Fuse Disconnecting Switches

ANSI C37.47 (1) Distribution Fuse Disconnecting Switches, Fuse Supports, and Current-Limiting Fuses

ANSI C37.50 (1) Low-Voltage AC Power Circuit Breakers Used in Enclosures—Test Procedures

ANSI C37.51 (1) Metal-Enclosed Low-Voltage AC Power Circuit-Breaker Switchgear Assemblies—Conformance Test Procedures

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UL 1418 Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1419 Professional Video and Audio Equipment
UL 1424 Cables for Power-Limited Fire-Protective-Signaling Circuits
UL 1429 Pullout Switches
UL 1431 Personal Hygiene and Health Care Appliances
UL 1433 Control Centers for Changing Message Type Electric Signs
UL 1436 Outlet Circuit Testers and Similar Indicating Devices
UL 1437 Electrical Analog Instruments, Panelboard Types
UL 1441 Coated Electrical Sleeving
UL 1445 Electric Water Bed Heaters
UL 1446 Systems of Insulating Materials—General
UL 1447 Electric Lawn Mowers
UL 1448 Electric Hedge Trimmers
UL 1449 Transient Voltage Surge Suppressors
UL 1450 Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
UL 1453 Electric Booster and Commercial Storage Tank Water Heaters
UL 1459 Telephone Equipment
UL 1468 Direct-Acting Pressure-Reducing and Pressure-Control Valves for Fire Protection Service
UL 1472 Solid-State Dimming Controls
UL 1474 Adjustable Drop Nipples for Sprinkler Systems
UL 1478 Fire Pump Relief Valves
UL 1480 Speakers for Fire Protective Signaling Systems
UL 1481 Power Supplies for Fire Protective Signaling Systems
UL 1484 Residential Gas Detectors
UL 1486 Quick Opening Devices for Dry Pipe Valves for Fire-Protection Service
UL 1492 Audio and Video Equipment
UL 1557 Electrically Isolated Semiconductor Devices
UL 1558 Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
UL 1559 Insect-Control Equipment, Electrocution Type
UL 1561 Large General Purpose Transformers
UL 1562 Transformers, Distribution, Dry Type—Over 600 Volts
UL 1563 Electric Hot Tubs, Spas, and Associated Equipment
UL 1564 Industrial Battery Chargers
UL 1565 Wire Positioning Devices
UL 1567 Receptacles and Switches Intended for Use With Aluminum Wire
UL 1569 Metal-Clad Cables
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 1573 Stage and Studio Lighting Units
UL 1574 Track Lighting Systems
UL 1577 Optical Isolators
UL 1581 Reference Standard for Electrical Wires, Cables, and Flexible Cords
UL 1585 Class 2 and Class 3 Transformers
UL 1594 Sewing and Cutting Machines
UL 1598 Luminaries
UL 1604 Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
UL 1610 Central-Station Burglar-Alarm Units
UL 1635 Digital Burglar Alarm Communicator System Units
UL 1637 Home Health Care Signaling Equipment
UL 1638 Visual Signaling Appliances
UL 1647 Motor-Operated Massage and Exercise Machines
UL 1651 Optical Fiber Cable
UL 1660 Liquid-Tight Flexible Nonmetallic Conduit
UL 1662 Electric Chain Saws
UL 1664 Immersion-Detection Circuit-Interrupters
UL 1666 Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1673 Electric Space Heating Cables

UL 1676 Discharge Path Resistors
UL 1682 Plugs, Receptacles, and Cable Connectors, of the Pin and Sleeve Type
UL 1684 Reinforced Thermosetting Resin Conduit
UL 1690 Data-Processing Cable
UL 1692 Polymeric Materials—Coil Forms
UL 1693 Electric Radiant Heating Panels and Heating Panel Sets
UL 1694 Tests for Flammability of Small Polymeric Component
UL 1703 Flat Plate Photo Voltaic Modules and Panels
UL 1711 Amplifiers for Fire Protective Signaling Systems
UL 1726 Automatic Drain Valves for Standpipe Systems
UL 1727 Commercial Electric Personal Grooming Appliances
UL 1730 Smoke Detector Monitors and Accessories for Individual Living Units of Multifamily Residences and Hotel/Motel Rooms
UL 1738 Venting Systems for Gas-Burning Appliances, Categories II, III, and IV
UL 1739 Pilot-Operated Pressure-Control Valves for Fire-Protection Service
UL 1740 Industrial Robots and Robotic Equipment
UL 1767 Early-Suppression Fast-Response Sprinklers
UL 1769 Cylinder Valves
UL 1773 Termination Boxes
UL 1776 High-Pressure Cleaning Machines
UL 1778 Uninterruptible Power Supply Equipment
UL 1786 Nightlights
UL 1795 Hydromassage Bathtubs
UL 1812 Ducted Heat Recovery Ventilators
UL 1815 Nonducted Heat Recovery Ventilators
UL 1821 Thermoplastic Sprinkler Pipe and Fittings for Fire Protection
UL 1838 Low Voltage Landscape Lighting Systems
UL 1863 Communication Circuit Accessories
UL 1876 Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1889 Commercial Filters for Cooking Oil
UL 1917 Solid-State Fan Speed Controls
UL 1950 Information Technology Equipment Including Electrical Business Equipment
UL 1951 Electric Plumbing Accessories
UL 1963 Refrigerant Recovery/Recycling Equipment
UL 1971 Signaling Devices for the Hearing Impaired
UL 1977 Component Connectors for Use in Data, Signal, Control and Power Applications
UL 1981 Central Station Automation Systems
UL 1993 Self-Ballasted Lamps and Lamp Adapters
UL 1994 Low-Level Path Marking and Lighting Systems
UL 1995 Heating and Cooling Equipment
UL 1996 Duct Heaters
UL 2006 Halon 1211 Recovery/Recharge Equipment
UL 2021 Fixed and Location-Dedicated Electric Room Heaters
UL 2024 Optical Fiber Cable Raceway
UL 2034 Single and Multiple Station Carbon Monoxide Detectors
UL 2044 Commercial Closed Circuit Television Equipment
UL 2061 Adapters and Cylinder Connection Devices for Portable LP-Gas Cylinder Assemblies
UL 2083 Halon 1301 Recovery/Recycling Equipment
UL 2085 Insulated Aboveground Tanks for Flammable and Combustible Liquids
UL 2096 Commercial/Industrial Gas and/or Gas Fired Heating Assemblies with Emission Reduction Equipment
UL 2097 Reference Standard for Double Insulation Systems for Use in Electronic Equipment
UL 2106 Field Erected Boiler Assemblies
UL 2111 Overheating Protection for Motors
UL 2157 Electric Clothes Washing Machines and Extractors
UL 2158 Electric Clothes Dryers
UL 2161 Neon Transformers and Power Supplies
UL 2250 Instrumentation Tray Cable
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3044 Surveillance Closed Circuit Television Equipment
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
UL 8730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Restrictions/Limitations on Recognition

[1] These standards are approved for equipment or materials intended for use in commercial and industrial power system applications. These standards are not approved for equipment or materials intended for use in installations that are excluded from the provisions of Subpart S in 29 CFR 1910 by Section 1910.302(a)(2).

Note: Testing and certification of gas operated equipment is limited to equipment for use with ''liquefied petroleum gas'' (''LPG'' or ''LP-Gas'')

At the time of preparation of the preliminary notice, some of the test standards for which OSHA currently recognizes UL, and which are listed above, have been withdrawn or replaced by the standards developing organization. Under OSHA policy regarding such withdrawn or replaced test standards, OSHA can no longer recognize the NRTL for the test standards, but the NRTL may request recognition for comparable test standards, i.e., other appropriate test standards covering similar types of product testing. However, a number of other NRTLs also are recognized for these withdrawn or replaced standards. As a result, OSHA will publish a separate notice to make the appropriate substitutions for UL and the other NRTLs that were recognized for these standards. However, see footnote (3) at the end of list of standards under the *Expansion of Recognition* section below.

OSHA's recognition of UL, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many of the Underwriters Laboratories (UL) test standards listed above, and listed later in this notice, are approved as American National Standards by the American National Standards Institute (ANSI). However, for

convenience in compiling the list, we use the designation of the standards developing organization (*e.g.,* UL 1004) for the standard, as opposed to the ANSI designation (*e.g.,* ANSI/UL 1004). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI web site (http://www.ansi.org) and click ''NSSN'' to find out whether or not a test standard is currently ANSI-approved.

Expansion of Recognition

OSHA limits the expansion of recognition to the two additional sites located in Tokyo, Japan, and in Ontario, Canada, as listed earlier in this notice. These sites are wholly owned or controlled by UL. As stated under the renewal section above, the Agency's recognition of any UL testing site is limited to performing testing to the test standards for which OSHA has recognized UL and for which the site has the proper capability and control programs. In addition, OSHA would permit the two sites to use all eight of the ''supplemental'' programs, listed earlier in this notice, as do the 10 sites already recognized.

OSHA further limits the expansion to testing and certification of products for demonstration of conformance to the following 64 test standards, and OSHA has determined the standards are ''appropriate,'' within the meaning of 29 CFR 1910.7(c).

ANSI/ASME A17.5 Elevators and Escalator Electrical Equipment
ANSI/BHMA A156.3 Exit Devices
ANSI C12.1 Code for Electricity Meters
ANSI Z21.1 Household Cooking Gas Appliances
ANSI/NFPA 11 Low Expansion Foam and combined Agent Systems
ANSI/NFPA 11A Medium- and High-Expansion Foam Systems
ANSI/NFPA 12 Carbon Dioxide Extinguishing Systems
ANSI/NFPA 12A Halon 1301 Fire Extinguishing Agent Systems
ANSI/NFPA 13 Installation of Sprinkler Systems
ANSI/NFPA 17 Dry Chemical Extinguishing Systems
ANSI/NFPA 20 Centrifugal Fire Pumps
ANSI/NFPA 72 Installation, Maintenance, and Use of Protective Signaling Systems
UL 6A Electrical Rigid Metal Conduit—Aluminum, Bronze, and Stainless Steel
UL 10C Positive Pressure Fire Tests of Door Assemblies
UL 198M Mine-Duty Fuses
UL 307A Liquid Fuel-Burning Heating Appliances for Manufactured Homes and Recreational Vehicles
UL 497C Protectors for Coaxial Communications Circuits
UL 498A Current Taps and Adapters
UL 514D Cover Plates for Flush-Mounted Wiring Devices
UL 536 Flexible Metallic Hose
UL 606 Linings and Screens for Use with Burglar-Alarm Systems
UL 641 Type L Low-Temperature Venting Systems
UL 651B Continuous Length HDPE Conduit
UL 698A Industrial Control Panels Relating to Hazardous (Classified) Locations
UL 789 Indicator Posts for Fire-Protection Service
UL 797A Electrical Metallic Tubing—Aluminum
UL 896 Oil-Burning Stoves
UL 963 Sealing, Wrapping, and Marking Equipment
UL 1425 Cables for Non-Power Limited Fire-Alarm Circuits
UL 1434 Thermistor-Type Devices
UL 1482 Solid-Fuel Type Room Heaters
UL 1640 Portable Power Distribution Equipment
UL 1653 Electrical Nonmetallic Tubing
UL 1655 Community-Antenna Television Cables
UL 1681 Wiring Device Configurations
UL 1686 Pin and Sleeve Configurations
UL 1699 Arc-Fault Circuit-Interrupters
UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems
UL 1887 Fire Test of Plastic Sprinkler Pipe for Flame and Smoke Characteristics
UL 2017 General Purpose Signaling Devices and Systems [1]
UL 2089 Vehicle Battery Adapters [2]
UL 2125 Motor-Operated Air Compressors for Use in Sprinkler Systems
UL 2127 Inert Gas Clean Agent Extinguishing System Unit
UL 2166 Halocarbon Clean Agent Extinguishing System Units
UL 2200 Stationary Engine Generator Assemblies
UL 2202 Electric Vehicle (EV) Charging System Equipment
UL 2227 Overfilling Prevention Devices
UL 3121–1 Process Control Equipment
UL 3101–2–20 Electrical Equipment for Laboratory Use, Part 2: Laboratory Centrifuges
UL 60950 Information Technology Equipment [3]
UL 8730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automated Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 8730–2–9 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Temperature Sensing Controls
UL 8730–2–14 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Electric Actuators
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1: General Requirements
UL 60335–2–34 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Motor-Compressors
UL 60730–1 Automatic Electrical Controls for Household and Similar Use, Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–4 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Thermal Motor Protectors for Motor-Compressors of Hermetic and Semi-Hermetic Type
UL 60730–2–10 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Electrically Operated Motor Starting Relays
UL 60730–2–11 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Electrically Operated Door Locks
UL 60730–2–13 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–16 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Automatic Electrical Water Level Operating Controls of the Float Type for Household and Similar Applications
UL 61058–1 Switches for Appliances

[1] Limited to electrical portions only.
[2] This standard is approved for testing and certification of products for use within recreational vehicles and mobile homes.
[3] This standard replaces UL 1950. Upon publication of this final notice, the web page of all other NRTLs currently recognized for

UL 1950 also will be updated to include UL 60950, due to earlier requests received from some of these other NRTLs for recognition of UL 60950.

Conditions

Underwriters Laboratories Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to the UL facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If UL has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

UL must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, UL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

UL will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

UL will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 1st day of May, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–11384 Filed 5–7–02; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2003 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for Proposals for the Provision of Civil Legal Services; correction.

SUMMARY: The Legal Services Corporation (LSC) published a notice in the **Federal Register** of April 22, 2002 (67 FR 19597) concerning the availability of competitive grant funds for the provision of civil legal services to low income people. The notice contained incorrect service area codes for the state of Louisiana. The correct service area codes for the state of Louisiana are LA–1 and LA–12.

FOR FURTHER INFORMATION CONTACT: Office of Program Performance by FAX at (202)336–7272, by e-mail at *competition@lsc.gov*, or visit the LSC Web site at *www.ain.lsc.gov*.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) published a notice in the **Federal Register** of April 22, 2002 (67 FR 19597) concerning the availability of competitive grant funds for the provision of civil legal services to low income people. The notice contained incorrect service area codes for the state of Louisiana. The correct service area codes for the state of Louisiana are LA–1 and LA–12.

The Request for Proposals (RFP) is available at *www.ain.lsc.gov*. Applicants must file a Notice of Intent to Compete (NIC) to participate in the competitive grants process. Applicants competing for service areas in Louisiana must file the NIC by May 24, 2002, 5:00 p.m. ET. The due date for filing grant proposals for service areas in Louisiana is June 24, 2002, 5:00 p.m. ET.

LSC is seeking proposals from: (1) Non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) State or local governments; and (5) substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials. LSC will not FAX the RFP to interested parties.

Service area descriptions are available from Appendix A of the RFP. Interested parties are asked to visit *www.ain.lsc.gov* regularly for updates on the LSC competitive grants process.

Michael A. Genz,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 02–11350 Filed 5–7–02; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Guidelines for Ensuring the Quality of Disseminated Information

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA is soliciting comments on proposed guidelines for ensuring the quality of disseminated information. The guidelines are being developed in response to Office of Management and Budget (OMB) issued government-wide guidelines. The notice states some of the basic features of how NCUA will address the OMB guidelines and includes NCUA's draft guidelines.

DATES: Comments must be received on or before June 1, 2002.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov*. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: The proposed draft guidelines are available at *www.ncua.gov*. For additional information contact Neil McNamara, Deputy Chief Information Officer, Office of the Chief Information Officer at the above address or telephone number: (703) 518–6440 or Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone number: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

Section 515 of the Treasury and General Appropriations Act for Fiscal Year 2001 (Pub. L. No 106–554, 114 Stat. 2763) directs each agency subject to the Paperwork Reduction Act (44 U.S.C. chapter 35) to issue customized guidelines for ensuring the quality of the information it disseminates. The agencies are to base their guidelines on final guidelines issued by OMB and to post proposed guidelines by May 1, 2002. 67 FR 8452 (February 22, 2002).

The goal of these guidelines is to ensure that information disseminated by the NCUA Board is: useful to the intended users of the information; presented in an accurate, clear, complete and unbiased manner; and protected from unauthorized access or revision. Section 515 also requires the agencies to include in their guidelines ''administrative mechanisms allowing

affected persons to seek and obtain correction of information maintained and disseminated by the agency.''

Draft Guidelines

Policy

NCUA will undertake to ensure that the information it disseminates to the public is objective (accurate, clear, complete, and unbiased), useful and has integrity. Most information disseminated by NCUA is subject to the basic standard described in these guidelines. Additional levels of quality standards are adopted as appropriate for specific categories of disseminated information. The OMB guidelines require ''influential scientific, financial or statistical information'' to meet a higher standard of quality. OMB defines ''influential'' to mean, ''the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.'' *Id.* at 8455. Influential information disseminated by NCUA is subject to a level higher than the basic standard. The NCUA's Chief Information Officer (CIO) serves as the agency official charged with overseeing the agency's compliance with OMB guidelines for the quality of information disseminated by NCUA.

Scope

NCUA will review all information disseminated for its quality before it is disseminated. The agency's pre-dissemination review and the guidelines in this document will apply to information that the agency first disseminates on or after October 1, 2002. The agency's administrative mechanism for correcting information will apply to information that the agency disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information.

These guidelines apply to NCUA information dissemination in all media and formats, including print, electronic, audio/visual, or some other form. Information includes books, papers, CD–ROMs, electronic documents, or other documentary material disseminated to the public by NCUA. The guidelines apply to information disseminated by NCUA from a web page, but they do not apply to hyperlinks from NCUA's web site to information that others disseminate. Nor do the guidelines apply to opinions if it is clear that what is being offered is someone's opinion, rather than fact or the agency's views. The guidelines do not apply to distribution limited to correspondence with individuals or persons, press releases, archival records, library holdings, public filings, subpoena, or adjudicative processes. Documents and information disseminated but neither authored by NCUA nor adopted as representing NCUA's views are not covered by these guidelines.

Dissemination means agency initiated or sponsored distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra-agency or inter-agency use or sharing of governmental information; or responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.

Process for Ensuring Quality of Information at the Basic Standard

The section 515 guidelines issued by OMB focus primarily on the dissemination of substantive information, for example, reports, studies and summaries, rather than information pertaining to basic agency operations. NCUA reviews all information before dissemination to assure that it meets the basic quality standard. Most information disseminated by NCUA does not require the higher standard of review associated with influential information.

As stated in the Policy section of these guidelines, NCUA's basic quality standard for information involves objectivity, utility, and integrity. Objectivity involves two distinct elements: presentation and substance. Objective presentation means the information is presented within a proper context to ensure an accurate, clear, complete and unbiased presentation. Objective substance means the data, the analytical process, and the resulting reports are accurate, reliable and unbiased. To the extent possible, and consistent with confidentiality protections, NCUA will identify the source of disseminated information so the public can assess whether the information is objective. The utility of information refers to its usefulness to its intended users, including the public. Integrity refers to the security of information, in other words, the protection of information from unauthorized access or revision.

NCUA's CIO is charged with primary oversight responsibility for assuring that all disseminated information meets the basic quality standard. The CIO relies on the Office Director with primary responsibility for the disseminated information to ensure that the pre-dissemination review process is performed and documented at a level appropriate for the type of information disseminated.

The Office Directors will use internal peer reviews and other review mechanisms to ensure that disseminated information is objective, unbiased, and accurate in both presentation and substance. The approval of information before dissemination will be documented. This documentation may include routing slips, clearance forms, e-mails and other approval mechanisms currently used to assure the quality of disseminated information.

The Office Director with primary responsibility is also responsible for ensuring the utility and integrity of the information disseminated by his or her office.

Information is useful only if it can be retrieved. Therefore, the Office Director should ensure that information published on the NCUA's website is retrievable by the public.

The security and integrity of agency information is addressed in NCUA Instruction No. 13500.04, ''Agency-Wide Information Security Policy & Procedures'' and the NCUA Agency-wide electronic systems records retention schedule. Office Directors are responsible for ensuring that information is protected from unauthorized revision, falsification, corruption, and intentional or inadvertent destruction. In particular, the originating Office Director is responsible for ensuring that the record copy of information products is filed in the appropriate official record keeping system and included in an approved records retention schedule. All NCUA employees are responsible for following security procedures intended to safeguard sensitive information. The originating Office Directors are required to review and update the security plans for their systems each year. The CIO provides an ongoing security-training program for agency staff. NCUA also has a comprehensive internal control program, including management, operational and technical controls, designed to protect the integrity of agency systems and information. The CIO, the Information Security Officer, and the Records Officer of NCUA advise the Office Directors and other employees, as needed on the implementation of appropriate security and records management procedures.

The originating Office Director is to review disseminated information on a regular basis, including information on the NCUA website, to ensure that information is current, timely, and correct.

Process for Ensuring Quality of Information at a Level Higher Than the Basic Standard

Some of the information disseminated by NCUA is influential, meaning that the ''information will have or does have a clear and substantial impact on important public policies or important private sector decisions.'' *Id.* at 8455.

OMB has instructed the agency's to take into account their mission in determining whether the information they disseminate is influential. NCUA's primary mission is to ensure the safety and soundness of federally insured credit unions. NCUA collects financial data from credit unions and produces statistical reports based on that data. This information is potentially influential. Both the individual credit union data and the statistical reports are made available to the public. These reports assist the NCUA in its functions as regulator and insurer, as well as credit unions and the public in their financial decisions. The information is considered influential if important public policies or important private sector decisions are made based on it. To ensure the accuracy of the original data, NCUA staff or the appropriate state regulator reviews it for accuracy. The data is then collected by NCUA's Office of Examination and Insurance (E&I) and reviewed for discrepancies. E&I then prepares summary statistical and trend reports for distribution to the general public. The original data on which these statistical and trend reports are based is available to the public, making the statistical and trend reports reproducible. Every possible step is taken to ensure the accuracy of the underlying data. The computer program used by credit unions for their initial submission of the call report data is designed to detect errors before submission. Next, the credit union's examiner or the appropriate state regulator reviews the call report to assure that the information is accurate. Finally, the information is reviewed by E&I to detect any errors. With these steps in place, NCUA is assuring the accuracy and reproducibility of information that is potentially influential.

Administrative Correction Methods

Background

NCUA has developed a procedure to seek correction of information under Section 515. These procedures are designed to be flexible, appropriate to the nature and timeliness of the information disseminated and incorporated into NCUA's information resources management and administrative practices. An affected person may request correction of information disseminated by NCUA. An affected person means anyone who may benefit or be harmed by the disseminated information. Documents and information disseminated but neither authored by NCUA nor adopted as representing NCUA's views are not covered by these guidelines.

Procedure

An affected person may submit his or her request to NCUA's CIO and the CIO will forward it to the appropriate NCUA Office Director for a determination. All requests should be addressed to: Chief Information Officer, Office of Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

The request should state that the correction of information is submitted under section 515 of Public Law 106–554 and include the requester's name and mailing address. The request should describe the information asserted to be incorrect, including the name of the report or data product where the information is located, the date of issuance, and a detailed description of the information to be corrected. The request should also state specifically why the information should be corrected, and if possible, recommend specifically how it should be corrected, and provide any supporting documentary evidence, such as comparable data or research results on the same topic to help in the review of the request.

If the Office Director determines that a request does not reasonably describe the disseminated information the requester asserts to be incorrect, the Office Director will either advise the requester what additional information is needed to identify the particular information or otherwise state why the request is insufficient.

The Office Director will coordinate with the appropriate NCUA officials to determine whether or not to correct information. The nature, influence, and timeliness of the information involved, the significance of the correction on the use of the information, and the magnitude of the correction will determine the level of review and the degree and manner of any corrective action.

The Office Director will respond to a request within 60 business days. The response will explain the findings of the review and the actions NCUA will take. If NCUA denies the request, the response will explain the right to an appeal and how to apply for it. The Office Director may extend the 60 days for up to 30 more business days. If extended, the Office Director will send an interim response that states why more time is needed and when a response may be expected. The 60-day response period begins on the day the request is received by the CIO.

A denial of a request to correct a record may be appealed to the CIO within 30 business days of the date of the denial letter. Appeals must be in writing, state the basis for the appeal, and provide any supporting documentation. Appeals must be addressed to the Chief Information Officer, Office of the Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Appeals must be decided within 60 business days unless the CIO, for good cause, extends the period for an additional 30 business days. The CIO will notify the appellant whether his or her request was granted or denied and what corrective action if any, the NCUA will take.

These procedures for correcting information will apply to information that NCUA disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information.

Annual Reports to OMB

NCUA will submit an annual fiscal year report to OMB providing information, both quantitative and qualitative, on the number, nature and resolution of complaints received by the agency regarding the accuracy of information it disseminates. The report is to be submitted on an annual fiscal year basis no later than January 1 of the following year. The first report will cover fiscal year 2003 and will be submitted to OMB by January 1, 2004.

Definitions

1. *Dissemination* means NCUA initiated or sponsored distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra-agency or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.

2. *Influential* means that NCUA can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public

policies or important private sector decisions.

3. *Information* means any communication or representation of knowledge such as fact or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative or audiovisual forms, whether on paper, film or electronic media and whether disseminated via fax, recording, machine readable data or website. This definition includes information from NCUA's web page, but does not include the provision of hyperlinks to information that others disseminate. It also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas, adjudicative processes or opinions, unless that opinion is the NCUA's official point of view.

4. *Integrity* refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

5. *Objectivity* involves two distinct elements, presentation and substance. Objectivity in presentation requires NCUA to present disseminated information in an accurate, clear, complete, and unbiased manner. To accomplish this, NCUA must assure that the information is presented within a proper context. NCUA will identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and, in a financial or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, data will have full, accurate, transparent documentation, and error sources affecting data quality will be identified and disclosed to users.

Objectivity in substance requires NCUA to disseminate accurate, reliable and unbiased information. To accomplish this, in a financial or statistical context, NCUA must assure that sound statistical and research methods are used to generate the original and supporting data and the conclusions that flow from the data. If NCUA disseminates influential information, it must assure that its conclusions are capable of being substantially reproduced.

6. *Quality* is an encompassing term comprising utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these four terms collectively, as ''quality.''

7. *Reproducibility* means that information is capable of being substantially reproduced subject to an acceptable degree of imprecision.

8. *Utility* refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that NCUA disseminates to the public, NCUA will consider the uses of the information not only from the perspective of the agency but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, NCUA will take care to ensure that transparency has been addressed in its review of the information. Transparency refers to a clear description of the methods, data sources, assumptions, outcomes and related information that will allow a data user to understand how information was produced.

Authorities: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the Office of Management and Budget Final Guidelines, 67 FR 369, January 3, 2002.

By the National Credit Union Administration Board on April 29, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–11330 Filed 5–7–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that three meetings of the Combined Arts Advisory Panel to the National Council on the Arts (Creativity and Organizational Capacity categories) will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Design: June 13–14, 2002, Room 716. A portion of this meeting, from 1 p.m. to 2 p.m. on June 14th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on June 13th and from 9 a.m. to 1 p.m. and 2 p.m. to 5 p.m. will be closed.

Visual Arts: June 25–27, 2002, Room 716. A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on June 27th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on June 25th and 26th and from 9 a.m. to 1:30 p.m. and 2:30 p.m. to 6 p.m. on June 27th, will be closed.

Museums: July 23–26, 2002, Room 716. A portion of this meeting, from 9 a.m. to 10 a.m. on July 26th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on July 23rd, from 9 a.m. to 5:30 p.m. on July 24th and 25th, and from 10 a.m. to 12 p.m. on July 26th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: May 2, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–11387 Filed 5–7–02; 8:45 am]

BILLING CODE 7536–01–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:* Extension.

2. *The title of the information collection:* NRC Form 64, ''Travel Voucher'' (Part 1); NRC Form 64A, ''Travel Voucher'' (Part 2); and NRC Form 64B, ''Optional Travel Voucher'' (Part 2).

3. *The form number if applicable:* NRC Form 64; NRC Form 64A and NRC Form 64B.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Contractors, consultants and invited NRC travelers who travel in the course of conducting business for the NRC.

6. *An estimate of the number of responses:* 100.

7. *The estimated number of annual respondents:* 100.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 100 hours (one hour for each form).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract::* As a part of completing the travel process, the traveler must file travel reimbursement vouchers and trip reports. The respondent universe for the above forms include consultants and contractors and those who are invited by the NRC to travel, *e.g.,* prospective employees. Travel expenses that are reimbursed are confined to those expenses essential to the transaction of official business for an approved trip.

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 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide 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 June 7, 2002. 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. Bryon Allen, Office of Information and Regulatory Affairs (3150–0192), 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 2nd day of May, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11375 Filed 5–7–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 AND 50–316]

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant Units 1 and 2; Notice of Consideration of Approbal of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating Licenses Nos. DPR–58 and DPR–74 for the Donald C. Cook Nuclear Plant, Units 1 and 2, held by Indiana Michigan Power Company (I&M, the licensee), as the owner and licensed operator. The indirect transfer would occur as a result of a proposed corporate restructuring, under which an affiliate company, Central and South West Corporation (CSW), would become the direct parent company of I&M. I&M and CSW are currently wholly-owned, direct subsidiaries of American Electric Power Company (AEP). AEP is a registered holding company under the Public Utility Holding Company Act of 1935, as amended. Upon the completion of the restructuring, CSW will remain a wholly-owned, direct subsidiary of AEP, while I&M will be a wholly-owned, direct subsidiary of CSW. Thus, I&M will become an indirect subsidiary of AEP.

According to an application for approval filed by the licensee, the proposed action will not involve any transfer of the assets of I&M, which will continue to be the licensee, responsible for the operation, maintenance, and eventual decommissioning of Donald C. Cook Nuclear Plant, Units 1 and 2. No physical changes to the Donald C. Cook Nuclear Plant facility, changes to the License or Technical Specifications or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction effecting the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By May 28, 2002, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Jeffrey D. Cross, *Esq.,* General Counsel, 1 Riverside Plaza, Columbus, Ohio 34215 (tel: 614–223–2580; fax: (614) 223–1560; e-mail: *jdcross@AEP.COM);* and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license

transfer cases only: *OGCLT@NRC.gov);* and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by June 7, 2002, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated March 28, 2002, 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 will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 1st day of May, 2002.

For the Nuclear Regulatory Commission.

John Stang,

Project Manager, Section I, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11374 Filed 5–7–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 30, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Thursday, May 30, 2002—9:30 a.m. until 12 Noon

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: May 2, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–11371 Filed 5–7–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Plant Operations; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Plant Operations will hold a joint meeting on May 30, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, May 30, 2002—1 p.m. Until 5 p.m.

The Subcommittees will review the staff's initiatives to integrate the NRC program for risk-based analysis of reactor operating experience into the reactor oversight process, specifically the development of reliability/availability performance indicators and industry trends. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff

and other interested persons regarding these matters. Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone: 301–415–3151) or Mr. August W. Cronenberg, Senior Staff Engineer (telephone 301–415–6809) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact one of the above named individuals one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 30, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–11372 Filed 5–7–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; Addenda to NUREG–0654/FEMA–REP–1,Revision 1

AGENCIES: Nuclear Regulatory Commission, Federal Emergency Management Agency.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency (FEMA) have issued an Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants.'' This NUREG is the basic emergency planning guidance document for radiological emergency planning and preparedness for commercial nuclear power plants and is used by licensees and by State and local government emergency response agencies to develop and maintain radiological emergency plans for nuclear power plants.

EFFECTIVE DATE: March, 2002.

The Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, also is available electronically by visiting NRC's home page (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/*) or FEMA's home page (*http://www.fema.gov/pte/rep/*).

A copy of the Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, is available for a fee in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, Room O1F21.

FOR FURTHER INFORMATION CONTACT: Kathy Halvey Gibson, Chief, Emergency Preparedness and Health Physics Section, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–1086; electronic mail address: *khg@nrc.gov* or Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Technological Services Division, Office of National Preparedness, Federal Emergency Management Agency, Washington, DC 20472, telephone (202) 646–3664; electronic mail address: *vanessa.quinn@fema.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of the Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants.'' NUREG–0654/FEMA–REP–1, Rev. 1, was issued in November 1980 and is the basic emergency planning guidance document for radiological emergency planning and preparedness for commercial nuclear power plants. NUREG–0654/FEMA–REP–1, Rev. 1, is used by licensees and by State and local government emergency response agencies to develop and maintain radiological emergency plans for nuclear power plants. NUREG–0654/FEMA–REP–1, Rev. 1, is also used by staff of the NRC and FEMA to review, respectively, licensee and State and local government radiological emergency plans and preparedness, and to make findings and determinations regarding the adequacy of these plans. As part of FEMA's strategic review of its radiological emergency preparedness program, FEMA and NRC staff determined that it was not necessary to revise NUREG–0654/FEMA–REP–1, Rev. 1, but that to enhance its usefulness, the outdated citations in the document should be replaced with updated citations through means of an addenda. An initial version of the addenda was posted on the FEMA web site and provided to the member agencies of the Federal Radiological Preparedness Coordinating Committee for comment.

Additionally, a draft version of the addenda was provided to all stakeholders for comment on March 26, 2001. Comments received were incorporated as appropriate in the final addenda.

Dated at Rockville, Maryland, this 4th day of April, 2002.

For the Nuclear Regulatory Commission.

Glenn M. Tracy,

Chief, Reactor Safeguards, Radiation Safety and Emergency Preparedness Branch, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission.

For the Federal Emergency Management Agency on April 17, 2002.

Bruce Baughman,

Director, Office of National Preparedness, Federal Emergency Management Agency.

[FR Doc. 02–11373 Filed 5–7–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Notice of Ratemaking Summit Co-Sponsored by Postal Service and Postal Rate Commission

AGENCY: Postal Service.

ACTION: Notice of Meeting.

SUMMARY: The Postal Service and the Postal Rate Commission will jointly sponsor a Ratemaking Summit at the Postal Service's Bolger Academy to consider how the process and approach for changing postal rates in major ''omnibus'' rate cases can be improved. All interested parties are invited to register and attend. Whether or not they attend, interested parties are also invited to submit a summary of priority issues they believe should be discussed.

DATES: The Ratemaking Summit will be held on Tuesday, May 28, 2002. Interested parties should submit to Jacquelyn Gilliam (address below) issue summaries and indicate whether they intend to attend by 5 p.m. on Friday, May 10.

ADDRESSES: The Postal Service Center for Leadership Development (Bolger Academy) is located at 9600 Newbridge Drive, Potomac, Maryland 20858–4320.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Gilliam, Secretary to the CMO, U.S. Postal Service, 1735 N. Lynn Street, Room 6012, Arlington, Virginia 22209–6000. Telephone: (703) 292–3677. Email: *jgillia2@email.usps.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Postal Service and the Postal Rate Commission hereby announce that they are jointly sponsoring a Ratemaking Summit to be held on Tuesday, May 28, 2002, at the Bolger Academy, 9600 Newbridge Drive, Potomac, Maryland. Continental breakfast will be served starting at 8 a.m. and the Summit will begin at 9 a.m. and conclude at 4:30 p.m.

The Summit will focus on how the process and approach for establishing

and changing postal rates in major ''omnibus'' cases can be improved. If this Summit is successful, the Postal Service and the Postal Rate Commission may sponsor additional meetings to address other ratemaking issues.

The Postal Service and the Postal Rate Commission invite all interested persons to share their views of what they want from the ratemaking process. Discussions will follow on potential changes that could not only satisfy the statutory obligations of the Commission and the Postal Service, but also make the omnibus ratemaking process more responsive to the needs of all affected interests, with particular focus on business and individual mailers.

In order to help make the Summit discussion as responsive and as practically useful as possible, the Commission and the Postal Service invite interested parties to submit a short summary of priority issues (no longer than two pages) related to omnibus rate cases that they believe should be discussed. The Postal Service and the Commission will use these summaries in developing a Summit agenda.

For purposes of preparing the agenda, as well as planning meeting space and refreshments, interested parties must indicate their intention to attend, as well as submit any issue summaries, to the Postal Service no later than 5:00 p.m. on Friday, May 10. Please respond to: Jacquelyn Gilliam, Secretary to the CMO, US Postal Service, 1735 N Lynn St, Rm 6012, Arlington VA 22209–6000; or Email to: *jgillia2@email.usps.gov.* Before the meeting, an agenda and directions to the Bolger Academy will be sent to all who have stated an intention to attend. Those wishing to reserve a room at the Bolger Academy the night before the Summit should call (301) 983–7000 to make a reservation. To ensure efficient handling, interested parties are requested to submit issue summaries and indicate a desire to attend using the following format:

Ratemaking Summit

Name: _____
Address: _____
Phone Number: _____
Email Address: _____

____ I will attend the May 28, 2002 Ratemaking Summit.
____ I will not attend the May 28, 2002 Ratemaking Summit.

I believe that the following issues related to the process for deciding omnibus rate cases should be discussed at the Summit:

[Insert suggestions.]

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 02–11643 Filed 5–6–02; 2:37 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c3–1 SEC File No. 270–197, OMB Control No. 3235–0200; Rule 17a–10 SEC File No. 270–154, OMB Control No. 3235–0122; Rule 17a–19 and Form X–17a–19, SEC File No. 270–148, OMB Control No. 3235–0133; Form BDW SEC File No. 270–17, OMB Control No. 3235–0018.

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'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 15c3–1 (17 CFR 240.15c3–1) under the Securities Exchange Act of 1934 (''Exchange Act'') requires a broker or dealer registered with the Commission to maintain at all times sufficient liquid assets in excess of liabilities to promptly satisfy the claims of customers in the event the broker or dealer fails. The rule facilitates monitoring the financial condition of brokers and dealers by the Commission and the various self-regulatory organizations. There are approximately 8,000 broker-dealer respondents registered with the Commission who incur an aggregate burden of 950 hours per year to comply with this rule.

Rule 17a–10 (17 CFR 240.17a–10) under the Exchange Act requires broker-dealers that are exempted from the filing requirements of paragraph (a) of Rule 17a–5 (17 CFR section 240.17a–5) to file with the Commission an annual statement of income (loss) and balance sheet. It is anticipated that approximately 1,100 broker-dealers will spend 12 hours per year complying with Rule 17a–10. The total burden is estimated to be approximately 13,200 hours.

Rule 17a–19 (17 CFR 240.17a–19) and Form X–17A–19 of the Exchange Act requires National Securities Exchanges and Registered National Securities Associations to file a Form X–17A–19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examining authority may be necessary.

It is anticipated that approximately eight National Securities Exchanges and Registered National Securities Associations collectively will make 2,600 total annual filings pursuant to Rule 17a–19 and that each filing will take approximately 15 minutes. The total burden is estimated to be approximately 650 total annual hours.

Fully registered broker-dealers and notice-registered broker-dealers use Form BDW (17 CFR 249.501a) to withdraw from registration with the Commission, the self-regulatory organizations, and the states. It is estimated that approximately 900 fully registered broker-dealers annually will incur an average burden of 15 minutes, or 0.25 hours, to file for withdrawal on Form BDW via the internet with Web CRD, a computer system operated by the National Association of Securities Dealers, Inc. that maintains information regarding fully registered broker-dealers and their registered personnel. It is further estimated that 140 futures commission merchants that are notice-registered broker-dealers annually will incur an average burden of 15 minutes, or 0.25 hours, to file for withdrawal on Form BDW by sending the completed Form BDW to the National Futures Association, which maintains information regarding notice-registered broker-dealers on behalf of the Commission. The annualized compliance burden per year is 260 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange

Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 30, 2002.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11337 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45858; File No. SR–Amex–2002–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Amending Exchange Equities and Options Rules to Provide for Decimal Pricing

May 1, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2002, the American Stock Exchange LLC (''Amex'' 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 Amex. On March 18, 2002, the Amex amended the proposed rule change.[3] The Amex again amended the proposal on April 18, 2002.[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 Amex proposes to amend its equities and options rules to provide for decimal pricing. The text of the proposed rule change, as amended, is available at the Amex and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Alton S. Harvey, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 14, 2002 (''Amendment No. 1''). In Amendment No. 1, the Amex made technical corrections to the proposed rule text.

[4] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Alton S. Harvey, Assistant Director, Division, Commission, dated April 17, 2002 (''Amendment No. 2''). In Amendment No. 2, the Amex: (1) deleted the term ''Trading Increment'' from Amex Rule 1000, Commentary .03(e) and Amex Rule 1000A, Commentary, .02(e); and (2) amended Amex Rule 952(a) to replace the term ''trading increments'' with ''quoting increments.''

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 proposes to amend its equities and options rules to provide for decimal pricing, in accordance with the Commission's order requiring self-regulatory organizations to submit rule filings regarding decimal pricing pursuant to Section 19(b)(2) of the Act by January 14, 2002,[5] and with the Commission's June 8, 2000 order establishing the framework for decimal pricing.[6] On August 7, 2000, the Amex filed with the Commission amendments to its rules to accommodate quoting in decimals in equities and options [7] in accordance with the Decimals Implementation Plan for the Equities and Options Markets submitted to the Commission on July 26, 2000 (the ''Plan'').[8] The Exchange began phasing in decimal quoting in equities and options on August 28, 2000, and began quoting all equities and options overlying exchange-listed stocks in decimals on January 29, 2001. Options overlying Nasdaq stocks began a phased-in conversion to decimal quoting on March 12, 2001, with full conversion to decimal quoting in options overlying Nasdaq stocks on April 9, 2001.

The Exchange proposes to continue the current minimum price variation (''MPV'') for equities and options included in SR–Amex–2000–41 [9] of: $.01 MPV for equities, exchange traded funds and trust issued receipts; $.05 MPV for option issues quoted under $3 a contract; and $.10 MPV for option issues quoted at $3 a contract or greater. The proposed changes, therefore, primarily delete references to quoting in fractions that were retained in SR–Amex–2000–41 [10] to accommodate securities that continued quoting in fractions during the phase-in of full decimalization.

The Amex proposes to amend the following rules:

Amex Rule 25. Cabinet Trading of Equity and Derivative Securities. Commentary .01 is proposed to be amended to replace 1/256 of $1.00 with $.01 as the minimum price which can be defined in a computer-readable format by the Exchange's market data system to the facilities of the Consolidated Tape and Consolidated Quotations Systems.

Amex Rule 103. General Floor Prohibitions. The Commentary .03 example is proposed to be amended to delete the reference to 25 1/8 and to Amex Rule 127. A number of the Exchange's previous rule changes, included in SR–Amex–2000–41,[11] referred to Amex Rule 127 in so far as Amex Rule 127 provided that securities not subject to decimal pricing under the phase-in would continue to be subject to the specified minimum fraction. Because previous rule changes maintained references to both fractions and decimals to accommodate quoting in both under the pilot, a number of the following rule changes delete references to Amex Rule 127.

Amex Rule 109. ''Stopping'' Stock. This rule is proposed to be amended to delete reference to Amex Rule 127.

Amex Rule 127. MPVs. This rule is proposed to be amended to provide that the MPV for dealings in equity securities shall be one cent ($.01). Rule language stating that different minimum fractional changes that may be fixed by the Exchange is proposed to be deleted. Commentary.01, which refers to the phase-in of decimal pricing under the Plan as well as continued quoting in fractions of equities not subject to decimal pricing, is proposed to be deleted. The proposed rule change would also delete Commentary .02 referring to quoting in 1/32 or 1/64 of specified Index Fund Shares and Portfolio Depositary Receipts; and Commentary .03 referring to quoting in 1/16 or 1/64 of specified Index Fund Shares. Commentary .04 relating to trading on the Floor in 1/32 or 1/64 to

[5] *See* Securities Exchange Act Release No. 44846 (September 25, 2001), 66 FR 49983 (October 1, 2001).

[6] *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[7] *See* Securities Exchange Act Release No. 43231 (August 30, 2000), 65 FR 54574 (September 8, 2000) (SR–Amex–2000–41).

[8] *See* letter from Dennis L. Covelli, Vice President, New York Stock Exchange, Inc. to Annette Nazareth, Director, Division, Commission, dated July 25, 2000.

[9] *See supra* note 7.

[10] *Id.*

[11] *Id.*

match bids and offers displayed by other markets to prevent trade-throughs would also be deleted.

Amex Rule 132. Price Adjustment of Open Orders on ''Ex-Date.'' This rule is proposed to be amended to substitute ''one cent increment'' for ''MPV'' and would delete reference to Amex Rule 127.

Amex Rule 134. Cash, Next Day and Seller's Option Transactions. This rule is proposed to be amended to delete reference to ⅛ point and to Amex Rule 127.

Amex Rule 154. Orders Left with Specialist. This rule is proposed to be amended to delete reference to ⅛ point or higher for securities quoting in fractions and reference to Amex Rule 127.

Amex Rule 1000. Portfolio Depositary Receipts. Commentary .03 to this rule is proposed to be amended to delete reference to minimum trading increment of 1/64, replacing it with an MPV of one cent ($.01).

Amex Rule 1000A. Index Fund Shares. Commentary .02 to this rule is proposed to be amended to delete reference to 1/16, 1/32, and 1/64 minimum trading increments, and replace them with an MPV of one cent ($.01).

Amex Rule 918. Trading Rotations, Halts and Suspensions; Amex Rule 952. MPVs;

Amex Rule 958. Options Transactions of Registered Traders; and Amex Rule 951C. Premium Bids and Offers. These rules are proposed to be amended to delete references to options series quoting in fractions and to the phase-in of decimals quoting under the Plan.

Amex Rule 903G. Terms of FLEX Options. This rule is proposed to be amended to clarify that exercise prices and premiums for FLEX options are to be rounded to the nearest MPV as set forth in Amex Rule 952.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Amex–2002–02 and should be submitted by May 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11338 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45864; File No. SR–Amex–2002–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to Proprietary Order Routing Facilities for Amex Listed Options

May 2, 2002.

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 April 16, 2002, the American Stock Exchange LLC (''Amex'' 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 Amex. Amex submitted Amendment No. 1 to the proposed rule change on April 30, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance ofthe Proposed Rule Change

Amex proposes to permit members to use, on an interim basis, facilities that are not owned or operated by the Exchange (''Proprietary Facilities'') to transmit orders electronically from the Amex floor to other exchanges and to receive orders transmitted electronically to the Amex floor from other exchanges for the purchase or sale of Amex listed options until the complete implementation of the permanent intermarket linkage in the options market (''Permanent Options Linkage'').[4] Below is the text of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposed Commentary .06 to Amex Rule 220. *See* letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 29, 2002 (''Amendment No. 1'').

[4] The Commission approved the Plan for the Purpose of Creating and Operating an Intermarket

Continued

proposed rule change. Proposed new language is italicized.

Communications to and on the Floor

Rule 220. (No change).

* * * Commentary

.01 through .05 (No change).

.06 Proprietary Facilities for Routing Options Orders. With the prior written approval of the Exchange, a member or member organization may establish and maintain facilities that are not owned or operated by the Exchange (''Proprietary Facilities'') to transmit orders electronically from the Amex Floor to other exchanges and to receive orders transmitted electronically to the Amex Floor from other exchanges for the purchase or sale of Amex listed options until the permanent Options Linkage is established. Such Proprietary Facilities may not be used for transmitting orders for listed equities and ETFs as the Intermarket Trading System serves as the mechanism for routing trading interest in these securities between exchanges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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. Amex 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 believes that until a Permanent Options Linkage is implemented, Amex should permit member firms to establish Proprietary Facilities to route orders in Amex listed options to and from the Exchange. This could facilitate member firm compliance with best execution obligations. Once the Permanent Options Linkage is implemented, however, the Exchange believes that, for reasons of regulatory oversight, a single mechanism for routing orders between options exchanges is preferable to a number of different proprietary systems. Management, accordingly, is proposing to terminate the ability of members to use Proprietary Facilities to route orders in Amex listed options to and from the Exchange once the Options Linkage is implemented. The proposed Proprietary Facilities could not be used for listed equities and Exchange-Traded Funds as the Intermarket Trading System serves as the mechanism for routing trading interest in these securities between exchanges.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b) of the Act,[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, 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 Amex. All submissions should refer to File No. SR–Amex–2002–33 and should be submitted by May 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11393 Filed 5–7–02; 8:45 am]

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Options Linkage in July 2000. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45867; File No. SR–DTC–2001–19]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Automated Corporation Action Program Applicable to the Exercise of Warrants, Conversions, and Put Option Privileges

May 2, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 18, 2001, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves DTC's new Automated Corporation Action Program (''ACAP'') applicable to the exercise of warrants, conversions, and put option privileges (collectively ''reorganization events'').[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission has proposed for comment amendments to Rule 17Ad–14 under the Act[4] that will expand the scope of the rule to include reorganization events in addition to tender offers and exchange offers.[5] Under the proposed changes to Rule 17Ad–14, reorganization agents acting on behalf of issuers in connection with reorganization events which involve the exercise of warrant, conversion, or put option privileges on securities on deposit at DTC (a ''qualified registered securities depository'' as defined in Rule 17Ad–14) would be required to establish an account at DTC to receive the subject securities from DTC participants by book-entry deliveries. In addition, the agents would not be permitted to require DTC to deliver securities certificates prior to the third business day following the expiration date of the reorganization event. These proposed changes to Rule 17Ad–14 would subject reorganization events involving the exercise of warrants, conversions, and put option privileges to requirements under Rule 17Ad–14 similar to those that currently apply to tender offers and exchange offers.

DTC proposes to establish procedures and a master agreement for ACAP which will govern participants' exercises of warrants, conversions, and put options privileges that DTC has made eligible for ACAP. Tender offers and exchange offers will continue to be processed through DTC's Automated Tender Offer Program. Prior to making a reorganization event eligible for ACAP, DTC and the agent will have entered into an agreement that provides that DTC's ACAP procedures are applicable to the event.[6]

Under the ACAP procedures, participants wishing to exercise warrant, conversion, or put option privileges in a reorganization event that has been made eligible for ACAP will transmit the acceptance to DTC. DTC will transmit the instruction to the agent in the form of a DTC ''agent's message'' and will effect a book-entry delivery of the subject securities to the account of the agent maintained at DTC for this purpose no later than the prescribed deadline for the event. The book-entry delivery will constitute the delivery of the securities required by the terms of the reorganization event. DTC will deliver the certificates evidencing the subject securities no later than three business days after the applicable deadline.

Under the ACAP procedures, DTC's delivery of the agent's message to the reorganization agent will satisfy the terms of the reorganization event as to the execution date and the delivery of either (1) the subscription/conversion/put option form by a DTC participant or (2) an instruction letter to cover a protect if the reorganization agent has accepted a notice of guaranteed delivery from a DTC participant outside of DTC.[7]

If DTC presents a certificate to the reorganization agent which the agent determines to be non-transferable, DTC will within three business days after notice from the agent either (i) put the certificate into transferable form or replace it with a transferable certificate for the same quantity of that issue of securities or (ii) return to the agent all funds and all securities of other issues paid to and issued to DTC in exchange for the non-transferable certificate. If a cash dividend or interest payment is payable on the non-transferable certificate during such three business day period, the agent may deduct the amount of the payment on the non-transferable certificate from the total payment due to DTC with respect to that issue of securities. As is generally the case with securities certificates deposited with DTC, DTC will resolve any problems relating to a non-transferable certificate with the participant that deposited the securities.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act and the rules and regulations thereunder applicable to DTC because it will further automate the processing of reorganization events by book-entry movements of securities and will reduce reliance on multiple movements of physical securities certificates in advance of the reorganization event and therefore increase the efficiency and reliability of processing with a decreased risk of loss due to lost or stolen certificates.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was developed through discussions with representatives of DTC participants and the Securities Transfer Association, Inc. Written comments on the ACAP procedures from DTC participants or others have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

[2] A copy of the text of DTC's proposed rule change and the attached exhibits are available at the Commission's Public Reference Section or through DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] 17 CFR 240.17Ad–14.

[5] Securities Exchange Act Release No. 40386 (August 31, 1998), 63 FR 47209 [File No. S7–25–98].

[6] DTC and the reorganization agent will enter into a master agreement, the terms of which will apply to all reorganization events thereafter made eligible for ACAP. When ACAP is fully automated, it is contemplated that DTC's Participant Terminal System (''PTS'') or other electronic means will be used to confirm the agreement between DTC and the reorganization agent with respect to each reorganization event and to confirm any special procedures applicable to an event. Prior to completion of ACAP system automation, event information may be exchanged by telephone, fax, or e-mail.

[7] Notices of guaranteed delivery issued by DTC participants in connection with protect periods in reorganization events may also be transmitted through ACAP upon completion of ACAP automation.

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2001–19 and should be submitted by May 29, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11395 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45857; File No. SR–ISE–2002–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Relating to Fee Changes

May 1, 2002.

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 April 23, 2002, the International Securities Exchange LLC (''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which the ISE has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to clarify the manner in which the ceiling on its payment-for-order-flow program will operate. The ceiling for each fund is set at $650,000. The payment for order flow fee would be suspended for a group of options when the fund balance for the group exceeds $650,000, but would be reinstated when any such fund balance falls below $650,000. 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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE 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

The purpose of the proposed rule change is to clarify the manner in which the ceiling on the ISE's payment for order flow program will operate. In SR–ISE–2002–09,[3] the ISE lowered the ceiling from $750,000 to $650,000 for each of the ten payment-for-order-flow funds that it maintains.[4] The ISE did not specify in that filing that the fee would be reinstated if a fund balance falls below the ceiling. This proposed rule change provides that clarification.

The basis for this proposed rule change is the requirement under Section 6(b)(4) of the Act[5] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

[3] *See* Securities Exchange Act Release No. 45772 (April 17, 2002), 67 FR 20563 (April 25, 2002). *See also* Securities Exchange Act Release No. 45128 (December 4, 2001), 66 FR 64325 (December 12, 2001) (establishing the original $750,000 ceiling).

[4] Under ISE Rule 802(b), the ISE has divided the options it trades into ten groups, with one Primary Market Maker assigned to each group. The ISE maintains a payment-for-order-flow fund for each group, consisting of the fees collected from market makers trading options in that group. The Primary Market Maker for the group is responsible for arranging and making all payments to Electronic Access Members for order flow sent to the ISE in options in that group.

[5] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(2)[7] because it changes an ISE fee. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to ISE–2002–12 and should be submitted by May 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11339 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45861, File No. SR–MSRB–2002–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change by the Relating to Rule G–14, on Reports of Sales or Purchases

May 1, 2002.

On March 27, 2002 the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2002–04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change relates to MSRB Rule G–14, on reports of sales or purchases, to increase transparency in the municipal securities market. The proposed rule change does not change the wording of Rule G–14.

The Commission published the proposed rule change in the **Federal Register** on April 4, 2002. The Commission received five comment letters relating to the forgoing proposed rule change. This order approves the proposal.

I. Description of the Proposed Rule Change

The Board has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. One product of the Board's Transaction Reporting Program is its Daily Transaction Report (the ''Report''), which has been provided to subscribers each day since January 2000. The report is made available each morning by 7:00 am and includes details of transactions in municipal securities which were ''frequently traded'' the previous business day. Since the beginning of the Transaction Reporting Program in 1995, ''frequently traded'' securities have been defined as those that were traded four or more times on a given business day.

Since 1995, the Board has made ongoing efforts to increase price transparency in the municipal securities market in measured steps, culminating in comprehensive, real-time price transparency. The first price transparency report, begun in 1995, was a T+1 report that summarized inter-dealer trades in frequently traded municipal securities. In 1998, the Board added customer trades to the T+1 summary reports, and in January 2000 began publishing individual transaction data on frequently traded securities in addition to summarizing their high, low and average prices. The Board has also introduced ''comprehensive'' transaction reports for this market, which list all municipal securities transactions (regardless of frequency of trading), but which are available no less than two weeks after trade date.[3]

At this time, the Board believes that the next appropriate step in this process is to change the threshold for determining that a municipal security is ''frequently traded'' for purposes of the T+1 transparency report. The proposed rule change would lower the threshold from four to three trades per day. By lowering the threshold, the proposal would increase substantially the proportion of municipal securities market activity that is reported on the day after trading. The present report, with a threshold of four or more trades per day, includes an average of 11,600 trades in 1,100 different issues, with a total par value of about 3.9 billion dollars. Under the proposed threshold, the report is expected to include an average of 14,400 trades in 2,600 issues, with a total par value of about 5.2 billion dollars. This represents a 24 percent increase in the number of trades reported, a more-than-twofold increase in the number of issues reported, and a 33 percent increase in par value reported.[4]

The enhanced Daily Transaction Report with the three-trade threshold will replace the current report and will be available each day to subscribers via the Internet.[5] Subscribers to the current Service receive the report free of charge, and their subscriptions will continue with implementation of the proposed Service. New subscriptions will be available free to parties who sign a subscription agreement. In addition, recent reports will continue to be available for examination, also free of charge, at the Board's Public Access Facility in Alexandria, VA.

II. Summary of Comments

The Commission received seven comment letters, from two persons, on the proposal.[6] One of the seven comment letters expressed support for the forgoing proposed rule change. The other six comment letters opposed the proposal.

The comment letter received from TBMA, commends the MSRB's proposed initiative as a mechanism to increase transparency in the municipal securities market.[7] The letter expresses that decreasing the threshold from four to three trades will provide more reliable indicators of market price while avoiding the dissemination of misleading prices from isolated transactions. However, the letter cautioned that reporting isolated trades, bonds that trade only once or twice on a given day, may require greater MSRB evaluation.

The six comment letters received from Municipalbonds.com criticized the MSRB's proposed rule change as ineffective. In general, the letters from Municipalbonds.com expressed that more attention should be given to the price reporting system by releasing all information, including identities, which correlates with the trade.[8] The first comment letter received from Municipalbonds.com stated that more transaction information is ''useless'' if the daily transaction reports ''are not being ruled on, watched or utilized by appropriate oversight or enforcement

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The first comprehensive report was introduced in October 2000 and listed all trades after a one month delay. The latest comprehensive report began operation in November 2001 and has a two-week delay. *See* Release No. 34–44894, 66 FR 51485 (October 9, 2001).

[4] These data are based upon market activity from April 1, 2001 through July 31, 2001.

[5] The enhanced report will be available to subscribers as soon as practical after SEC approval of the proposed rule change. It is estimated that the period between approval and implementation will not exceed two weeks.

[6] *See* letter from John M. Ramsey, Vice President and Senior Regulatory Counsel, The Bond Market Association (''TBMA''), to Jonathan G. Katz, Secretary, Commission, dated April 24, 2002; three electronic letters from Kevin Olson, Municipalbonds.com, to SEC Commissioners, dated April 19, 2002; electronic letter from Kevin Olson, Municipalbonds.com, to Commissioners, dated April 11, 2002; and two electronic letters from Kevin Olson, Municipalbonds.com, dated April 10, 2002.

[7] *See* letter from TBMA, note 6, *supra.*

[8] *See* letters from Municipalbonds.com, note 6, *supra.*

authorities''.[9] The same comment letter offered two alternative considerations ''to facilitate fair pricing'' such as, initiating ''a system of identified * * * market makers for any, all or specific municipal bonds' or requiring municipal securities traders to ''inform or quote two-sided markets instead of just their bid or offer side.'' [10]

Subsequent letters sent from Municipalbonds.com continued to address reporting inefficiencies. In addition to the two alternatives discussed above, Municipalbonds.com challenged the MSRB to respond to the problem of reporting errors, which Municipalbonds.com has identified.[11]

III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Exchange Act and the rules and regulations thereunder, which govern the MSRB.[12] The language of Section 15B(b)(2)(C) of the Exchange Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, 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 system, and, in general, to protect investors and the public interest.[13]

After careful review, the Commission finds that the MSRB's proposed rule change consisting of an amendment to Rule G–14, on professional qualifications, which relates to municipal fund securities limited principals, meets the statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Exchange Act, set forth above.

[9] *See* letter from Municipalbonds.com dated April 10, 2002, note 6, *supra.*

[10] *Id.*

[11] *See* letters from Municipalbonds.com, dated April 19, 2002, note 6, *supra.*

[12] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78o–4(b)(2)(C).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[14] that the proposed rule change (File No. SR–MSRB–2002–04) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11394 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45862; File No. SR–Phlx–2002–22]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend Its Pilot Program to Disengage Its Automatic Execution System (''AUTO–X'') for a Period of Thirty Seconds After the Number of Contracts Automatically Executed in a Given Option Meets the AUTO–X Minimum Guarantee for that Option

May 1, 2002.

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 April 8, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, on an accelerated basis, for an additional six-month pilot, expiring on November 30, 2002.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for an additional six months, its pilot program effecting a systems change to AUTO–X, the automatic execution feature of the Exchange's Automated Options Market System (''AUTOM''),[3] that would disengage AUTO–X for a period of thirty seconds after the number of contracts automatically executed in a given option meets the AUTO–X minimum guarantee for that option. The pilot program was originally approved on a six-month basis for a limited number of eligible options,[4] and subsequently extended for an additional six-month period.[5] Subsequently, the number of options eligible for the pilot was expanded to include all Phlx-traded options.[6] As of December 1, 2001, the pilot was again extended for an additional six-month period, which is scheduled to expire on May 31, 2002.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to extend the pilot program for an additional six-month period. On December 1, 2000, the Initial Pilot Program became effective.[8] The pilot program was then extended several times and is currently scheduled to end on May 31, 2002.[9] The pilot program includes the following features:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange's trading floor.

[4] *See* Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR–Phlx–00–96) (''Initial Pilot Program'').

[5] *See* Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR–Phlx–2001–56).

[6] *See* Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR–Phlx–2001–79).

[7] *See* Securities Exchange Act Release No. 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR–Phlx–2001–100).

[8] *See supra* note 4.

[9] *See supra* note 7.

• Once an automatic execution occurs in an option via AUTO–X, the system would begin a ''counting'' program, which would count the number of contracts executed automatically for that option, up to the AUTO–X guarantee, regardless of the number of executions.

• When the number of contracts executed automatically for that option meets the AUTO–X guarantee within a fifteen second time frame, the system would cease to automatically execute for that option, and would drop all AUTO–X eligible orders in that option for manual handling by the specialist for a period of thirty seconds to enable the specialist to refresh quotes in that option.[10]

• Upon the expiration of thirty seconds, automatic executions would resume and the ''counting'' program would be set to zero and begin counting the number of contracts executed automatically within a fifteen second time frame again, up to the AUTO–X guarantee.

• Again, when the number of contracts automatically executed meets the AUTO–X guarantee within a fifteen second time frame, the system would drop all subsequent AUTO–X eligible orders for manual handling by the specialist for a period of thirty seconds.

A significant purpose of this pilot program is to enable the Exchange to move towards the dissemination of options quotations with size.[11] The ''counting'' feature of the pilot program functions to disengage AUTO–X for a period of thirty seconds in a given option once the number of contracts automatically executed meets the AUTO–X guarantee for that option within a fifteen-second time frame. A similar ''counting'' mechanism is expected to be utilized upon the implementation of the systems necessary for the dissemination of options quotations with size. Thus, the proposed extension of the pilot program should allow the Exchange to continue its efforts in the process of moving towards the implementation of quotations with size.

The Exchange believes that an extension of the pilot program would enable specialists to continue to provide fair and orderly markets during peak market activity by manually executing orders at correct market prices and refreshing quotations to reflect market demand.

In addition, the Exchange recognizes that the Commission has inquired into the possibility of re-engaging AUTO–X in less than thirty seconds once the specialist revises the quote. The Exchange's Financial Automation, Legal, and Regulatory staff have begun to review the issue, specifically as to whether it is feasible to re-engage AUTO–X for an entire issue based upon the revision of a quotation in one single series.[12] The Exchange notes that the Commission has informed the Exchange that it would not grant the pilot program permanent approval unless the Exchange addresses this issue. Because the Exchange's proposal to define the disseminated size for options quotations to reflect bids and offers of limit orders on the book has not yet been approved by the Commission, the Exchange proposes to extend the pilot for an additional six months in lieu of seeking permanent approval of the pilot. The Exchange believes that, with the ultimate implementation of the second phase of the dissemination of quotes with size, the Exchange should, over the proposed additional six-month pilot period, be able to more accurately assess its ability to re-engage AUTO–X in an entire class of options upon the revision of a quote in a single option series.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[13] in general, and with Section 6(b)(5) in particular,[14] in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade by enabling Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive or solicit any written comments on the proposed rule change.

III. 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 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–Phlx–2002–22 and should be submitted by May 29, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities

[10] Any orders delivered in excess of the minimum AUTO–X guarantee will be executed to the guaranteed amount and the excess will be dropped to the specialist for manual execution. *See* Initial Pilot Program, *supra* note 4.

[11] Currently, the size of any disseminated bid or offer by the Exchange is equal to the AUTO–X guarantee for the quoted option, except that the disseminated size of bids and offers of limit orders on the book is ten contracts and shall be firm regardless of the actual size of such orders. *See* Exchange Options Floor Procedure Advice F–7. The Exchange has established this rule setting forth the size for which its quotes are firm, and periodically publishes that size in accordance with recently amended Rule 11Ac1–1 under the Act (''Quote Rule''), setting forth firm quote requirements for responsible brokers or dealers quoting options. *See* Securities Exchange Act Release No. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) (SR–Phlx–01–37). The Exchange represents that the current pilot is designed, in part, to enable the Exchange to roll out the system designed to decrement the disseminated size of Exchange quotes once such system is deployed.

[12] Under Phlx's current pilot program, AUTO–X is programmed to re-engage after thirty seconds, regardless of whether the specialist has updated its quote prior to that period of time.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

system, and protect investors and the public interest.[16] The Commission believes that an extension of the pilot program for an additional six months should help the Exchange to prepare for disseminating options quotes with size. In addition, the Commission believes that the proposal may assist specialists in maintaining fair and orderly markets during periods of peak market activity.

The Commission notes that the Exchange is attempting to address its concern regarding the feasibility of re-engaging AUTO–X for a particular issue prior to thirty seconds if the quote has been revised by the specialist before that time period. Consequently, the Commission believes that extending the pilot program for an additional six months should enable the Phlx to further evaluate the effect of disengaging AUTO–X under certain circumstances.

The Commission notes that the Exchange has represented that it will continue to evaluate the pilot program by reviewing specialists' performance, and by monitoring any complaints relating to the pilot program.[17] Furthermore, the Commission notes that the Exchange has represented that it will continue to post on its website a list of options included in the pilot program, as well as issue a circular to this effect to members, member organizations, participants, and participant organizations explaining the pilot program and the circumstances in which the AUTO–X system will not be available for customer orders.[18]

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[19] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recognizes that during the last six-month extension of the pilot program, the Phlx has received no complaints from customers, floor traders, or member firms. The Commission believes that granting accelerated approval to extend the pilot program for an additional six months will allow Phlx to continue, without interruption, the existing operation of its AUTO–X system.

[16] 15 U.S.C. 78f(b)(5).

[17] Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sapna C. Patel, Attorney, Division of Market Regulation (''Division''), Commission, on April 30, 2002.

[18] *Id.* Phlx also represented that it would include language in its circular clarifying that AUTO–X will not be re-engaged until the expiration of the thirty second period, even after a quote is revised. Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sapna C. Patel, Attorney, Division, Commission, on April 30, 2002.

[19] 15 U.S.C. 78s(b)(2).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Phlx–2002–22), is hereby approved on an accelerated basis, as a six-month pilot, scheduled to expire on November 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11392 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–P

[20] *Id.*

[21] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Computer Matching Between the Selective Service System and the Department of Education

AGENCY: Selective Service System.

ACTION: Notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer matching and Privacy Protection Act of 1988 (Public Law 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, the following information is provided:

1. Name of participating agencies. The Selective Service System (SSS) and the Department of Education (ED).

2. Purpose of the match. The purpose of this matching program is to ensure that the requirements of Section 12(f) of the Military Selective Service Act [50 U.S.C. App. 462(f)] are met.

3. Authority for conducting the matching program. Computerized access to the Selective Service Registrant Registration Records (SSS 10) enables the U.S. Department of Education to confirm the registration status of applicants for assistance under Title IV of the Higher Education Act of 1965 (HEA), as amended (20 U.S.C. 1070 *et. seq.*). Section 12(f) of the Military Selective Service Act, as amended [50 U.S.C. App. 462(f)], denies eligibility for any form of assistance or benefit under Title IV of the HEA to any person required to present himself and submit to registration under Section 3 of the Military Selective Service Act who fails to do so in accordance with that section and any rules and regulations issued under that section. In addition, the Military Selective Service Act and section 484(n) of the HEA which allows the data match to fulfill the statement requirement specifies that any person required to present himself and submit to registration under Section 3 of the Military Selective Service Act file a statement that he is in compliance with the Military Selective Service Act. Furthermore, Section 12(f)(3) of the Military Selective Service Act authorizes the Secretary of Education, in agreement with the Director of the Selective Service, to prescribe methods for verifying the statements of compliance filed by students.

Section 484(n) of the Higher Education Act of 1965, as amended (20 U.S.C. 1091), requires the Secretary of Education to conduct data base matches with the Selective Service System, using common demographic data elements, to enforce the Selective Service registration provisions of the Military Selective Service Act [50 App. U.S.C. 462(f)], and further states that appropriate confirmation of person's registration shall fulfill the requirement to file a separate statement of compliance.

4. Categories of records and individuals covered.

1. Federal Student Aid Application File (18–11–01). Individuals covered are men born after December 31, 1959, but at least 18 years old by June 30 of the applicable award year.

2. Selective Service Registration Records (SSS 10).

5. Inclusive dates of the matching program. Commence on July 1, 2002 or 40 days after copies of the matching agreement are transmitted simultaneously to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget, whichever is later, and remain in effect for eighteen months unless earlier terminated or modified by agreement of the parties.

6. Address for receipt of public comments or inquires. Willie L. Blanding, Jr., Director of Operations, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

Dated: April 30, 2002.

Alfred Rascon,

Director.

[FR Doc. 02–11461 Filed 5–7–02; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

[Public Notice 3981]

Notice of Meetings of the United States International Telecommunication Advisory Committee; ITU Council Agenda

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union (ITU).

• The ITAC will meet to debrief the just-completed ITU Council meeting from 2 to 4 on May 21, 2002 at the Department of State in room 1408.

Persons intending to attend the meeting should send a fax to (202) 647–7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Directions to the meeting location and on which entrance to use may be determined by calling the ITAC Secretariat at (202) 647–2592 or email to worsleydm@state.gov. Attendees may join in the discussions, subject to the instructions of the Chair. Admission of participants will be limited to seating available.

Dated: April 30, 2002.

Cecily C. Holiday,

Director, Telecommunication Development, Department of State.

[FR Doc. 02–11446 Filed 5–7–02; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)

AGENCY: Maritime Administration, DOT.

ACTION: Notice of open season for enrollment in fiscal year (FY) 2003 VISA Program.

Introduction

The VISA program was established pursuant to section 708 of the Defense Production Act of 1950, as amended (DPA), which provides for voluntary agreements for emergency preparedness programs. VISA was approved for a two year term on January 30, 1997, and published in the **Federal Register** on February 13, 1997, (62 FR 6837). Approval was extended through February 13, 2003, and published in the **Federal Register** on February 20, 2001 (66 FR 10938).

As implemented, VISA is open to U.S.-flag vessel operators of militarily useful vessels, including bareboat charter operators if satisfactory signed agreements are in place committing the assets of the owner to the bareboat charterer for purposes of VISA. While tug/barge operators must own or bareboat charter barges committed to the VISA program, it is not required that these operators commit tug service through bareboat charter or ownership arrangements. Time charters of U.S.-flag tugs will satisfy commitments to the VISA program. By order of the Maritime Administrator on August 4, 1997, participation of U.S.-flag deepwater tug/barge operators in VISA was encouraged. Voyage, and space charterers are not considered U.S.-flag vessel operators for purposes of VISA eligibility.

VISA Concept

The mission of VISA is to provide commercial sealift and intermodal shipping services and systems, including vessels, vessel space, intermodal systems and equipment, terminal facilities, and related management services, to the Department of Defense (DOD), as necessary, to meet national defense contingency requirements or national emergencies.

VISA provides for the staged, time-phased availability of participants' shipping services/systems to meet contingency requirements through prenegotiated contracts between the Government and participants. Such arrangements are jointly planned with the Maritime Administration (MARAD), U.S. Transportation Command (USTRANSCOM), and participants in peacetime to allow effective and best valued use of commercial sealift capacity, to provide DOD assured contingency access, and to minimize commercial disruption, whenever possible.

VISA Stages I and II provide for prenegotiated contracts between the DOD and participants to provide sealift capacity to meet all projected DOD contingency requirements. These contracts are executed in accordance with approved DOD contracting methodologies. VISA Stage III will provide for additional capacity to the DOD when Stage I and II commitments or volunteered capacity are insufficient to meet contingency requirements, and adequate shipping services from non-participants are not available through established DOD contracting practices or U.S. Government treaty agreements.

FY 2003 VISA Enrollment Open Season

The purpose of this notice is to invite interested, qualified U.S.-flag vessel operators that are not currently enrolled in the VISA program to participate in the program for FY 2003 (October 1, 2002 through September 30, 2003). Current participants in the VISA program are not required to apply for FY 2003 reenrollment, as VISA participation will be automatically extended for FY 2003. This is the fifth annual enrollment period since the commencement of the VISA program. The annual enrollment was initiated because VISA has been fully integrated into DOD's priority for award of cargo to VISA participants. It is necessary to link the VISA enrollment cycle with DOD's peacetime cargo contracting cycle.

New VISA applicants are required to submit their applications for the FY 2003 VISA program as described in this Notice no later than May 31, 2001. This alignment of VISA enrollment and eligibility for VISA priority will solidify the linkage between commitment of contingency assets by VISA participants and receiving VISA priority consideration for the award of FY 2003 DOD peacetime cargo.

This is the only planned enrollment period for carriers to join VISA and derive benefits for DOD peacetime contracts during FY 2003. The only exception to this open season period for VISA enrollment will be for a non-VISA carrier that reflags a vessel into U.S. registry. That carrier may submit an application to participate in the VISA program at any time upon completion of reflagging.

Advantages of Peacetime Participation

Because enrollment of carriers in VISA provides the DOD with assured access to sealift services during contingencies based on a level of commitment, as well as a mechanism for joint planning, the DOD awards peacetime cargo contracts to VISA participants on a priority basis. This applies to liner trades and charter contracts alike. Award of DOD cargoes to meet DOD peacetime and contingency requirements is made on the basis of the following priorities:

• U.S.-flag vessel capacity operated by VISA participants, and U.S.-flag Vessel Sharing Agreement (VSA) capacity held by VISA participants.

• U.S.-flag vessel capacity operated by non-participants.

• Combination U.S.-flag/foreign-flag vessel capacity operated by VISA participants, and combination U.S.-flag/foreign-flag VSA capacity held by VISA participants.

• Combination U.S.-flag/foreign-flag vessel capacity operated by non-participants.

• U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by VISA participants.

• U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by non-participants.

• Foreign-owned or operated foreign-flag vessel capacity of non-participants.

Participants

Any U.S.-flag vessel operator organized under the laws of a state of the United States, or the District of Columbia, who is able and willing to commit militarily useful sealift assets and assume the related consequential risks of commercial disruption, may be eligible to participate in the VISA program. While vessel brokers and agents play an important role as a conduit to locate and secure appropriate vessels for the carriage of DOD cargo, they may not become participants in the VISA program due to lack of requisite vessel ownership or operation. However, brokers and agents should encourage the carriers they represent to join the program.

Commitment

Any U.S.-flag vessel operator desiring to receive priority consideration in the award of DOD peacetime contracts must commit no less than 50 percent of its total U.S.-flag militarily useful capacity in Stage III of the VISA program. A participant desiring to bid on DOD peacetime contracts will be required to provide commitment levels to meet DOD-established Stages I and/or II minimum percentages of the participant's military useful, oceangoing U.S-flag fleet capacity on an annual basis. The USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse national economic impact. To minimize domestic commercial disruption, participants operating vessels exclusively in the domestic Jones Act trades are not required to commit the capacity of those U.S. domestic trading vessels to VISA Stages I and II. Overall VISA commitment requirements are based on annual enrollment.

In order to protect a U.S.-flag vessel operator's market share during contingency activation, VISA allows participants to join with other vessel operators in Carrier Coordination Agreements (CCA's) to satisfy commercial or DOD requirements. VISA provides a defense against antitrust laws in accordance with the DPA. CCA's must be submitted to MARAD for coordination with the Department of Justice for approval, before they can be utilized.

Compensation

In addition to receiving priority in the award of DOD peacetime cargo, a participant will receive compensation during contingency activation. During enrollment, each participant may choose a compensation methodology which is commensurate with risk and service provided. The compensation methodology selection will be completed with the appropriate DOD agency.

Enrollment

New applicants may enroll by obtaining a VISA application package (Form MA–1020 (OMB Approval No. 2133–0532)) from the Director, Office of Sealift Support, at the address indicated below. Form MA–1020 includes instructions for completing and submitting the application, blank VISA Application forms and a request for information regarding the operations and U.S. citizenship of the applicant company. A copy of the February 20, 2001 VISA will also be provided with the package. This information is needed in order to assist MARAD in making a determination of the applicant's eligibility. An applicant company must be able to provide an affidavit that demonstrates that the company is a citizen of the United States, at least for purposes of vessel documentation, within the meaning of 46 U.S.C., section 12102, and that it owns, or bareboat charters and controls, oceangoing, militarily useful vessel(s) for purposes of committing assets to VISA. As previously mentioned, VISA applicants must return the completed VISA application documents to MARAD not later than May 31, 2002. Once MARAD has reviewed the application and determined VISA eligibility, MARAD will sign the VISA application document which completes the eligibility phase of the VISA enrollment process.

In addition, the applicant will be required to enter into a contingency contract with the DOD. For the FY 2003 VISA open season, and prior to being enrolled in VISA, eligible VISA applicants will be required to execute a joint VISA Enrollment Contract (VEC) with the DOD [Military Traffic Management Command (MTMC) and Military Sealift Command (MSC)] which will specify the participant's Stage III commitment for FY 2003. Once the VEC is completed, the applicant completes the DOD contracting process by executing a Drytime Contingency Contract (DCC) with MSC (for Charter Operators) and/or as applicable, a VISA Contingency Contract (VCC) with MTMC (for Liner Operators). Upon completion of the DOD contingency contract(s), the Maritime Administrator will confirm the participant's enrollment by letter agreement, with a copy to all appropriate parties.

FOR ADDITIONAL INFORMATION AND APPLICATIONS CONTACT: Frances M. Olsen, Chief, Division of Sealift Programs, U.S. Maritime Administration, Room 7307, 400 Seventh Street, SW, Washington, DC 20590. Telephone (202) 366–2323. Fax (202) 493–2180. Other information about the VISA can be found on MARAD's Internet Web Page at *http://www.marad.dot.gov.*

By Order of the Maritime Administrator.

Dated: May 3, 2002.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–11457 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Docket No. 944; ATF O 1130.31]

Delegation of the Director's Authorities in 27 CFR Part 44, Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax

To: All Bureau Supervisors

1. *Purpose.* This order delegates certain authorities of the Director to subordinate ATF officials and prescribes the subordinate ATF officials with whom persons file documents which are not ATF forms.

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax. The Bureau has determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

3. *Cancellation.* ATF O 1100.102A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR part 290, Exportation

of Tobacco Products, dated 2/28/84, is canceled.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR part 44 to subordinate officials. Also, this ATF order prescribes the subordinate officials with whom applications, notices, and reports required by 27 CFR part 44, which are not ATF forms, are filed. The attached table identifies the regulatory sections, authorities and documents to be filed, and the authorized ATF officials. The authorities in the table may not be redelegated.

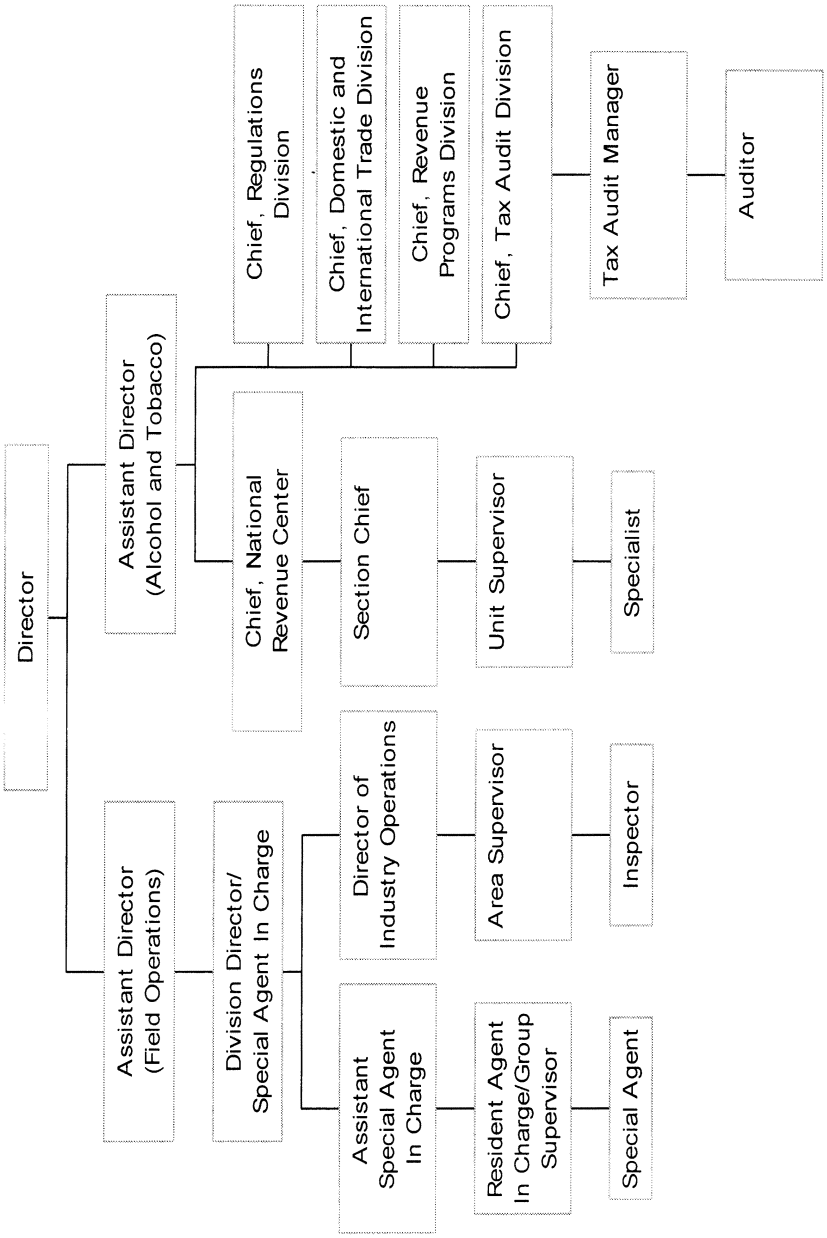
5. *Questions.* If you have questions about this order, contact the Regulations Division (202–927–8210).

Bradley A. Buckles,
Director.

Regulatory section	Officer(s) authorized to act or receive document
§ 44.2(a)	Chief, Regulations Division, Chief, Domestic and International Trade Division, or Chief, Revenue Programs Division.
§ 44.35(c)	Inspector, Specialist, Auditor or Special Agent.
§ 44.62	Area Supervisor.
§ 44.66	Unit Supervisor, National Revenue Center (NRC).
§ 44.70	Inspector, Specialist, Auditor or Special Agent.
§ 44.71	Inspector, Specialist, Auditor or Special Agent.
§ 44.72	Chief, Regulations Division. If alternate method or procedure does not affect an ATF approved formula, or import or export recordkeeping, Chief, NRC, may act upon the same method or procedure that has been approved by the Chief, Regulations Division.
§ 44.73	Director of Industry Operations.
§ 44.83	Unit Supervisor, NRC.
§ 44.84	Unit Supervisor, NRC.
§ 44.91	Unit Supervisor, NRC, or Area Supervisor.
§ 44.92	Specialist, NRC, to cause investigation. Director of Industry Operations to give notice and to deny.
§ 44.93	Section Chief, NRC, upon recommendation of Area Supervisor, to issue permit. Inspector, Specialist, Auditor or Special Agent to inspect permit.
§ 44.104	Unit Supervisor, NRC.
§ 44.105	Unit Supervisor, NRC.
§ 44.106	Unit Supervisor, NRC.
§ 44.112	Area Supervisor.
§ 44.121(b)	Section Chief, NRC.
§ 44.123	Unit Supervisor, NRC.
§ 44.124	Unit Supervisor, NRC, or Area Supervisor to require bond. Section Chief, NRC, to approve.
§ 44.125	Unit Supervisor, NRC, or Area Supervisor to require bond. Section Chief, NRC, to approve request from surety.
§ 44.127	Section Chief, NRC.
§ 44.129(a)	Section Chief, NRC.
§ 44.142(e)	Inspector, Specialist, Auditor or Special Agent.
§ 44.143(b)	Inspector, Specialist, Auditor or Special Agent.
§ 44.145	Section Chief, NRC, or Area Supervisor.
§ 44.147	Inspector, Specialist, Auditor or Special Agent.
§ 44.150	Section Chief, NRC, or Area Supervisor.
§ 44.152	Area Supervisor to whom report is made. To act on claim and to notify, Unit Supervisor, NRC, for claim of $10,000 or less, Section Chief, NRC, for claim of more than $10,000 but not more than $100,000 or Chief, NRC, for claim of more than $100,000.
§ 44.153	Unit Supervisor, NRC, for claim of $10,000 or less, Section Chief, NRC, for claim of more than $10,000 but not more than $100,000 or Chief, NRC, for claim of more than $100,000.
§ 44.154	Unit Supervisor, NRC, for claim of $10,000 or less, Section Chief, NRC, for claim of more than $10,000 but not more than $100,000 or Chief, NRC, for claim of more than $100,000.
§ 44.161	Unit Supervisor, NRC, with whom documents are filed and to terminate bond liability.
§ 44.162	Director of Industry Operations.
§ 44.184	Chief, Regulations Division.
§ 44.199	Unit Supervisor, NRC, with whom form is filed. Inspector, Specialist, Auditor or Special Agent to inspect.
§ 44.200	Unit Supervisor, NRC.
§ 44.201	Unit Supervisor, NRC, with whom form is filed. Inspector, Specialist, Auditor or Special Agent to inspect.
§ 44.202	Unit Supervisor, NRC.
§ 44.203	Unit Supervisor, NRC.
§ 44.204	Unit Supervisor, NRC.
§ 44.205(b)(3)	Unit Supervisor, NRC.
§ 44.206	Unit Supervisor, NRC.
§ 44.207	Unit Supervisor, NRC.
§ 44.207a	Unit Supervisor, NRC.
§ 44.208	Unit Supervisor, NRC.
§ 44.209	Unit Supervisor, NRC.
§ 44.210	Unit Supervisor, NRC.
§ 44.212	Unit Supervisor, NRC.
§ 44.213	Area Supervisor with whom notice is filed and to assign. Inspector, Specialist, Auditor or Special Agent to supervise. Unit Supervisor, NRC, with whom ATF form is filed.
§ 44.222	Area Supervisor to detail and assign. Inspector, Specialist, Auditor or Special Agent to supervise.
§ 44.223	Section Chief, NRC, to approve bond. Unit Supervisor, NRC, with whom claim is filed. Unit Supervisor, NRC, for claim of $10,000 or less, Section Chief, NRC, for claim of more than $10,000 but not more than $100,000 or Chief, NRC, for claim of more than $100,000.

Regulatory section	Officer(s) authorized to act or receive document
§ 44.224	Inspector, Specialist, Auditor or Special Agent.
§ 44.225	Inspector, Specialist, Auditor or Special Agent.
§ 44.226	Unit Supervisor, NRC.
§ 44.227	Unit Supervisor, NRC.
§ 44.228	Unit Supervisor, NRC, with whom certificate is filed.
§ 44.229	Unit Supervisor, NRC, with whom application is filed.
§ 44.230	Unit Supervisor, NRC.
§ 44.231	Unit Supervisor, NRC.
§ 44.232	Unit Supervisor, NRC, for claim of $10,000 or less, Section Chief, NRC, for claim of more than $10,000 but not more than $100,000 or Chief, NRC, for claim of more than $100,000.
§ 44.242	Unit Supervisor, NRC.
§ 44.244	Unit Supervisor, NRC.
§ 44.245	Unit Supervisor, NRC, or Area Supervisor, to require bond. Section Chief, NRC, to approve bond.
§ 44.246	Unit Supervisor, NRC, or Area Supervisor, to require bond. Section Chief, NRC, to approve bond termination.
§ 44.257	Unit Supervisor, NRC, with whom form is filed. Inspector, Specialist, Auditor or Special Agent to inspect.
§ 44.258	Unit Supervisor, NRC.
§ 44.259	Unit Supervisor, NRC.
§ 44.260	Unit Supervisor, NRC.
§ 44.261	Unit Supervisor, NRC.
§ 44.262	Unit Supervisor, NRC.
§ 44.263	Unit Supervisor, NRC.
§ 44.264	Unit Supervisor, NRC.
§ 44.264a	Unit Supervisor, NRC.
§ 44.265	Unit Supervisor, NRC.
§ 44.266	Inspector, Specialist or Special Agent.
§ 44.267	Unit Supervisor, NRC, with whom form is filed. Inspector, Specialist, Auditor or Special Agent to inspect.

BILLING CODE 4810–31–P



ATF Organization

This is not a complete organizational chart of ATF

[FR Doc. 02–11259 Filed 5–7–02; 8:45 am]
BILLING CODE 4810–31–C

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

ACTION: Notice and request for comments.

SUMMARY: The proposed information collection requirement, concerning a study by the Community Development Financial Institutions Fund (the Fund) regarding the need for, and the feasibility of, selling loans made by Community Development Financial Institutions (CDFIs) on a secondary market, will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Fund is soliciting public comments on the subject proposal.

DATES: Written and electronic comments on the subject proposal must be submitted to the Fund by July 8, 2002, to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments regarding the subject proposal. Comments should refer to the proposal by name and should be sent by mail to: Office of Legal Counsel, CDFI Fund, 601 Thirteenth Street, NW, Suite 200, Washington DC 20005; by e-mail to *cdfihelp@cdfi.treas.gov;* or by facsimile at (202) 622–8244. This is not a toll free number.

FOR FURTHER INFORMATION CONTACT: Donna Fabiani, Financial Strategies and Research Unit, CDFI Fund, 601 Thirteenth Street, NW, Suite 200, Washington DC 20005; telephone number 202/622–8575. This is not a toll free number. Copies of the proposed survey form and other available information may be obtained from Ms. Fabiani.

SUPPLEMENTARY INFORMATION: The Fund will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This notice is soliciting comments from members of the public and affected organizations concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary to proper performance of the functions of the Fund, including whether the information will have practical utility; (2) evaluate the accuracy of the Fund's estimate of the burden of the proposed collection of information; (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 use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Secondary Market Survey of Community Development Financial Institutions.

Description of the need for information and proposed use: The Fund, a wholly owned government corporation within the Department of the Treasury, is conducting, through a contract with Abt Associates Inc., a study of the need for, and feasibility of, developing a secondary market for loans made by CDFIs. A key component of the feasibility study is gathering data, through a survey, on the loans made by CDFIs to determine whether it would be feasible for such loans to be sold in a secondary market and the potential size of this market. It is also crucial to understand the projected capital needs of these institutions to assess whether a secondary market would be beneficial to them. The survey will address both of these issues. The survey will include questions that will enable the Fund to undertake an analysis of the risk characteristics and pricing of CDFI loans to evaluate the potential for sale in a secondary market. The survey will also pose questions about current capital available, projected growth, anticipated capital needs and sources, current and potential use of a secondary market, and characteristics of individual loans. The data gathered through the survey will be used by the Fund to assess the feasibility of developing a secondary market for loans made by CDFIs.

Members of the affected public: Staff from up to 325 CDFIs that have received awards from the Fund through the Core Component of the CDFI Program (an award program administered by the Fund) will be asked to respond to the survey.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The researchers will administer a one-time mail survey with telephone follow-up to staff from each of the CDFIs to be surveyed. Completing each survey is estimated to take 5 hours, for a total maximum burden hour estimate of 1,625 hours.

Total Estimated Annual Burden Hours: 1,625 (one time).

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 2, 2002.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 02–11351 Filed 5–7–02; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 843

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 843, Claim for Refund and Request for Abatement.

DATES: Written comments should be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund and Request for Abatement.

OMB Number: 1545–0024.

Form Number: 843.

Abstract: Internal Revenue Code section 6402, 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Responses: 545,500.

Estimated Time Per Respondent: 1 hr., 33 min.

Estimated Total Annual Burden Hours: 845,525.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–11473 Filed 5–7–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5713 and Schedules A, B, and C (Form 5713)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5713, and Schedules A, B, and C (Form 5713), International Boycott Report.

DATES: Written comments should be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: International Boycott Report.

OMB Number: 1545–0216.

Form Number: 5713, and Schedules A, B, and C (Form 5713).

Abstract: Form 5713 and related Schedules A, B, and C are used by any entity that has operations in a ''boycotting'' country. If that entity cooperates with or participates in an international boycott, it may lose a portion of the following benefits: the foreign tax credit, deferral of income of a controlled foreign corporation, deferral of income of a domestic international sales corporation, or deferral of income of a foreign sales corporation. The IRS uses Form 5713 to determine if any of these benefits should be lost. The information is also used as the basis for a report to the Congress.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 3,875.

Estimated Time Per Respondent: 26 hours, 54 minutes.

Estimated Total Annual Burden Hours: 104,236.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–11474 Filed 5–7–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2678

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2678, Employer Appointment of Agent.

DATES: Written comments should be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer Appointment of Agent.

OMB Number: 1545–0748.

Form Number: 2678.

Abstract: Internal Revenue Code section 3504 authorizes a fiduciary, agent or other person to perform acts of an employer for purposes of employment taxes. Form 2678 is used to empower an agent with the responsibility and liability of collecting and paying the employment taxes including backup withholding and filing the appropriate tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms and the Federal Government.

Estimated Number of Respondents: 95,200.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 47,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–11475 Filed 5–7–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Office

Government-Owned Invention for Licensing

AGENCY: Research and Development Office, VA.

ACTION: Notice of government-owned invention available for licensing.

SUMMARY: The invention listed below by the U.S. Government, as represented by the Department of Veterans Affairs, is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious Commercialization of results of Federally-funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Mindy Aisen, MD, Department of Veterans Affairs, Director, Technology Transfer Program, Research and Development Office, 810 Vermont Avenue, NW, Washington, DC 20420; Fax (202) 275–7228; e-mail at *mindy.aisen@mail.va.gov.*

Any request for information should include the number and title for the relevant Invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20031.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: PCT/US01/11834 ''Compositions and Methods for Tissue Preservation''.

Dated: May 1, 2002.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 02–11447 Filed 5–7–02; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
May 8, 2002

Part II

Securities and Exchange Commission

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Incorporated To Establish Rules for a Screen-Based Trading System Known as CBOE*direct*; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45829; File No. SR–CBOE–00–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Incorporated To Establish Rules for a Screen-Based Trading System Known as CBOE*direct*

April 25, 2002.

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 9, 2000, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CBOE submitted Amendment Nos. 1, 2, and 3 to the proposal on October 29, 2001; April 2, 2002; and April 19, 2002, respectively.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adopt rules governing its screen-based trading system, known as CBOE*direct*, which will initially be used to trade options only when the open outcry option market is not open. The text of the proposed rule change, as amended, is set forth below. All of the text below would be new CBOE rules; this proposal would not amend or delete any existing CBOE rule.

* * * * *

Chapter XL

Introduction

The rules in Chapters XL (40) through XLIX (49) are applicable only to trading on the Exchange's screen based trading system. Trading of securities on the screen based trading system shall also be subject to the rules in Chapters I through XXVII to the same extent such rules apply to the trading of the products to which those rules apply, in some cases supplemented by the rules in Chapters 40 through 49, except for rules that have been replaced by rule in Chapters 40 through 49 and except where the context otherwise requires. Whenever a rule in Chapters 40 through 49 supplements or, for purposes of trading on the screen based trading system replaces such rules in Chapters I through XXVII, that fact is indicated following the rule in these Chapters 40 through 49. Appendix A to the screen based trading rules lists the rules in Chapters I (1) through XXVII (27) that are applicable to the trading on the screen based trading system. Where appropriate, Appendix A also indicates that a rule in Chapter 1 through 27 has been supplemented by a rule in these screen based trading rules. All references in the rules in Chapters 1 through 27 to the Exchange shall mean SBT System also unless the context dictates otherwise.

* * * * *

Definitions

Rule 40.1

(a) For purposes of the rules governing the use of the Exchange's Screen Based Trading System, any term defined in Article I of the Constitution or in Rule 1.1 and not otherwise defined in Chapters 40 through 49 shall have the meaning assigned to such term in either Article I or in Rule 1.1.

SBT System

(b) ''Screen Based Trading System'' or ''SBT System'' means the electronic system administered by the Exchange which performs the functions set out in Exchange rules including controlling, monitoring, and recording trading by members through SBT workstations and trading between members.

Application Program Interface

(c) ''Application Program Interface'' or ''API'' means the computer program that allows Traders on their own computers or on CBOE or third-party vendor-supplied workstations to interface with the SBT System.

SBT Book

(d) ''SBT Book'' means all unexecuted orders, other than spread orders, currently held by the SBT System.

SBT Spread Book

(e) ''SBT Spread Book'' means all unexecuted spread orders, currently held by the SBT System.

SBT Workstation

(f) ''SBT workstation'' means a computer connected to the SBT System for the purposes of trading pursuant to the rules in these Chapters 40 through 49.

Trading Official

(g) ''Trading Official'' means an Exchange employee or member who is granted certain duties under these Rules to take actions affecting either the operation of the SBT System or to take actions affecting the responsibilities of SBT Traders.

SBT Trader

(h) ''SBT Trader'' means an individual member who or member organization which has the right to trade on the SBT System.

Market Turner

(i) ''Market Turner'' means an SBT Trader who was the first to enter an order (quote) at a better price than the previous best book price and the order (quote) is continuously in the market until the particular order trades. There may be a Market Turner for each price at which a particular order trades.

Legal Width Market

(j) ''Legal Width Market'' means a bid and offer for a prescribed size or greater that is at or within the prescribed width as set forth in Rule 44.4. While a legal width market is equivalent to the ''maximum quote width'' in width, Rule 44.4 requires that an SBT market-maker enter both the bid and offer to receive credit for the quote. A legal width market can be established by a bid and offer that are entered by two different SBT Traders.

Extended Trading Hour Session

(k) ''Extended Trading Hour Session'' or ''ETH Session'' is any period of time during which the SBT System is open for trading other than the regular trading hour session for those products traded during the ETH session.

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Application of Other Rules

Rule 40.2

(a) To the extent the rules in Chapters I through XXXI are applicable to trading on the SBT System (as indicated by the context or by Appendix A to these Chapters XL through XLIX), the terms used in Chapters I through XXXI should

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Angelo Evangelou, Legal Division, CBOE, to Nancy Sanow, Division of Market Regulation (''Division''), Commission, dated October 25, 2001 (''Amendment No. 1''); April 1, 2002 (''Amendment No. 2''); and April 18, 2002 (''Amendment No. 3''). In Amendment No. 1, CBOE substantially revised the proposed rule change; the proposed rule text and description of the proposal submitted as part of Amendment No. 1 supercedes those provisions of the original submission. In Amendment No. 2, CBOE substantially revised its proposed trade nullification rule for CBOE*direct*. In Amendment No. 3, CBOE further modified the proposed trade nullification rule.

be read to have the following meanings where appropriate:

(1) ''Floor'' should be read to mean SBT System.

(2) ''Floor Official'' should be read to mean Trading Official.

(3) ''Appropriate Floor Procedure Committee'' should be read to mean ''appropriate SBT Trading Committee.''

(4) ''Floor Broker'' should be read to mean ''SBT Broker.''

(5) ''Market-Maker'' should be read to mean ''SBT Market-Maker.''

(6) ''DPM'' should be read to mean ''SBT DPM.''

(b) References in rules to ''the Exchange'' should be read to include the SBT System where appropriate.

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Chapter XLI

Market Participants, Market Access and Securities Dealt In

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Market Participants

Rule 41.1

(a) The SBT Traders in the SBT System shall be:

(1) SBT Market-Makers—members who are either SBT Standard Market-Makers, SBT Lead Market-Makers or SBT Designated Primary Market-Makers;

(2) SBT Standard Market-Makers—members who have agreed to fulfill certain market making obligations thus qualifying for defined benefits;

(3) SBT Lead Market-Makers—SBT Standard Market Makers who have a higher level of market-maker obligations and a greater level of benefits for those classes in which they act as SBT Lead Market-Makers. SBT Lead Market-Makers generally act in such capacity on a rotating basis;

(4) SBT Designated Primary Market-Makers—members who are qualified and obligated to fulfill a higher level of market-maker obligations than SBT Standard Market-Makers thus qualifying for a greater level of defined benefits;

(5) SBT Brokers—members who enter orders as agents for accounts other than accounts of SBT Market-Makers;

(6) Proprietary Traders—members who enter orders as principal for non-market-maker proprietary accounts;

(b) Other users of the SBT System are:

(1) Clearing Firm Users—members who monitor and regulate the activities of traders trading through the clearing firm;

(2) SBT System Operators/Administrators—Exchange employees who support the operation of the system.

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Registration of Membership

Rule 41.2

Any Exchange member who chooses to participate on the SBT System must apply with the Membership Committee to act as an SBT Market-Maker, SBT Broker, or Proprietary Trader. The Membership Committee shall be responsible for approving applications of Exchange members as an SBT Market-Maker, SBT Broker, or Proprietary Trader for the SBT System.

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Communication Access

Rule 41.3

The connection point for any SBT workstation must be in the United States except as otherwise provided for by the Board. The Exchange may limit the locations of any SBT workstations to specified locations or cities if necessary to ensure the operational integrity of the System.

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Replacement Traders

Rule 41.4

(a) If the SBT System is so enabled to recognize Replacement Traders, Individual SBT Market-Makers may nominate a Replacement Trader that must be qualified and registered with the Exchange as such. The Membership Committee shall be responsible for qualifying and approving Replacement Traders. Replacement Traders for a nominee of a member firm must be nominees of the same firm or must have their memberships registered for the same firm.

(b) When an SBT Market-Maker logs off the SBT System, he may first choose to transfer his position to a Replacement Trader. Any quotes transferred in that manner will retain their priority.

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Chapter XLII

Trading Day and States of Operation

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Days and Hours of Business

Rule 42.1

The days and hours of business shall be determined in accordance with the applicable rules for the type of product; *e.g.,* equity options—Rule 6.1, index options—Rule 24.6, etc. The Board of Directors may determine to approve hours of trading and days of operation for categories of products traded on the SBT System that are different than those approved for trading on the Exchange's open outcry system on the Exchange floor.

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States of Operation

Rule 42.2

(a) Pre-Opening. Pre-opening is some pre-determined period of time (as described in Rule 42.3), as determined by the Exchange, prior to the opening during which the SBT System will accept orders and quotes, but during which no trading will take place.

(b) Opening. During the Opening State, the System will accept orders and quotes for some period of time (as described in Rule 42.3) as determined by the Exchange. At the end of that period of time, quotes and orders will be accepted for some period of time (but will not be included in the opening trade). During this time, the length of which is determined by the Exchange, opening prices are established. At the end of the Opening State, the System will complete the opening trades, if any, and then change the state of the class to Trading.

(c) Trading. During Trading, the series will trade freely and orders and quotes will be accepted.

(d) Trading Halts. During Trading Halts as declared in accordance with Rule 43.4(b), orders are accepted by the System. The class will have to go through the pre-opening and opening procedures before it reverts to the state of Trading.

(e) Closed. The System changes the state to Closed at a predetermined time dependent on the closing time of the underlying security. Trading is stopped but the System continues to accept certain types of orders to allow SBT Traders to maintain their orders. At some designated time the System stops accepting orders and performs end-of-day procedures as described in Rule 42.4.

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Opening and Closing Rotation Procedures

Rule 42.3

(a) For some period of time before the opening (as determined by the Exchange) in the underlying security, the SBT System will accept orders and quotes. Spread orders and contingency orders (except ''opening only'' orders) do not participate in the opening. The SBT System will disseminate information about resting orders in the SBT Book that remain from the prior business day and any orders sent in before the opening. After the primary market for the underlying security disseminates the opening trade or the

opening quote for the underlying security, the SBT System sends a notice to SBT Market-Makers with an appointment in that class of options who may then submit their opening quotes. If there is an SBT Designated Primary Market-Maker (''SBT DPM'') or an SBT Lead Market-Maker (''SBT LMM'') in the particular option class, the SBT DPM or SBT LMM must enter opening quotes. Standard SBT Market-Makers may but are not required to enter an opening quote unless required by the procedure described in paragraph (b) below. The SBT System will begin the Opening Procedure at a randomly selected time within a number of seconds after the receipt of the underlying security's opening price. In the case of trading during an ETH session, the System may open the class without having received the underlying security's opening price. Spread orders and contingency orders do not participate in the opening trade or in the determination of the opening price.

(b)(1) For series that have no SBT Market-Makers with appointments logged on to the System and no SBT Market-Makers without appointments providing pre-opening quotes, the System will issue an alert message to the Help Desk at a prescribed time before the open. The Help Desk may contact SBT Market-Makers with an appointment to request that the Market-Makers log on and prepare to quote any series in the class. If a sufficient number of SBT Market-Makers can not be encouraged to log on, then the Help Desk may have the Opening Notice sent to some or all other SBT Market-Makers logged on to the System. A Special Request for Quote, which may be sent to the SBT Market-Makers with an appointment, is an RFQ that will require a response.

(2) For series where SBT Market-Makers have logged on but have not responded to the Opening Notice, and where no non-appointed SBT Market-Makers have provided pre-opening quotes, the System will send an alert message to the Help Desk and a Special RFQ to those SBT Market-Makers with an appointment.

(c) From some time after the Opening Notice is sent, the SBT System will calculate and provide the Expected Opening Price (''EOP'') given the current resting orders during an EOP Period. The EOP Period shall be a time established by the appropriate SBT Trading Committee and shall be no less than five seconds and no more than one minute. The EOP is that price at which the greatest number of orders in the SBT Book would be traded. The EOP will be re-calculated and disseminated every few seconds. During this time after the Opening Notice is sent, quotes and orders may be submitted without restriction. An EOP can only be calculated if an opening trade is possible. An opening trade is possible if: (i) the SBT Book is crossed (highest bid is higher than the lowest offer), locked (highest bid equals lowest offer), or there are market orders in the SBT Book, and (ii) at least one quote is present that is at or within the legal width market and of the prescribed minimum size as set forth in Rule 44.4.

(d) After the EOP Period, the System will enter a Lock Interval during which quotes and orders may be submitted but they are not included in the opening trade. The Lock Interval shall be a period of time not to exceed four seconds. The SBT System will establish the opening price at this time during its Opening Procedure. The System will process the series of a class in a random order. The opening price of a series is the ''market-clearing'' price which will leave bids and offers which cannot trade with each other. In determining the priority of orders to be filled, the SBT System will give priority to market orders first, then to limit orders whose price is better than the opening price and entered before the Lock Interval, and then to resting orders at the opening price and entered before the Lock Interval. One or more series of a class may not open because of conditions cited in paragraph (f) of this Rule. Orders entered during the Lock Interval will be eligible to be traded (according to the time priority in which they were entered) after the System enters the Trading State.

(e) As the opening price is determined by series, the System will change the product state of the series to Trading, and disseminate to OPRA and to the SBT participants the opening quote and the opening trade price, if any. Quotes and orders entered during the Lock Interval will then be submitted to the SBT Book in the order of their arrival.

(f) The System will not open a series if one of the following conditions is met:

(1) There is no quote from any SBT Market-Maker that provides a legal width market;

(2) The opening price is not within an acceptable range (as determined by the appropriate SBT Trading Committee) compared to the highest quote offer and the lowest quote bid (*e.g.,* the upper boundary of the acceptable range may be 125% of the highest quote offer and the lower boundary may be 75% of the lowest quote bid); or

(3) The opening trade would leave a market order imbalance (*i.e.,* there are more market orders to buy or to sell for the particular series than can be satisfied by the limit orders and the market orders on the opposite side).

(g) If one of the conditions in paragraph (f) of this Rule is met, the System will not open the series but will send a Request for Quote (''RFQ'') with no size, except when the condition in (f)(3) is met. In this case, the RFQ will include a size equal to the market order imbalance and the direction (buy or sell) of the imbalance. At the end of the RFQ period, the System will put the series into Opening Rotation. The System will repeat this process until the series is open.

(h) Two Trading Officials may deviate from the standard manner of the opening procedure, including delaying the opening in any option class, when they believe it is necessary in the interests of a fair and orderly market.

(i) The procedure described in this Rule may be used to reopen a class after a trading halt.

(j) Closing Rotation Procedure. The procedure described in this Rule may be employed after the end of the normal close of any trading session whenever the Exchange concludes that such action is appropriate in the interests of a fair and orderly market. The factors that may be considered in holding a closing rotation procedure include, but are not limited to, whether there has been a recent opening or reopening of trading in the underlying security, a declaration of a fast market, or a need for a closing procedure in connection with expiring individual stock options, an end of the year procedure, or the restart of a procedure which is already in progress. The decision to employ a closing rotation procedure in non-expiring options shall be disseminated prior to the commencement of such procedure.

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End of Day/Session Process

Rule 42.4

The System will automatically delete expiring orders (*i.e.,* day orders and session orders) and expiring GTC (Good-'til-Canceled) orders after the close. If an option class is traded on both the SBT System during an Extended Trading Hours session and also on the Exchange during different trading hours then orders eligible to be traded in the next or a future session may be passed by the System from one book to the next appropriate book, *e.g.,* orders may be passed from the SBT Book to the regular book or from the regular book to the SBT Book as appropriate.

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Chapter XLIII

Trading Rules and Processing of Orders

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Matching Algorithm/Priority

Rule 43.1

(a) *Generally.* The appropriate SBT Trading Committee will determine to apply, for each class of options, one of the following rules of trading priority. The Exchange will issue a Regulatory Circular periodically which will specify which priority rules will govern which classes of options any time the appropriate Committee changes the priority.

(1) *Price-Time Priority.* Under this method, resting orders in the book are prioritized according to price and time. If there are two or more orders at the best price then priority is afforded among these orders in the order in which they were received by the SBT System.

(2) *Combined Price-Time and Size Priority.* Under this method, resting orders in the book are prioritized according to price. If there are two or more orders at the best price then trades are allocated proportionally according to size (in a pro rata fashion). The executable quantity is allocated to the nearest whole number, with fractions ½ or greater rounded up and fractions less than ½ rounded down. If there are two market participants that both are entitled to an additional ½ contract and there is only one contract remaining to be distributed, the additional contract will be distributed to the market participant whose quote or order has time priority.

(b) *Additional Priority Overlays.* In addition to the base allocation methodologies set forth above, the appropriate SBT Trading Committee may determine to apply, on a class-by-class basis, any or all of the following designated market participant overlay priorities in a sequence determined by the appropriate SBT Trading Committee. The Exchange will issue a Regulatory Circular periodically which will specify which classes of options are subject to these additional priorities as well as any time the appropriate SBT Trading Committee changes these priorities.

(1) *Public Customer.* When this priority overlay is in effect and no other priority overlays are in effect, the highest bid and lowest offer shall have priority except that public customer orders shall have priority over non-public customer orders at the same price. If other priority overlays are also in effect, priority is established in the sequence designated by the appropriate SBT Trading Committee. In either case, if there are two or more public customer orders for the same options series at the same price, priority shall be afforded to such public customer orders in the sequence in which they are received by the System, even if the Combined Price-Time and Size Priority allocation method is the chosen allocation method.

(2) *Market Turner.* When this priority overlay is in effect and no other priority overlays are in effect, the Market Turner has priority at the highest bid or lowest offer that he established. If other priority overlays are also in effect, priority is established in the sequence designated by the appropriate SBT Trading Committee. In either case, the Market Turner priority at a given price remains with the order once it is earned. For example, if the market moves in the same direction as the direction in which the order from the Market Turner moved the market, and then the market moves back to the Market Turner's original price, then the Market Turner retains priority at the original price.

(3) *Trade Participation Right.* SBT Designated Primary Market-Makers or SBT Lead Market-Makers may be granted trade participation rights pursuant to the provisions of Chapter 44 that will provide for priority over non-public customer and/or customer orders up to the applicable participation right percentage designated pursuant to the provisions of Chapter 44. If other priority overlays are also in effect, priority is established in the sequence designated by the appropriate SBT Trading Committee. In allocating the participation right, all of the following shall apply:

(i) To be entitled to their participation right, a DPM's/LMM's order and/or quote must be at the best price.

(ii) A DPM/LMM may not be allocated a total quantity greater than the quantity that the DPM/LMM is quoting (including orders not part of quotes) at that price. Additionally, a DPM/LMM may not be allocated a total quantity that represents a greater percentage than the DPM's/LMM's percentage of the total size at the best price before the participation right was applied.

(iii) If the trade participation right priority and the Market Turner priority are both in effect and the DPM/LMM is the Market Turner, the Market Turner priority will not be applicable.

(iv) In establishing the counterparties to a particular trade, the DPM's/LMM's participation right must first be counted against the DPM's/LMM's highest priority bids or offers.

(c) *Contingency Orders.* Regardless of the allocation method in place, contingency orders are placed last in priority order, regardless of when they were entered into the SBT System. A contingency order that was entered before a limit order for the same series at the same price will be treated as if it were entered after the limit order. If customer priority is afforded to a particular option class, customer contingency orders will have priority over non-public customer contingency orders but behind all other orders.

(d) *Spread Orders.* Spread orders will not be afforded priority according to this Rule 43.1 but will be handled as provided in Rule 43.10.

(e) *Regenerated Quotes.* Notwithstanding anything to the contrary in this Rule, if a Market-Maker has the SBT System regenerate his quote in accordance with Rule 44.5(b) after the Market-Maker's bid or offer has been filled, then that portion of the regenerated quote equal to the original size executed against that Market-Maker's bid or offer takes priority over all other orders at the regenerated price except public customer orders, if public customer priority is applicable to that class of options. The portion of the regenerated quote that is not executed will be placed in a priority position consistent with the time the quote was regenerated.

(f) *Cancel/Replace Orders.* Depending on how a quote or order is modified the quote or order may change priority position as follows:

(1) If the price is changed, the changed side loses position and is placed in a priority position behind all orders of the same type (*i.e.,* customer or non-customer) at the same price.

(2) If one side's quantity is changed, the unchanged side retains its priority position.

(3) If the quantity of one side is decreased, that side retains its priority position.

(4) If the quantity of one side is increased, that side loses its priority position and is placed behind all orders of the same type at the same price.

(g) *Priority of Market Orders and Limit Orders.* As further described in the Rules governing the execution of market orders and limit orders, market orders generally have execution priority over limit orders. However, if there is not a legal width market available when a market order is entered, an RFQ will be sent for the market order. During the pendency of the RFQ process, a limit order may be executed ahead of the market order if an order is entered on the other side of the market which satisfies the order's limit before any of

the conditions are satisfied that would allow the market order to trade.

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Types of Orders Handled

Rule 43.2

(a) At the discretion of the appropriate SBT Trading Committee, and once the System is so enabled, any of the following types of orders may be accommodated on the SBT System:

(1) *Market Order*. A market order is an order to buy or sell a stated number of option contracts at the best price available in the market.

(2) *Limit order*. A limit order is an order to buy or sell a stated number of option contracts at a specified price, or better.

(3) *Cancel order*. A cancel order is an order that cancels partially or fully an existing buy or sell order.

(4) *Cancel Replace Order*. A cancel replace order is an order to cancel fully an existing buy or sell order and replace it with a new order that has a different quantity or a different price.

(5) *Day order*. A day order is an order that remains in the SBT Book until it either trades or expires at the end of the day it was entered. The System may recognize different types of day orders as indicated in Rule 43.3.

(6) *Good-for-Session order*. A Good-for-Session order remains in either the SBT Book or the auction market book until it either trades or expires at the end of the SBT Trading session or the auction market session, as appropriate. (See interpretations to Rule 43.3).

(7) *Good-'til-Canceled order*. A Good-'til-Canceled order remains in the SBT Book until either it trades, is withdrawn by the submitting trader or his firm, or the option expires. The System may recognize different types of Good-'til-Canceled orders as indicated in Rule 43.3.

(8) *Spread order*. A spread order is an order accommodated by the SBT System and as defined in the rule governing the execution of spread orders.

(9) *Contingency order*. A contingency order is a limit or market order to buy or sell that is contingent upon a condition being satisfied while the order is held in the Book for execution.

(A) *Opening Only*. An Opening Only order may be a market order or a limit order that may be accepted when the System is in the Pre-Opening, Trading Halt, and Closed States. An opening only order either will be executed on the opening or canceled.

(B) *All or None*. An all or none order is an order which is to be executed in its entirety at its limit price.

(C) *Fill-or-Kill Order*. A fill-or-kill order is an order which is to be executed in its entirety within a short period of time after its receipt. If the order is not so executed, it is canceled.

(D) *Immediate-or-Cancel Order*. An immediate-or-cancel order is a market or limit order which is to be executed in whole or in part within a short period of time after it is received by the SBT System. Any portion not so executed is to be treated as canceled.

(E) *Minimum Volume Order*. A minimum volume order is an order where the fill should at least equal the minimum volume specified, which is an amount less than the total volume of the order.

(F) *Stop (stop-loss) Order*. A stop order is an order to buy or sell when the market for a particular option contract reaches a specified price. A stop order to buy becomes a market order when the option contract trades or is bid at or above the stop price. A stop order to sell becomes a market order when the option contract trades or is offered at or below the stop price.

(G) *Stop-limit Order*. A stop-limit order is an order to buy or sell when the market for a particular option contract reaches a specified price. A stop-limit order to buy becomes a limit order when the option contract trades or is bid at or above the stop-limit price. A stop-limit order to sell becomes a limit order when the option contract trades or is offered at or below the stop-limit price.

(H) *Market-on-close Order*. A market-on-close order is a market or limit order that is to be executed during some defined period of time prior to the close and should be filled at or near to the Closing price for the particular series of option.

(10) Any other order type that the Exchange decides to permit to be entered on the SBT System.

(b) The appropriate SBT Trading Committee may determine to provide for only certain of these order types to be available during an extended trading hour session, even if these order types are available during regular trading hours. For example, the appropriate SBT Trading Committee may determine not to allow for the entry of market orders during an extended trading hour session.

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Order Types Accepted at Various Product States

Rule 43.3

(a) The appropriate SBT Trading Committee shall determine which order types may be accepted at various product states and session states.

(b) Once the System is enabled to receive such categories of day and good 'til canceled (''GTC'') orders, customers may specify that their day orders or GTC orders are to be transferred between one trading session and the next and may determine to have the orders represented only during ETH sessions or only during auction market sessions or both. The customer may specify his preferences for the representation of his order by using codes published by the Exchange for that purpose.

* * * *Interpretations and Policies:*

.01 The Exchange will provide for the following ''time in force'' codes for orders entered over the Exchange's interface: (1) DAA—this indicates the order is to be represented only in the AM ETH session; (2) DAY—this indicates the order is to be represented only during the current Regular Trading Hour (''RTH'') session; and (3) GTC—this indicates the order is to be represented in all RTH sessions until it is traded, canceled or expired.

.02 Once the System is so enabled to recognize such codes, the Exchange will provide for the following for orders entered over the Exchange's interface: (1) DAP—this indicates the order is to be represented only in the PM ETH session; (2) DAX—this indicates the order is to be represented during all sessions during the current trading day; and (3) GTX—this indicates the order is to be represented during all sessions until it is traded, canceled, or expired.

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Unusual Market Conditions

Rule 43.4

(a) *Fast Markets.* A fast market may be declared by (A) the SBT System automatically or (B) by two Trading Officials whenever in the judgment of those Trading Officials, due to an influx of orders or other conditions or circumstances, the interest of maintaining a fair and orderly market so requires. A ''fast market'' may be declared in one or more option classes or for the SBT System in its entirety. Once a fast market has been declared either by the SBT System or by Trading Officials, a systemwide notification message will be sent. When Trading Officials declares a fast market or when the SBT System declares a fast market, two Trading Officials may take any action the Trading Officials deem necessary to maintain a fair and orderly market including changing the bid-ask width requirement as set forth in Rule 44.4.

(1) *SBT System Declaration.* The SBT System may declare a fast market for a class or classes when the System has lost an underlying security feed, *e.g.,* SIAC or Nasdaq feed. Regular trading

conditions may be resumed when the underlying security feed has been restored or whenever a Trading Official believes that such action is warranted.

(2) *Trading Official Declaration*. In declaring a fast market, among the conditions which the Trading Officials may consider are loss of an underlying security feed, impending news, increases in trading volume that has the capability to interfere with the operation of the System, increase in volatility that has the capability to interfere with the operation of the System, and for any other reason to maintain a fair and orderly market. Regular trading conditions may be resumed whenever two Trading Officials believe that such action is warranted.

(b) *Trading Halts*. A trading halt may be declared (A) automatically by the SBT System or (B) by two Trading Officials whenever the conditions, in the Trading Officials' judgment, can not be managed by means available through the operation of paragraph (a) of this Rule.

(1) *SBT System Declaration*. With respect to stock options, the SBT System may declare a trading halt, when a trading halt has been declared for the underlying security in the primary market. When the SBT System is operated during Extended Trading Hours, there may not be a primary market trading the underlying security. In such cases, the SBT System may or may not declare a trading halt if the underlying security has been halted on one or more of the markets trading the underlying security. The appropriate SBT Trading Committee will determine in advance from time to time whether to have the system automatically halt trading on the options if the trading in the underlying has been halted in a market trading the underlying during an ETH session.

(2) *Trading Official Declaration*.

(A) With respect to options on equity securities, two Trading Officials may declare a trading halt for any of the following reasons:

(i) There was no last sale and/or quotation dissemination by the Exchange or by OPRA;

(ii) The primary market halts trading in one or more stocks for regulatory reasons;

(iii) The primary market halts trading in one or more stocks for non-regulatory reasons;

(iv) The primary market halts trading floor-wide;

(v) The primary market is open but is unable to disseminate last sale or quotation information;

(vi) Dissemination of news after or near to the close of trading in the primary market;

(vii) Opening of the underlying security has been delayed because of unusual circumstances;

(viii) Loss of the underlying security feed, *e.g.,* SIAC or NASDAQ feed;

(ix) SBT System or CBOE systems failure;

(x) Opening has not been completed or other factors affect the status of the opening;

(xi) Other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(B) With respect to index options, two Trading Officials may declare a trading halt for any of the following reasons:

(i) Activation of price limits on future exchanges;

(ii) One or some of the stocks underlying the index is/are not trading;

(iii) The current calculation of the index derived from the current market prices of the stocks is not available;

(iv) The opening has not been completed or other factors affect the status of the opening;

(v) Other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(C) With respect to any class of products not specified above, two Trading Officials may declare a trading halt for any unusual conditions or circumstances that the Trading Officials deem to be detrimental to the maintenance of a fair and orderly market.

(3) *Resumption of Trading.* Whenever trading has been halted, whether by the system or by the action of Trading Officials, trading may be resumed whenever two Trading Officials determine that a fair and orderly market may be maintained.

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Trade Nullification Procedures

Rule 43.5

(a) *Negotiated Trade Nullification.* A trade on the SBT System may be nullified if the parties to the trade agree to the nullification. Negotiation may be conducted through the SBT System's messaging facility that would allow a trade party to exchange messages with his contra-parties in a particular trade. The SBT System will preserve the anonymity of the parties although a party may voluntarily disclose his identity to the other parties. When all parties to a trade have agreed to a trade nullification, one party must contact the Help Desk which will confirm the agreement and perform the following procedure:

(1) Nullify the trade in the matched trade system;

(2) notify all parties involved;

(3) disseminate cancellation information in prescribed OPRA format; and

(4) reestablish order(s) and their respective priorities in the SBT Book on a best efforts basis.

(b) *Mandated Trade Nullification.* An SBT Trader may have a trade nullified by two Trading Officials if: (i) a documented request is made within five minutes of execution or, if the request is on behalf of a public customer order, within fifteen minutes of execution; and (ii) the trade resulted from: (A) a disruption or malfunction of an Exchange execution, dissemination, or communication system; (B) an erroneous print disseminated by the underlying market which is later cancelled or corrected by that underlying market; or (C) an erroneous quote in the Primary Market (as defined in Rule 1.1) for the underlying security as defined below.

For purposes of this Rule, an erroneous quote in the Primary Market for an underlying security is a quote that has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. The average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).

Upon the nullification of a trade, the Help Desk will perform the following procedure:

(1) Notify all parties involved;

(2) disseminate cancellation information in prescribed OPRA format; and

(3) reestablish order(s) and their respective priorities in the SBT Book on a best efforts basis.

Nothing in this Rule should be construed to prohibit the contra-party of the trade (*i.e.,* that party who traded against the party that initiated the nullification) to seek to recover any loss incurred due to a change in the price in the underlying during the period from the trade to a reasonable amount of time (for unwinding the transaction) after the nullification notification. The recovery of any loss may be sought by any legal means including arbitration.

(c) *Reinstatement of Orders in a Nullified Trade.* All orders that were executed in a nullified trade will be reinstated along with their original entry time and price except for the following:

(1) An order of a party requesting a nullification;

(2) a market order;

(3) an order that was originally one side of a quote;

(4) a contingency order; and

(5) an order of a party who does not want the order to be reinstated.

A reinstated order is treated like any incoming order except it retains its original order entry time. If the reinstated order is the first in time priority, the order will receive market turner priority. If there is a market turner order at the same price level with lower time priority, that other order loses its market turner priority.

(d) *Spread Orders.* If so enabled, the System will provide for the possibility of nullifying trades of spread orders.

* * * * *

Order Entry and Maintenance

Rule 43.6

(a) *Spread Order Entry.* Once the SBT System is so enabled, Traders will have the ability to enter spread orders whose legs are options of the same underlying security.

(b) *Order Maintenance.* A Trader may display the status of his working or active orders (submitted to the SBT Book and SBT Spread Book, if applicable). A Trader may keep orders in the System that are inactive and may activate them when desired. A Trader may update (cancel/replace) the order; cancel the order or a group of orders; or activate or inactivate an order or a group of orders. When a Trader logs off the SBT System his orders will remain on the SBT Book or SBT Spread Book, if applicable.

(c) *Limitations on Orders.* Order providers (SBT Brokers and Proprietary Traders) will be prohibited from entering limit orders in the same options series, for the accounts or accounts of the same or related beneficial owners, in such a manner that the Order Provider or the beneficial owner(s) effectively is operating as a Market-Maker by holding itself out as willing to buy and sell options contracts on a regular or continuous basis. In determining whether an Order Provider or beneficial owner effectively is operating as a Market-Maker, the Exchange will consider, among other things: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same option series during the same day; the multiple acquisition and liquidation of positions in the same option series during the same day; and the entry of multiple limit orders at different prices in the same options series.

* * * * *

Market Order Processing

Rule 43.7

(a)(1) If a legal width market exists for a particular option, even if established by a pair of unrelated bids and offers for a size less than required of SBT Market-Makers to meet their quote requirement, the SBT System will match market orders against orders at the best price in the Book and against the other orders behind the best price at varying prices until the order is fully executed or until a legal width market no longer exists.

(2) If there is not a legal width market when the order is entered in the System or if any portion of the market order is not executed because there is no longer a legal width market, then the System will hold the order (or any remaining portion of the order) in queue, send a Request for Quote (''RFQ'') to SBT Market-Makers currently providing quotes in the class (which will be handled as described in paragraph (a)(3) below), and send a notice to the originator of the order about the order status.

(3) An RFQ sent pursuant to paragraph (a)(2) will include the market order quantity, but not whether the order is a buy or a sell. RFQ responses will be sent to the SBT Book. Once the responses are sent to the SBT Book the orders may trade with resting orders unless the market order trades against that order first when one of the below conditions are met. The market order will be executed if any one of the following conditions becomes true:

(A) During the RFQ expiration response time, if the best quote width (*i.e.,* the spread between the best bid and offer) becomes a certain prescribed percentage (*e.g.,* 75%)—as set by the appropriate SBT Trading Committee—of the legal width market, the System will execute the market order against the quote and any other eligible booked order (*i.e.,* an order on the book with a limit price that allows that order to trade against the market order) until the order is filled or the legal width market no longer exists. If there is volume remaining in the market order, the System will hold the market order in queue again, send another RFQ, and send a notice to the originator about the order status.

(B)(i) If the System receives a limit order on the same side of the market as the market order that could match the best bid or offer and at least one legal width quote has been received, then the System will execute the market order against the best bid/offer. If there is no legal width quote then the limit order that is entered is filled ahead of the market order.

(ii) If one or more incoming RFQ responses could execute against a market order as well as any limit orders that are already on the book (''older limit orders'') at a particular price, then:

(aa) If the incoming RFQ response(s) is (are) of large enough quantity to fill all the older limit orders and the market order, then all those orders will be filled at the price of the older limit orders.

(bb) If the incoming RFQ response(s) is (are) not large enough to fill the market order and all the older limit orders, the market order will be executed at the minimum price interval (*i.e.,* the minimum price differential which may exist between two orders) ahead of the older limit orders.

(C) When a certain prescribed percentage of the market-makers currently providing quotes in the class (the percentage to be set by the appropriate SBT Trading Committee) (*e.g.,* 50%) have responded to the RFQ with legal width markets or when the RFQ period expires and there is at least one quote response, the System will execute the market order against orders in the SBT Book. A response will count toward the percentage requirement even if the quotes are traded against orders in the book before all orders that constitute the percentage requirement have been received. If there is volume remaining in the market order, the System will hold the order in queue and repeat the RFQ cycle again. The System will also send a notice to the originator of the order status and give him the option to cancel the order.

(4) When a market order can be executed under the conditions cited in sub-paragraphs (3)(A) through (C) above and there is one or more market orders on the opposite side, the System will cross the market orders at a price as determined as follows:

(A) At the middle of the best bid-offer in the Book if the middle price is a legal price; or

(B) If the middle price is not a legal price, at the next legal price from the middle that is closer to the last trade price of the series.

(C) For purposes of this sub-paragraph (a)(4), ''legal price'' means a price that may be entered on the SBT System.

(b) If the RFQ period expires and there is no RFQ response, the System will continue to hold the market order, repeat the RFQ cycle, send a notice to the originator of the order, and send an

alert message to the Help Desk so that the Help Desk may solicit quotes from the market-makers. The Help Desk may require a response from the Market-Makers.

(c) If a market order for a certain series becomes subject to an RFQ as described in paragraph (a) above, then subsequent market orders for the same series and side are queued to ensure that these incoming market orders are processed in time sequence. Market orders for the same series but opposite side would be processed normally. Other orders that are not market orders would be routed to the SBT Book.

(d) *Trading Halts.* When trading is halted in the series while a market order is on hold waiting for RFQ responses, the SBT System will do the following: If the market order is a GTC order, the System will hold and execute it at the next opening, in the same day or the next day. If it is a day order, the System executes it at re-opening if trading resumes for the same day. If trading does not resume, the System purges it as part of the end-of-day procedure for purging day orders.

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Processing of Limit Orders

Rule 43.8

Until the System is enabled to provide price protection as set forth in Rule 43.8A, after the opening, upon being entered into the SBT System, limit orders will be matched against the best prices available in the SBT Book under the priority rules set forth in Rule 43.1. If there are no orders in the SBT Book that match the limit order when it is entered, the limit order will be held and displayed in the SBT Book and may be traded against later submitted orders.

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Price Protection of Limit Orders

Rule 43.8A

(a) When the System is so enabled, and to the extent that the appropriate SBT Trading Committee has determined to apply the protection to the particular options class, the System will protect a limit order by automatically executing it against the best bid/ask only if one or both of the following conditions is met:

(1) A legal width market exists for that series; or

(2) The limit price on the order is between the bid of the series with the same expiration month and one strike price lower and the offer of the series with the same expiration month and one strike price higher and a legal width market exists for both of these series.

(b) If a limit order can execute against the best bid/ask and neither of the conditions set forth in paragraph (a)(1) or (a)(2) is met, the System puts the order in queue and sends an RFQ. The RFQ will include the order quantity but not whether the order is a buy or sell. Quote responses are exposed in the SBT Book as they are received. The SBT Trader whose link to the SBT System is through the API and who has submitted the limit order may override the RFQ and determine to enter the limit order into the SBT Book.

(c) If the limit order's price prevents it from matching with the best bid/ask, the System will place the order in the Book in its appropriate priority position.

(d) If the submitting SBT Trader does not override the RFQ pursuant to paragraph (b), the System will execute the limit order after one of the following conditions becomes true:

(1) During the RFQ response time, if the best quote width becomes a certain prescribed percentage (*e.g.,* 75%)—as set by the appropriate SBT Trading Committee—of a legal width market, the System shall execute the limit order against the quote and any other eligible Booked order. If there is volume remaining in the limit order, the System will hold the limit order in the SBT Book and send a notice to the originator about the order status.

(2) If an incoming market or limit order is received (independent of the RFQ responses) on the opposite side that would match the original limit order and if a legal width market exists for the series, then the System will match the limit order with the best bid/ask. If there is volume remaining in the limit order, the System will hold the limit order in the SBT Book.

(3) When a certain prescribed percentage of the SBT Market-Makers currently providing quotes in that class (the percentage to be set by the appropriate SBT Trading Committee), have responded to the RFQ or when the RFQ period expires and there is at least one quote response, the System will execute the limit order against the SBT Book. If there is volume remaining in the limit order, the System will hold it in the SBT Book. The System will also send a notice to the originator of the order status and give him the option to cancel the order.

(e) If a limit order for a certain series is queued, subsequent limit orders for the same series and side are queued behind the first one to ensure that they are processed in time sequence. Market orders for the same series and side also will be queued. If a legal width market remains upon completion of the limit order processing the market order will be executed against orders resting in the Book. If there is not a legal width market, market order processing will begin in accordance with Rule 43.7.

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Processing of Contingency Orders

Rule 43.9

Contingency orders will be handled by the SBT System as described below. As described in Rule 43.2, for purposes of determining priority, a contingency order that is entered before a limit order with no contingency at the same price and for the same series will nonetheless be treated as if it were entered after the limit order. The SBT System will notify the originator of the order if the contingency order expires or is canceled. Contingency orders except Immediate or Cancel orders will not be disseminated as part of the best bid/ask to OPRA. The SBT System may disseminate to certain SBT Traders a contingency count that includes All or None, Fill or Kill, and Minimum Volume order information. The following contingency orders will be handled by the SBT System as described below once the SBT System is so enabled to handle such contingency orders.

(a) *Opening Only Order.* The order will be executed during the Opening State if there are orders to execute it against. The order or any unexecuted portion will expire after the opening trade or after the opening quote is disseminated.

(b) *All or None Order.* An all or none (''AON'') order will only be executed if it can be executed in its entirety. The order will remain in the Book until filled or canceled.

(c) *Fill or Kill Order.* A fill or kill (''FOK'') order has a time contingency and must be fully filled within a period of time, or the System automatically cancels the order. The SBT System will attempt to execute the full quantity of the FOK order upon receipt. If the FOK order is at the best price, and there is a legal width market, and it cannot be filled fully, the System will indicate its presence to certain SBT Traders by disseminating its quantity for the Time Contingency Period (*e.g.,* five seconds) as determined by the appropriate SBT Trading Committee. If the FOK order does not equal or better the market, *e.g.,* if it is a buy order lower than the best bid or a sell order higher than the best offer, the System will reject the order.

(d) *Immediate or Cancel Order.* An Immediate or Cancel (''IOC'') order has a time contingency and must be filled fully or partially within a period of time, or the System automatically cancels the remainder. If the IOC order is at the best price, and there is a legal

width market, and it cannot be filled fully, the System will indicate its presence to certain SBT Traders by disseminating its quantity for the Time Contingency Period as determined by the appropriate SBT Trading Committee. If the IOC order does not equal or better the market, *e.g.,* if it is a buy order lower than the best bid or a sell order higher than the best offer, the System will reject the order. The SBT System will cancel the residual order volume after the Time Contingency Period, if the IOC order has not been executed completely.

(e) *Minimum Volume Order.* A Minimum Volume (''MIN'') order may be accepted by the SBT System at any time. The MIN order has two quantities specified: the total quantity and the minimum acceptable quantity that can be filled. The fill must be at least equal to the minimum quantity specified. The SBT System will attempt to execute at least the minimum volume specified against orders in the Book. If the minimum volume is not executed, the order will remain in the Book.

(f) *Stop Order.* A Stop order to buy becomes a market order when the product trades or is bid at or above the stop price. A Stop order to sell becomes a market order when the product trades or is offered at or below the stop price.

(g) *Stop Limit Order.* A Stop Limit order has two prices, the stop-limit price and the limit price. A stop-limit order to buy becomes a limit order at the second price when the product trades or is bid at or above the stop-limit price (first price). A stop-limit order to sell becomes a limit order at the second price when the product trades or is offered at or below the stop-limit price (first price).

(h) *Market On Close Order.* A Market on Close (''MOC'') order may be received at any time up to some period of time before the closing period (*e.g.,* four minutes before the close) and is executable only during a pre-defined period of time prior to the close (*e.g.,* two minutes prior to the close). When an MOC order is present, the System will send an RFQ for it at a pre-defined time before the close; the time before the close to be determined by the appropriate SBT Trading Committee. The order is canceled after closing if it is not filled.

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Processing of Spread Orders

Rule 43.10

(a) When the System is so enabled, the System will support the following types of spread orders (''Spread Orders''): (1) two-legged spreads where the ratio is 1:1 and 1:2; (2) three-legged spreads where the ratio is 1:1:1 or 1:2:1; (3) four-legged spreads where the ratio is 1:1:1:1; and (4) any spread type approved by the appropriate SBT Trading Committee.

(b) The System will treat each spread order as a unique product and will assign each a unique product name. Data about the resulting spread product will be disseminated at the point of creation to all SBT Traders. The System will maintain a Book for every unique spread, with bids and offers for individual spread packages. The System will keep track of and disseminate the best bid and offer for every unique spread.

(c) An SBT Trader submitting a spread order may change the net price, the multiplier or the quantity of the spread, the time in force, and any contingency.

(1) An increase in the multiplier or quantity changes the order's priority;

(2) A decrease in the multiplier or quantity does not change its priority position;

(d) A spread order may trade only if all of its legs have legal width markets and if only one leg trades at a price ahead of orders in the Book at the same price.

(e) When the spread is traded, the System will do the following:

(1) Disseminate to the order source the fill report for the spread, but not the individual legs;

(2) Disseminate to the designated back office the fill reports for the individual legs; and

(3) Disseminate the last sale reports to OPRA (or any other securities information processor that is being employed by the Exchange) for the individual legs, with some indication that the last sale is part of a spread trade.

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Processing of Requests for Quotes

Rule 43.11

(a) *Submission of RFQs.*

(1) Any SBT Trader may initiate a Request for Quote (RFQ) for a series. The SBT Trader may specify a size at his option. The System will send the RFQ to the Market Makers who are currently providing quotes in that class.

(2) The SBT System will also automatically send an RFQ when the SBT System receives a market order and the current market width is wider than the Exchange prescribed width as set forth in Rule 44.4.

(b) *Response to RFQs.* RFQs may be submitted by an SBT Trader or an RFQ may be initiated by the System as otherwise described in the Rules. In either event, the RFQ has an expiration period for the Market-Makers to respond to the RFQ. Market-Makers must respond to RFQs in accordance with their obligations set forth in Rule 44.4(b).

(c) *Processing of RFQ Responses.* RFQ responses (quotes) are submitted to the Book and exposed as they arrive.

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Crossing Trades

Rule 43.12

(a) *Crossing Mechanism.* Once the System is so enabled to provide for it, the Crossing Mechanism is a process by which an SBT Broker can facilitate orders or cross two orders.

(1) An SBT Broker must submit to the System an RFQ designating a size equal to the quantity to be crossed.

(2) SBT Traders will have an RFQ response period for a length of time established by the SBT Trading Committee in order to enter orders or quotes that improve upon the market.

(3) Within a time period after the RFQ was sent, with such time period to be established by the SBT Trading Committee, the terms of the cross transaction have to be entered. The required terms include the terms of the original order and the proposed facilitation order (or two original orders), a proposed crossing price, the quantity of the original order which the SBT Broker is willing to facilitate (in the case of a facilitation cross), and an indication of which order is to be exposed to the market (in the case of cross of two original orders). The customer order will be the exposed order in a facilitation cross.

(4) The following two conditions must be satisfied at the time the cross transaction is entered or the System will reject the cross transaction: (A) a legal width market must exist for the particular series to be crossed and (B) the proposed cross price must be between the best bid and offer displayed by the System.

(5) After accepting the cross transaction, the System will immediately cross the two orders for the guaranteed crossing percentage (which is established at 40%) of the overall crossing quantity. The System exposes the remaining volume of the designated order in the book for a crossing period of twenty seconds. The order's price and the remaining quantity are disclosed but there is no indication that the order is part of an impending cross. The System places the opposite order on hold as a shadow order that is not visible except to the submitter.

(6) As long as the exposed order is the highest priority order at the best price, other SBT Traders can trade against the exposed order during the crossing period. If the exposed order is fully filled by other traders, the System cancels the remaining quantity of the shadow order and sends the SBT Broker a message that the crossing transaction is completed.

(7) At the end of the crossing period (if the order has not yet been fully traded), if the exposed order is at the best price and has the highest priority, then the System fills the remainder of the order against the shadow order. The System cancels the remainder of the shadow order and sends the crossing firm a message that the crossing transaction is completed. If the exposed order has quantity remaining and it is not the highest priority order at the market, then the System automatically cancels the remainder of the exposed order and the shadow order and sends the SBT Broker a message that the crossing transaction is completed.

(b) Rule 43.12A will apply until the System is so enabled to provide for this Crossing Mechanism.

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Interim Crossing Procedure

Rule 43.12A

(a) An SBT Broker who wishes to cross two original orders or to facilitate an original order must first send an RFQ with the size of the orders to be crossed. The RFQ response period will be established by the appropriate SBT Trading Committee and shall initially be set at thirty seconds.

(b) At the end of this RFQ response period and within twenty seconds or some other period of time established by the appropriate SBT Trading Committee, the SBT Broker must expose one of the orders to the Book.

(c) If the exposed order has not been completely taken out by other SBT Traders at the end of a period after the order was entered, then the SBT Broker may enter the opposite order to cross the balance of the exposed order. The period of time shall be established by the appropriate SBT Trading Committee and shall initially be set at ten seconds.

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Prohibited Conduct Related to Cross Transactions

Rule 43.12B

(a) It will be a violation of Rule 43.12 and of Rule 43.12A for an SBT Broker to be a party to any arrangement designed to circumvent Rule 43.12 or Rule 43.12A by providing an opportunity for a customer to regularly execute against agency orders handled by the SBT Broker immediately upon their entry into the System.

(b) It will be a violation of Rule 43.12 or of Rule 43.12A for an SBT Broker to cause the execution of an order it represents as agent on the Exchange by orders it solicited from Members and non-member broker-dealers to transact with such orders, whether such solicited orders are entered into the System directly by the SBT Broker or by the solicited party (either directly or through another Member), if the Member fails to expose orders on the Exchange as required by Rule 43.12 or Rule 43.12A.

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Responsible Traders

Rule 43.13

(a) *Defined.* A Responsible Trader is an individual who is responsible for each and every order submitted to the SBT System on behalf of a particular SBT Trader. There must be a Responsible Trader registered with the Exchange for every member. The Responsible Trader must be approved by the Membership Committee and must satisfy any qualification standards set by the Exchange.

(b) The Responsible Trader will be required to:

(1) have full control over access to the SBT System and over the ability to submit orders using the member's access right;

(2) be fully aware of orders submitted using the member's access right (although the business might have originated from another source); and

(3) have the ability to adjust or withdraw any order.

(c) A Responsible Trader can be charged for violations of Exchange rules resulting from any submission of an order made on behalf of the particular member.

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Chapter XLIV—SBT Market-Makers and Designated Market-Makers

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Section A: Market-Makers

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SBT Market-Maker Defined

Rule 44.1

An SBT Market-Maker for purposes of the rules in Chapter XL through LIX is an individual (either a member or nominee of a member organization or a member who has registered his or her membership for a member organization) who is registered with the Exchange for the purpose of making transactions as a dealer-specialist in the SBT System in accordance with the provisions of this Chapter. Registered SBT Market-Makers are designated as specialists on the Exchange for all purposes under the Securities Exchange Act of 1934 and the Rules and Regulations thereunder. Only transactions that are (i) transacted on the SBT System or (ii) that qualify under Rule 8.1 shall count as Market-Maker transactions for purposes of this Chapter and Rules 8.1 and 12.3(b)(2). An SBT Market-Maker may be either: an SBT Standard Market-Maker, an SBT Lead Market-Maker or an SBT Designated Primary Market-Maker.

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Registration of Market-Makers

Rule 44.2

(a) An applicant for registration as an SBT Market-Maker shall file his application in writing with the Membership Department on such form or forms as the Exchange may prescribe. Applications shall be reviewed by the Membership Committee, which shall consider an applicant's ability as demonstrated by his passing an examination prescribed by the Exchange, and such other factors as the Committee deems appropriate. After reviewing the application, the Committee shall either approve or disapprove the applicant's registration as an SBT Market-Maker.

(b) The registration of any person as an SBT Market-Maker may be suspended or terminated by the appropriate Market Performance Committee upon a determination that such person has failed to properly perform as an SBT Market-Maker.

(c) Any member or prospective member adversely affected by a determination of the appropriate Market Performance Committee under this Rule may obtain a review in accordance with the provisions of Chapter XIX.

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Appointment of SBT Market-Makers

Rule 44.3

(a) On a form or forms prescribed by the Exchange, a registered SBT Market-Maker may apply for an Appointment (having the obligations of Rule 44.4) in one or more classes of option contracts traded on the SBT System. From among those SBT Market-Makers registered, the appropriate Market Performance Committee shall ordinarily make two or more Appointments for each class of option contracts traded on the System. In making such Appointments, the Committee shall give attention to (1) the preference of registrants; (2) the maintenance and enhancement of

competition among SBT Market-Makers in each class of options; and (3) assuring that financial resources available to an SBT Market-Maker enable him to satisfy the obligations set forth in Rule 44.4 with respect to each class of option contracts to which he is appointed. The appropriate Market Performance Committee may arrange two or more classes of options into groupings and make Appointments to those groupings rather than to individual classes. The appropriate Market Performance Committee may suspend or terminate any Appointment of an SBT Market-Maker under this Rule and may make additional Appointments whenever, in the Committee's judgment, the interests of a fair and orderly market are best served by such action.

(b) An SBT Market-Maker's refusal to accept an Appointment may be deemed sufficient cause for termination or suspension of an SBT Market-Maker's registration.

(c) The appropriate Market Performance Committee may limit the number of classes which an SBT Market-Maker may trade outside of his Appointment either on the floor of the Exchange or on the SBT System on a daily basis or for some other designated period of time. Unless exempted by the appropriate Market Performance Committee, to the extent an SBT Market-Maker trades in an option class outside his Appointment, that SBT Market-Maker becomes subject to the requirements of Rule 44.4 for that option class for that day or for a designated period as determined by the appropriate Market Performance Committee.

(d) The appointment of an SBT Market-Maker to an option class traded on the System will not count against that Member's limit of ten trading stations to which that Member may be appointed pursuant to Rule 8.3(c).

* * * *Interpretations and Policies:*

.01 SBT Lead Market-Makers. A member organization desiring to be approved to act as an SBT LMM shall file an application with the Exchange on such form or forms as the Exchange may prescribe. The appropriate Market Performance Committee may appoint one or more SBT LMMs to an option class traded on the System if those option classes have not been assigned to an SBT DPM. If the appropriate Market Performance Committee appoints more than one SBT LMM per trading session to an option class traded on the System, the appointed SBT LMMs will function as SBT LMMs on a rotating basis in accordance with a schedule set by the appropriate Market Performance Committee. SBT LMMs will have the obligations of SBT Market-Makers plus those additional obligations set forth in Interpretation .01 to Rule 44.4.

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Obligations of SBT Market-Makers

Rule 44.4

(a) *General.* Transactions of an SBT Market-Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and no SBT Market-Maker should enter into transactions or make bids or offers that are inconsistent with such a course of dealings.

(b) *RFQ Response.* With respect to each class of option contracts for which he holds an Appointment under Rule 44.3 and for any other classes that he trades as required by Rule 44.3(c), an SBT Market-Maker has an obligation to respond to that percentage of RFQs as determined by the appropriate Market Performance Committee with a two-sided market at or within the widths prescribed in the table below within the amount of time specified by the appropriate Market Performance Committee from the time the RFQ is entered. The SBT Market-Maker shall specify the size at which he is willing to trade the series. The size shall not be less than a minimum specified by the appropriate Market Performance Committee. The SBT Market-Maker responding to the RFQ is required to maintain a continuous market in that series for a subsequent 30-second period (or for some other time specified by the appropriate Market Performance Committee) or until his quote is filled. An SBT Market-Maker may change his quotes during this subsequent 30-second period but he may not cancel them without replacing them. If the SBT Market-Maker does cancel without replacing the quote his response to the RFQ will not count toward the SBT Market-Maker's percentage requirement set forth in this paragraph (b). An SBT Market-Maker will be considered to have responded to the RFQ if he has a quote in the market for the series at the time the RFQ is received and he maintains it for the appropriate period of time. An SBT Market-Maker must respond to a percentage, to be established by the appropriate Market Performance Committee, of the Special RFQs that the SBT Market-Maker is sent. The bid/ask differentials listed in the table below shall not apply to in-the-money series where the underlying securities market is wider than the widths set forth below. For those series, the bid/ask differential may be as wide as the quotation on the primary market of the underlying security.

Bid range	Maximum allowable quote spread
Less than $2.00	$0.25
$2.00–$5.00	0.40
$5.01–$10.00	0.50
$10.01–$20.00	0.80
$20.01–higher	1.00

(c) *Classes of Option Contracts Other than those to which Appointed.* With respect to classes of option contracts in which he does not hold an Appointment, an SBT Market-Maker should not engage in transactions for an account in which he has an interest which are disproportionate in relation to, or in derogation of, the performance of his obligations as specified in paragraph (b) of this Rule with respect to those classes of option contracts to which he does hold an Appointment. Whenever an SBT Market-Maker submits a two-sided quote in an option class to which he is not appointed, he must fulfill the obligations established by paragraph (b) of this Rule for the rest of that trading session.

(d) *Obligations during an ETH Session.* Depending upon the liquidity in any of the underlying markets during an ETH session, the appropriate Market Performance Committee may determine not to impose an RFQ response requirement upon SBT market-makers or may impose a different RFQ response rate than is applicable during the regular trading hours.

(e) *Exemptions.* The appropriate Market Performance Committee may establish bid/ask widths different than those specified above for one or more option series. The appropriate Market Performance Committee may also vary the RFQ response rate on a series-by-series basis. Two Trading Officials may also vary the bid/ask differences or the RFQ response rate in the event of unusual market conditions

* * * *Interpretations and Policies:*

.01 SBT Lead Market-Makers.

(a) Each SBT LMM shall fulfill all of the obligations of an SBT Market-Maker under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities appointed to the SBT LMM, during such SBT LMM's rotation(s) as an LMM:

(1) Assure that its disseminated market quotations are accurate;

(2) provide opening quotes for all series in its appointed classes;

(3) trade in all securities appointed to the SBT LMM only in the capacity of an

SBT LMM and not in any other capacity;

(4) handle orders that are not executed on the System due to the fact that there is a better quote on another market;

(5) respond to a percentage of the RFQs at a rate as designated by the appropriate Market Performance Committee. The appropriate Market Performance Committee may also require that an SBT LMM provide continuous quotes in some or all of the series of the classes appointed to an SBT LMM; and

(6) supervise all persons associated with the SBT LMM to assure compliance with the Rules.

(b) Subject to the review of the Board of Directors, the appropriate Market Performance Committee may establish from time to time a participation entitlement formula that is applicable to all SBT LMMs. The maximum guaranteed percentage entitlement for an SBT LMM shall be 40%, although the participation of an SBT LMM on any particular trade may be greater if the applicable allocation and priority rules provide for a pro rata distribution. To the extent established pursuant to this paragraph and pursuant to the applicable trading allocation and priority rules, each SBT LMM shall have a right to participate for its own account with the other SBT Traders in transactions in securities appointed to the SBT LMM that occur at the SBT LMM's previously established bid or offer whether the bid or offer was established by a quote or an order. The appropriate Market Performance Committee may determine whether the participation entitlement shall be applicable to the opening transaction.

* * * * *

Quote Maintenance

Rule 44.5

(a) *Generally.* An SBT Market-Maker will have the following functional capabilities for maintaining his quotes in the SBT Book:

(1) An SBT Market-Maker may delete or cancel a specific quote;

(2) An SBT Market-Maker may delete or cancel all of his quotes in a specified class, or all of his quotes in all classes;

(3) An SBT Market-Maker may inactivate his quotes for a certain period of time, if the System is so enabled; and

(4) An SBT Market-Maker may cancel/replace or update an existing quote.

(b) *Automatic Quote Regeneration.* Once the System is so enabled to provide this function, an SBT Market-Maker may have the SBT System regenerate his quote when his bid or offer is filled. The SBT System will regenerate a new quote where the bid/offer is a pre-defined number of ticks worse than the previous bid/offer (the number of ticks will be defined by the SBT Market-Maker) and the size of the quote will be set by the SBT Market-Maker. The priority of the regenerated quote will be as described in Rule 43.1(e). When a bid/offer is regenerated the designated number of ticks worse than the previous bid/offer, the SBT System will keep the opposite side at the same price unless the resulting spread is wider than the Exchange prescribed width as set forth in Rule 44.4. If the resulting spread would be wider, then the SBT System will adjust the opposite side's price (cancel/replace the old order) (i) to keep the same spread before the regeneration, or (ii) adjust it to bring the spread to the Exchange prescribed width, as determined by the SBT Market-Maker.

(c) *Quote Risk Monitor Function.* The SBT System will provide for an SBT Market-Maker to establish a contract volume limit for a class for a period of time designated by the SBT Market-Maker. If trades against an SBT Market-Maker's quotes in that class exceed the established volume limit within the designated period of time (*e.g.,* 200 contracts within the most recent ten second period), then the SBT System will cancel the SBT Market-Maker's remaining quotes for that class. The appropriate Market Performance Committee may establish minimum volume limits and minimum time periods for all SBT Market-Makers. The System will not consider trades the SBT Market-Maker initiates by hitting a bid or taking an offer in determining whether the volume limit is exceeded.

(d) *Managing Quote Traffic.* The Exchange may set limits on the quote traffic that is sent to the SBT System to prevent the SBT System from becoming overloaded.

(e) *Logoff.* An SBT Market-Maker's logoff from the SBT System will cause the System to delete all his quotes from the SBT Book. Non-quote orders will remain in the Book unless they are expiring orders.

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Market-Making through an API

Rule 44.6

The Exchange may limit the number of Market-Makers that may access the SBT System through an API (or the number of messages sent by Market-Makers accessing the System through an API) in order to protect the integrity of the System. In addition, the Exchange may impose restrictions on the use of a computer connected through an API if it believes such restrictions are necessary to ensure the proper performance of the System.

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Rule 44.7–44.9 Reserved

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Section B: SBT Designated Primary Market-Makers

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SBT DPM Defined

Rule 44.10

An ''SBT Designated Primary Market-Maker'' or ''SBT DPM'' is a member organization that is approved by the Exchange to function on the SBT System in allocated securities as an SBT Market-Maker (as defined in Rule 44.1) with the additional obligations provided for in this Section B of Chapter 44. Determinations concerning whether to grant or withdraw the approval to act as an SBT DPM are made by the appropriate SBT DPM Appointments Committee (''SBT DPM Committee'') in accordance with Rules 44.12. SBT DPMs are allocated securities by the appropriate Allocation Committee in accordance with Rule 8.95.

* * * * *

SBT DPM Designees

Rule 44.11

(a) An SBT DPM may act as an SBT DPM solely through its SBT DPM Designees. An ''SBT DPM Designee'' is an individual who is approved by the SBT DPM Committee to represent an SBT DPM in its capacity as an SBT DPM. The SBT DPM Committee may subclassify SBT DPM Designees and require that certain SBT DPM Designees be subject to specified supervision and/or be limited in their authority to represent a SBT DPM.

(b) Notwithstanding any other rules to the contrary, an individual must satisfy the following requirements in order to be an SBT DPM Designee of an SBT DPM:

(1) The individual must be a member of the Exchange;

(2) the individual must be a nominee of the SBT DPM or of an affiliate of the SBT DPM or must own a membership that has been registered for the SBT DPM or for an affiliate of the SBT DPM;

(3) the individual must be registered as an SBT Market-Maker pursuant to Rule 44.1;

(4) on such form or forms as the Exchange may prescribe, the SBT DPM must authorize the individual to enter into Exchange transactions on behalf of the SBT DPM in its capacity as an SBT

DPM, must authorize the individual to represent the SBT DPM in all matters relating to the fulfillment of the SBT DPM's responsibilities as an SBT DPM, and must guaranty all obligations arising out of the individual's representation of the SBT DPM in its capacity as an SBT DPM in all matters relating to the Exchange; and

(5) the individual must be approved by the SBT DPM Committee to represent the SBT DPM in its capacity as an SBT DPM.

Notwithstanding the provisions of sub-paragraph (b)(2) of this Rule, the SBT DPM Committee shall have the discretion to permit an individual who is not affiliated with an SBT DPM to act as an SBT DPM Designee for the SBT DPM on an emergency basis provided that the individual satisfies the other requirements of sub-paragraph (b) of this Rule.

(c) The approval of an individual to act as an SBT DPM Designee shall expire in the event the individual does not have trading privileges on the Exchange for a six month time period.

(d) An SBT DPM Designee of an SBT DPM may not trade as a Market-Maker in securities allocated to the SBT DPM unless the SBT DPM Designee is acting on behalf of the SBT DPM in its capacity as an SBT DPM.

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Approval To Act as an SBT DPM

Rule 44.12

(a) A member organization desiring to be approved to act as an SBT DPM shall file an application with the Exchange on such form or forms as the Exchange may prescribe.

(b) The SBT DPM Committee shall determine the appropriate number of approved SBT DPMs. Each SBT DPM approval shall be made by the SBT DPM Committee from among the SBT DPM applications on file with the Exchange, based on the SBT DPM Committee's judgment as to which applicant is best able to perform the functions of an SBT DPM. Factors to be considered in making such a selection may include, but are not limited to, any one or more of the following:

(1) Adequacy of capital;

(2) operational capacity;

(3) trading experience of and observance of generally accepted standards of conduct by the applicant, its associated persons, and the SBT DPM Designees who will represent the applicant in its capacity as an SBT DPM;

(4) number and experience of support personnel of the applicant who will be performing functions related to the applicant's SBT DPM business;

(5) regulatory history of and history of adherence to Exchange Rules by the applicant, its associated persons, and the SBT DPM Designees who will represent the applicant in its capacity as an SBT DPM;

(6) willingness and ability of the applicant to promote the Exchange as a marketplace;

(7) performance evaluations conducted pursuant to Exchange rules; and

(8) in the event that one or more shareholders, directors, officers, partners, managers, members, SBT DPM Designees, or other principals of an applicant is or has previously been a shareholder, director, officer, partner, manager, member, SBT DPM Designee, DPM Designee, or other principal in another SBT DPM or DPM, adherence by such SBT DPM to the requirements set forth in Exchange rules regarding DPM or SBT DPM responsibilities and obligations during the time period in which such person(s) held such position(s) with the SBT DPM or DPM.

(c) Each applicant for approval as an SBT DPM will be given an opportunity to present any matter which it wishes the SBT DPM Committee to consider in conjunction with the approval decision. The SBT DPM Committee may require that a presentation be solely or partially in writing, and may require the submission of additional information from the applicant or individuals associated with the applicant. Formal rules of evidence shall not apply to these proceedings.

(d) In selecting an applicant for approval as an SBT DPM, the SBT DPM Committee may place one or more conditions on the approval, including, but not limited to, conditions concerning the capital, operations, or personnel of the applicant and the number or type of securities which may be allocated to the applicant.

(e) Each SBT DPM shall retain its approval to act as an SBT DPM until the SBT DPM Committee relieves the SBT DPM of its approval and obligations to act as an SBT DPM or the SBT DPM Committee terminates the SBT DPM's approval to act as an SBT DPM.

(f) If a member organization resigns as an SBT DPM or if the SBT DPM Committee terminates or otherwise limits its approval to act as an SBT DPM, the SBT DPM Committee shall have the discretion to do one or both of the following:

(1) Approve an interim SBT DPM, pending the final approval of a new SBT DPM pursuant to paragraphs (a) through (d) of this Rule; and

(2) allocate on an interim basis to another SBT DPM or to other SBT DPMs the securities that were allocated to the affected SBT DPM, pending a final allocation of such securities pursuant to Rule 8.95.

Neither an interim approval or allocation made pursuant to this paragraph (f) should be viewed as a prejudgment with respect to the final approval or allocation.

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Conditions on the Allocation of Securities to SBT DPMs

Rule 44.13

The SBT DPM Committee may establish (i) restrictions applicable to all SBT DPMs on the concentration of securities allocable to a single SBT DPM and to affiliated SBT DPMs and (ii) minimum eligibility standards applicable to all SBT DPMs which must be satisfied in order for an SBT DPM to receive allocations of securities, including but not limited to standards relating to adequacy of capital and number of personnel.

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Termination, Conditioning, or Limiting Approval to Act as a DPM

Rule 44.13A

(a) The SBT DPM Committee may terminate, place conditions upon, or otherwise limit a member organization's approval to act as an SBT DPM under any one or more of the following circumstances:

(1) If the member organization incurs a material financial, operational, or personnel change;

(2) if the member organization fails to comply with any of the requirements under this Section B of Chapter XLIV or the applicable provisions of Section B of Chapter VIII or fails to adequately satisfy the standards of performance under Rule 8.88(a);

(3) if for any reason the member organization should no longer be eligible for approval to act as a DPM or to be allocated a particular security or securities.

Before the MTS Committee takes action to terminate, condition, or otherwise limit a member organization's approval to act as an SBT DPM, the member organization will be given notice of such possible action and an opportunity to present any matter which it wishes the MTS Committee to consider in determining whether to take such action. Such proceedings shall be conducted in the same manner as SBT DPM Committee proceedings concerning SBT DPM approvals which are governed by Rule 44.12(c).

(b) Notwithstanding the provisions of paragraph (a) of this Rule, the SBT DPM

Committee has the authority to immediately terminate, condition, or otherwise limit a member organization's approval to act as an SBT DPM if it incurs a material financial, operational, or personnel change warranting such action or if the member organization fails to comply with any of the financial requirements of Rule 8.86.

(c) Limiting a member organization's approval to act as an SBT DPM may include, among other things, limiting or withdrawing the member organization's SBT DPM participation entitlement provided for under Rule 44.15, withdrawing the right of the member organization to act in the capacity of an SBT DPM in a particular security or securities which have been allocated to the member organization, and/or requiring the relocation of the member organization's SBT DPM operation on the Exchange's trading floor.

(d) If a member organization's approval to act as an SBT DPM is terminated, conditioned, or otherwise limited by the SBT DPM Committee pursuant to this Rule, the member organization may seek review of that decision under Chapter XIX of the Rules.

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SBT DPM Obligations

Rule 44.14

(a) Each SBT DPM shall fulfill all of the obligations of an SBT Market-Maker under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities allocated to the DPM:

(1) Assure that its disseminated market quotations are accurate;

(2) Provide opening quotes for all series in its allocated classes;

(3) Trade in all securities allocated to the SBT DPM only in the capacity of an SBT DPM and not in any other capacity;

(4) Handle orders that are not executed on the System due to the fact that there is a better quote on another market;

(5) Respond to a percentage of the RFQs at a rate as designated by the appropriate Market Performance Committee. The appropriate Market Performance Committee may also require that an SBT DPM provide continuous quotes in some or all of the series of the classes assigned to an SBT DPM; and

(6) Segregate in a manner prescribed by the appropriate SBT DPM Committee (A) all transactions consummated by the SBT DPM in securities allocated to the SBT DPM and (B) any other transactions consummated by or on behalf of the SBT DPM that are related to the SBT DPM's DPM business.

To the extent that there is any inconsistency between the specific obligations of an SBT DPM set forth in sub-paragraphs (a)(1) through (a)(5) of this Rule and the general obligations of an SBT Market-Maker under the Rules, sub-paragraphs (a)(1) through (a)(5) of this Rule shall govern.

(b) *Other Obligations.* In addition to the obligations described in paragraph (a) of this Rule, an SBT DPM shall fulfill each of the following obligations:

(1) Act to increase the Exchange's order flow in the securities which are allocated to the SBT DPM and respond to competitive developments by improving market quality and service and otherwise acting to increase the Exchange's market share in those securities;

(2) Promptly inform the SBT DPM Committee of any desired change in the SBT DPM Designees who represent the SBT DPM in its capacity as an SBT DPM and of any material change in the financial or operational condition of the SBT DPM;

(3) Supervise all persons associated with the SBT DPM to assure compliance with the Rules;

(4) Continue to act as an SBT DPM and to fulfill all of the SBT DPM's obligations as an SBT DPM until the SBT DPM Committee relieves the SBT DPM of its approval and obligations to act as an SBT DPM or the SBT DPM Committee terminates the SBT DPM's approval to act as an SBT DPM; and

(5) Segregate in a manner prescribed by the appropriate SBT DPM Committee the SBT DPM's business and activities as an SBT DPM from the SBT DPM's other business and activities.

(c) *Obligations of SBT DPM Associated Persons.* Each person associated with an SBT DPM shall be obligated to comply with the provisions of this Rule when acting on behalf of the SBT DPM.

* * * * *

Participation Entitlement of SBT DPMs

Rule 44.15

(a) Subject to the review of the Board of Directors, the SBT DPM Committee may establish from time to time a participation entitlement formula that is applicable to all SBT DPMs. The maximum guaranteed percentage entitlement for an SBT DPM shall be 40%, although the participation of an SBT DPM on any particular trade may be greater if the applicable allocation and priority rules provide for a pro rata distribution.

(b) To the extent established pursuant to paragraph (a) of this Rule and pursuant to the applicable trading allocation and priority rules, each SBT DPM shall have a right to participate for its own account with the other SBT Traders in transactions in securities allocated to the SBT DPM that occur at the SBT DPM's previously established bid or offer whether the bid or offer was established by a quote or an order. The SBT DPM Committee may determine whether the participation entitlement shall be applicable to the opening transaction.

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Allocation of SBT DPMs

Rule 44.16

Different members may be allocated the same class for different trading sessions, that is, an SBT DPM may be allocated a particular option class in one trading session but not another. Also, the appropriate SBT DPM Committee may allocate classes to SBT DPMs on a rotating basis such that the SBT DPM assigned to a particular option class for a particular trading session rotates between two or more SBT DPMs on a periodic basis.

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Chapter XLV

Section A: SBT Brokers

SBT Broker Defined

Rule 45.1

An SBT Broker is an individual (either a member or a nominee of a member organization) who is registered with the Exchange for the purpose of accepting and executing orders received from members, from registered broker-dealers, or from public customers on the SBT System. An SBT Broker shall not accept an order from any source other than a member or a registered broker-dealer unless he is either the nominee of, or has registered his individual membership for, a member organization approved to transact business with the public in accordance with Rule 9.1. In the event the organization is approved pursuant to Rule 9.1, an SBT Broker who is the nominee of, or who has registered his individual membership for such organization, may then accept orders directly from public customers where (i) the organization clears and carries the customer account or (ii) the organization has entered into an agreement with the public customer to execute orders on its behalf. Among the requirements an SBT Broker must meet in order to register pursuant to Rule 9.1 is the successful completion of an examination for the purpose of

demonstrating an adequate knowledge of the securities business.

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Registration of SBT Brokers

Rule 45.2

(a) An applicant for registration as an SBT Broker shall file his application in writing with the Membership Department on such form or forms as the Exchange may prescribe. Applications shall be reviewed by the Membership Committee, which shall consider an applicant's ability as demonstrated by his passing an examination prescribed by the Exchange, and such other factors as the Committee deems appropriate. After reviewing the application, the Committee shall either approve or disapprove the applicant's registration as an SBT Broker.

(b) The registration of any person as an SBT Broker may be suspended or terminated by the appropriate Market Performance Committee upon a determination that such person has failed to properly perform as an SBT Broker.

(c) Any member or prospective member adversely affected by a determination of the appropriate Market Performance Committee under this Rule may obtain a review in accordance with the provisions of Chapter XIX.

(d) An SBT Broker must receive authorization, in a manner prescribed by the Exchange, by a clearing member prior to entering orders for a clearing member.

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Rule 45.3 to Rule 45.10 Reserved

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Section B: Clearing Firm Broker Functions

Clearing Firm Broker Functions

Rule 45.11

(a) *Defined.* A Clearing Firm Broker is an individual who represents the Clearing Firm of a particular SBT Market-Maker and has the authority to take certain actions with respect to that SBT Market-Maker's use of the SBT System.

(b) *Forced Logout of Trader.* The Clearing Firm User may request the Help Desk to logout an SBT Market-Maker. Upon the logout of an SBT Market-Maker, the System cancels all the quotes for that SBT Market-Maker. The logout can also be used to cancel all the trader's regular orders and de-authorize the trader as a user. In the event the trader has been de-authorized, the System will not permit an SBT Market-Maker who has been forcibly logged out to log in again until he is re-authorized as an SBT Trader by the Clearing Firm User.

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Chapter XLVI

System Operator/Administrator Functions and Data Dissemination Functions

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Quote and Trading Information

Rule 46.1

(a) *Internal Dissemination of Quote.* The SBT System will disseminate the best bid and offer internally. As each new limit order (whether as an order or as part of a market-maker quote) is entered into the SBT System, the best bid and offer displayed in the System is updated to the extent the new bid or offer improves the previously displayed bid or offer. The SBT System will send quote/order information—series, price, size, and order source (Market-Maker, customer, or non-customer professional order)—to the SBT workstations that are trading a given class. The SBT System will also provide the current best bid or offer in any other market, as such best bids or offers are identified in the System.

(b) *Internal Dissemination of Price/Last Sale.* The SBT System may disseminate internally to subscribers that have indicated interest in a given class last sale information including series, price, and size. All SBT Market-Makers assigned to a given class will be provided this information but other individuals and firms may subscribe to this information as well.

(c) *Booked Order Dissemination.* When an SBT Trader or authorized access point requests information for an option class, the SBT System will provide the information which presents the Book's best bids, asks, and their total volumes for each series of the class requested. The Exchange may delete or add categories of disseminated information as it deems appropriate.

(d) *Book Depth.* Upon request, SBT Traders can access from the SBT System market depth information including the aggregate size and the number of contracts at each price. The Exchange may charge fees for access to this information. The information may not be provided upon request if the Exchange believes that it could lead to degradation of the service of the SBT System.

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Dissemination of Market Information

Rule 46.2

The SBT System will disseminate quote and trade (last sale) information externally. Series, price and size will be disseminated for trades. Series and price and size will be disseminated for quotes. Every best Book bid or ask change will generate a quote report. The SBT quote width may be wider than the legal width market because two unrelated orders, separated by more than the legal width market, may be the best orders, causing the System to send their prices as the best quote.

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Proprietary Information of the Exchange

Rule 46.3

Information sent over the Exchange's SBT System to the SBT Traders and participants is proprietary information of the Exchange and may not be distributed or shared without written permission of the Exchange.

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Chapters XLVII to XLIX [Reserved]

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Appendix A—Applicability of Rules of the Exchange

This Appendix lists the rules in Chapters I (1) through XXVII (27) of the rules of the Exchange that apply to the trading of products on the Exchange's screen based trading system. Where a rule in Chapters 1 through 27 is supplemented by a rule in Chapters 40 through 49, that fact is so indicated.

Existing rule	Supplemented by
Chapter I—Definitions	
1.1 Definitions	40.1

Existing rule	Supplemented by
Chapter II—Organization and Administration	
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2.15 Departments of Exchange	
Part C: Dues, Fees and Other Charges	
2.20 Membership Dues	
2.21 Charge on Net Commissions	
2.22 Other Fees or Charges	
2.23 Liability for Payment	
2.24 Exchange's cost of defending legal proceedings	
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3.3 Qualifications and Membership Statuses of Member Organizations	
3.4 Qualifications of Foreign Member Organizations	
3.5 Denial of and Conditions to Membership and Associations	
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3.16 Special Provisions Regarding Chicago Board of Trade Exerciser Memberships	
3.17 Leased Memberships	
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4.10 Other Restrictions on Members	
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4.12 Exercise limits	
4.13 Reports related to position limits	
4.14 Liquidation of positions	
4.15 Limit on outstanding uncovered short position	
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4.18 Prevention of misuse of material, nonpublic information	
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5.2 Rights and obligations of holders and writers	
5.3 Criteria for underlying securities	
5.4 Withdrawal of approval of underlying securities	

Existing rule	Supplemented by
5.5 Series of option contracts open for trading	
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Existing rule	Supplemented by
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Existing rule	Supplemented by
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Existing rule	Supplemented by
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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE 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 proposed rule change sets forth rules governing the Exchange's screen-based trading (''SBT'') system (''SBT System'' or ''System''), known as CBOE*direct.* CBOE*direct* will supplement the Exchange's floor-based open outcry auction market. Although it has been designed to be able to trade options during the regular trading hours or during extended trading hours, CBOE*direct* initially will be used to trade only during hours when the open outcry auction market is not open.[4] CBOE's existing rules would govern trading on the SBT System, except as those rules are superseded or supplemented by the rules in Chapters XL through XLIX. CBOE is presently proposing to adopt SBT rules in Chapters XL through XLVI and would reserve Chapters XLVII through XLIX for future SBT rules, if it became necessary to adopt additional rules.

a. Basics of the SBT System

Unlike with the open outcry auction market, execution priority of orders in CBOE*direct* would not necessarily depend on originator type (*e.g.,* market maker, customer, firm, or broker-dealer). As discussed further below, orders would be executed on the System using either a strict price/time priority or a price/time pro rata allocation procedure. However, the Exchange's SBT Trading Committee would have the authority to overlay customer priority on either of these two allocation procedures. In addition, the SBT Trading Committee would have authority to allocate a trade participation right to an SBT Designated Primary Market Maker (''SBT DPM'') or an SBT Lead Market Maker (''SBT LMM'').[5] The initial SBT DPM/LMM participation entitlement percentage would be 30%, which CBOE would indicate in a circular distributed to the Exchange's membership. It is possible that the SBT Trading Committee might provide for different priority methods for different option classes at the same time. By doing so, the SBT Trading Committee could tailor the particular priority method to the particular option class (since the trading in different classes can vary), meet changes in priority structures put in place at competing exchanges, and experiment to determine which priority methods attract the most customer demand. CBOE has represented that, in any event, it would publicize the type of priority structure that applied to each particular option class so that all market participants were able to know what would be the relative priority of their orders for any particular option class.

As currently designed, CBOE*direct* would disclose neither the source of an order nor the contra-parties to a trade, except as identities of the trade participants might be revealed in connection with trade nullification procedures set forth in the proposed rules.

A number of SBT Standard Market Makers would be assigned to each class traded on CBOE*direct.* An SBT DPM also might be assigned to a class traded on the System and, if one were so assigned, would be obligated to provide opening quotes for all the series in its assigned classes. If no SBT DPM had been assigned to a particular trading class, the SBT Standard Market Makers would be obligated to provide opening quotes.[6] In addition, SBT Market Makers (either SBT Standard Market Makers, SBT DPMs, or SBT LMMs) assigned to a class would be obligated to respond to a certain minimum percentage of request for quotes (''RFQs'') in their assigned classes.[7] If

[4] On September 7, 2001, CBOE submitted to the Commission a Form PILOT with respect to CBOE*direct,* pursuant to Rule 19b–5 under the Act, 17 CFR 240.19b–5. A self-regulatory organization may commence operation of a pilot trading system 20 days after filing a Form PILOT. *See* 17 CFR 240.19b–5(e)(1). CBOE commenced operation of a SBT System on October 26, 2001. Rule 19b–5 requires a self-regulatory organization, within two years of commencing operations of the pilot trading system, to file a proposed rule change—pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2)—to obtain permanent authority to operate that system. *See* 17 CFR 240.19b–5(f)(1). The present filing (SR–CBOE–00–55) was submitted pursuant to the requirement.

[5] Although the maximum guaranteed percentage entitlement for an SBT DPM/LMM would be 40%, the participation of an SBT DPM/LMM on any particular trade may be greater if the applicable allocation and priority rules so provide.

[6] The appropriate Market Performance Committee also might appoint an SBT LMM on a rotating basis which, like an SBT DPM, would have an obligation to provide opening quotes and to respond to RFQs at a higher rate than standard SBT Market Makers. Also an SBT LMM, like an SBT DPM, might have a guaranteed participation right for trades executed at its previously established quote. Initially, the guaranteed participation rate for SBT LMMs would be 30%. CBOE has stated that it would issue a circular to its membership indicating this participation rate. SBT LMMs also might have a continuous quoting obligation.

[7] Under the present open outcry system, a market maker is obligated, among other things, to compete with other market to improve markets in all series of option classes at the station where the market

CBOE*direct* were used during extended trading hours when there was little liquidity in the underlying market, the appropriate Market Performance Committee or two Trading Officials could exempt the market makers from providing opening quotes or responding to RFQs. SBT Standard Market Makers, SBT DPMs, and SBT LMMs would have other obligations as further described below and in the proposed rules.

Only SBT Market Makers (including SBT DPMs/LMMs) could enter quotes. Order providers (SBT Brokers and Proprietary Traders) would be prohibited from entering limit orders in the same options series, for the accounts or accounts of the same or related beneficial owners, in such a manner that the order provider or the beneficial owner(s) effectively would be operating as a market maker by holding itself out as willing to buy and sell option contracts on a regular or continuous basis. Market maker quotes would be entered as two simultaneous orders (a buy order and a sell order) with any width. For a quote to count towards an SBT Market Maker's quote obligations (*i.e.,* the RFQ response requirement or continuous quote requirement), a quote would have to be no wider than a prescribed width and for an amount equal to or greater than some prescribed size. All market participants, including SBT Market Makers, could submit regular orders, for any class.

CBOE*direct* would accept market maker, firm, and broker-dealer orders in addition to public customer orders. Spread orders and certain contingency orders also would be accepted.

Customer, firm, and broker-dealer orders could be submitted through an SBT workstation, the current wire order facility (used to send orders to the Exchange's open outcry auction market), or through a computer-to-computer link using CBOE's new application program interface (''API''). CBOE has stated that it might limit the number of market makers that could access CBOE*direct* through an API in order to protect the integrity of the System. In addition, CBOE has stated that it might impose restrictions on the use of a computer connected through an API if it believed such restrictions were necessary to ensure the proper performance of the System. CBOE has represented that these limitations would be only for the purpose of protecting the integrity of the System and would not be used in a discriminatory or arbitrary fashion.

Market maker orders and quotes could be submitted through an SBT workstation or the API.

Book depth and other market information would be available to all participants, although fees might be charged for access to certain of the information. CBOE has represented that these fees would be charged in a non-discriminatory manner and set at a level to ensure that the performance of the System did not become degraded.

Both opening and closing procedures would be handled automatically. SBT Market Makers assigned to a class would participate in the opening trade on an individual basis by providing their own quotes. SBT DPMs would be obligated to provide their opening quotes. The System would determine automatically the opening price that would clear the market and trade the maximum quantity at the open.[8] Spread orders and contingency orders (except for ''opening only'' orders) would not participate in the opening trade or in the determination of the opening price.[9] CBOE believes that the exclusion of these order types from the opening process would not only simplify the process for completing the opening, but also be consistent with the operation of the System which treats spread orders separately from other orders. Market participants wishing to have their spread orders represented in the opening could separate the order into distinct legs which could be represented in the opening. Likewise, market participants wishing to trade a contingency order could choose not to impose the contingency until after the opening if they wanted to attempt to participate in the opening.

In CBOE*direct,* the series of a class would not have to open all at the same time. Those that could open would be opened and those that could not open because of some reason (*e.g.,* market order imbalance) would cycle through the pre-opening and opening rotation procedures until they could open.

Unlike with the open outcry system, a CBOE autoquote facility would not be available to SBT Market Makers. However, CBOE anticipates that SBT Market Makers might use their proprietary autoquote systems to submit quotes through the API.

SBT Traders could trade from their offices or from any location where they had a workstation and communication link to the Exchange. An SBT Trader would have to be assigned a membership in order to trade on the System. However, current membership rules, which are applicable to the SBT System, provide for a different trader to use the regular trader's seat in certain situations. SBT Traders could avail themselves of current CBOE Rule 3.8, which allows a nominee of a firm to transfer onto a seat that is generally used by another nominee of the same firm. A firm would thereby be permitted to allow one nominee to trade on the seat during regular trading hours and a different nominee to trade on the seat during a CBOE*direct* extended trading hour session.

Other users of the System—besides SBT Market Makers and SBT Brokers—would include Proprietary Traders, Clearing Firm Users, and SBT System Operators/Administrators. Proprietary Traders would be members who entered orders as principal for non-market-maker proprietary accounts. Clearing Firm Users would be members who monitored and regulated the activities of SBT Traders trading through the clearing firm of the Clearing Firm User. SBT System Operators/Administrators would be Exchange employees who supported the operation of the System.

Extended Trading Hour Session

Initially, CBOE*direct* is intended to be used to trade options only during one or more extended trading hour (''ETH'') sessions and not during the regular trading hour (''RTH'') session during which options are currently traded on the Exchange. At this time, CBOE

maker is present; to make markers which, absent changed market conditions, will be honored to a reasonable number of contracts in all series of option classes at the station where the market maker is present; and to update quotations in response to changed market conditions in all series of option classes at the station where the market maker is present. As a practical, however, quotes in all of the thousands of series trades at one station are provided by an autoquote system, while the market makers will verbally update and improve a number of the series on a periodic basis. It is possible for a market maker in the open outcry system, however, to avoid actively updating quotes, although CBOE does have a number of means to monitor for compliance. It would not be possible for an SBT Market Maker to avoid its obligations, as the System would monitor compliance and keep track of every response an SBT Market Maker had submitted.

CBOE anticipates that a number of SBT Market Makers would choose to provide continuous quotes, although the Exchange would not require them to do so. CBOE believes, however, that the quotes stream that would be produced if all market makers were required to provide continuous quotes for such a large number of series as might be listed on the System would overwhelm the quote dissemination systems currently in place at the Options Price Reporting Authority (''OPRA'') and a third-party quote vendors. CBOE doubts whether there would be any benefit from imposing such a requirement.

[8] Today in the open outcry system, CBOE employs a Rapid Opening System (''ROS'') to open some classes in a quick and automated fashion.

[9] The Commission notes that proposed CBOE Rule 42.3, *Opening and Closing Rotation Procedures,* is not consistent with its position in order approving CBOE's Rapid Opening System (''ROS'') pilot program that non-bookable orders should be incorporated into ROS. *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999).

intends to trade a number of index option products during a morning session from 7 a.m. to 8:15 a.m. Central Time, before the normal opening for the open outcry auction market at 8:30 a.m. CBOE has not finalized the products that will be traded on the System, but as of April 24, 2002, the only products trading on CBOE*direct* were all series (except LEAPS) of options on the Standard & Poor's 100 index (''OEX''), the Russell 2000 (''RUT''), and the Dow Jones Industrial Average (''DJX'').[10] Of course, the trading hours during which the System is used and the products traded on the System could change at any time based upon the competitive landscape, the interests of the Exchange's membership, and customer demand. At this time, CBOE intends to provide OPRA reports of quote and last sale during the ETH session(s) different from those sent during the RTH session so that the reports could be easily distinguished. The trading symbols for the classes would, however, be identical during the RTH and ETH sessions, and the contracts traded in both sessions would be fungible.

Initially, the System would not provide for the passing of orders between the ETH session and the RTH session. ''Time in force'' indicators would be used on orders routed to the Exchange to indicate whether the order was to be represented in the ETH session or the RTH session. Eventually, the System would allow for a variety of ''time in force'' codes that would provide for the order to be represented in more than one or all of the sessions of a current trading day. As a protection to customers and firms, CBOE would limit the time frames during which order types could be submitted to the Exchange, such that any order submitted would have to be designated for the current or next trading session of the current trading day.

Initially, during the ETH period, CBOE expects to require SBT DPMs/LMMs to continuously quote all series in the front two months and all series that are no more than 5% in-the-money or out-of-the-money. For those series that would not be continuously quoted, CBOE expects to impose an 85% RFQ response rate on SBT DPMs/LMMs and a 10% RFQ response rate on standard SBT Market Makers. The RFQ response rate would be calculated over a monthly period.

[10] Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Nancy Sanow, Division, Commission, on April 24, 2001.

Definitions and Application of Other Rules

The Exchange has proposed a definitional rule, CBOE Rule 40.1, to define those terms that are unique to the SBT System.

- ''Screen Based Trading System'' or ''SBT System'' would be defined as the electronic system administered by the Exchange that would perform the functions set out in Exchange rules including controlling, monitoring, and recording trading by members through SBT workstations and trading between members.
- ''Application Program Interface'' or ''API'' would mean the computer program that would allow SBT Traders on their own computers or on CBOE- or vendor-supplied workstations to interface with the SBT System.
- ''SBT Book'' would mean all unexecuted orders, other than spread orders, currently held by the SBT System.
- ''SBT Spread Book'' would mean all unexecuted spread orders currently held by the SBT System.
- ''SBT workstation'' would mean a computer workstation connected to the SBT System for the purposes of trading pursuant to the rules in proposed Chapters XL through XLIX.
- ''Trading Official'' would mean an Exchange employee or member who is granted certain duties under these rules to take actions affecting either the operation of the SBT System or the responsibilities of SBT Traders.[11]
- ''SBT Trader'' would mean an individual or organization that had the right to trade on the SBT System.
- ''Market Turner'' would mean an SBT Trader who was the first SBT Trader to enter an order (quote) at a better price than the previous best book price prior to the trading of an order, and the order (quote) was continuously in the market until the particular order traded.
- ''Legal Width Market'' would mean a bid and offer that was at or within the prescribed width as set forth in proposed CBOE Rule 44.4. For most purposes under these rules, a legal width market could be established by a bid from one SBT Trader and an offer from a different SBT Trader.

The Exchange also has proposed CBOE Rule 40.2, which would specify that, to the extent that existing Chapters I through XXVII of the CBOE rules are applicable to trading on the SBT System (as indicated by the context or by Appendix A to the SBT rules), the terms used in Chapters I through XXVII should be read to have the following meanings where appropriate:

- ''Floor'' should be read to mean SBT System;
- ''Floor Official'' should be read to mean Trading Official;
- ''Appropriate Floor Procedure Committee'' should be read to mean ''appropriate SBT Trading Committee;''
- ''Floor Broker'' should be read to mean ''SBT Broker'' where appropriate;
- ''Market-Maker'' should be read to mean ''SBT Standard Market-Maker,'' ''SBT LMM,'' or ''SBT DPM,'' as appropriate; and
- References in rules to ''the Exchange'' should be read to include the SBT System, where appropriate.

Any Exchange member who chose to participate on the SBT System could register with the Membership Committee as an SBT Market Maker (who could then act as an SBT Standard Market Maker, SBT LMM, or SBT DPM), SBT Broker, or Proprietary Trader. The Membership Committee would be responsible for approving applications of Exchange members as an SBT Market Maker, SBT Broker, or Proprietary Trader for the SBT System.

Once the SBT System had been enabled to recognize Replacement Traders, individual SBT Market Makers could nominate a Replacement Trader who would have to be qualified and registered with the Exchange as such. The Membership Committee would be responsible for qualifying and approving Replacement Traders. Replacement Traders for a nominee of a member firm would have to be nominees of the same firm or have their memberships registered for the same firm. When an SBT Market Maker logged off the SBT System, it could first choose to transfer its position to a Replacement Trader. Any quote transferred in that manner would retain its priority.

Access

For purposes of the SBT System that would be used during an ETH session, a member could use its membership to trade during the ETH session. As mentioned previously, a member organization also could have a different nominee use its membership to trade on the SBT System, pursuant to existing CBOE Rule 3.8.

Types of SBT System Users

As mentioned above, there would be a number of types of users of SBT workstations: SBT Market Makers

[11] The Commission notes that there are several instances in the proposed rules where ''two Trading Officials'' or ''Trading Officials'' or ''Exchange Officials'' would be able to take various actions. The Commission believes that, in certain proposed rules, the discretion afforded to ''Trading Officials'' or ''Exchange Officials'' may be overbroad.

(including Standard SBT Market Makers, SBT LMMs, and SBT DPMs); Proprietary Traders; Clearing Firm Users; and SBT System Operators/Administrators.

Market makers would operate the SBT workstation for the following functions:

- Enter, cancel, cancel/replace, and maintain two-sided quotes;
- Enter, cancel, cancel/replace, and maintain orders;
- Hit bids and take offers;
- Submit RFQs;
- Respond to RFQs;
- Communicate with contra-parties for nullifying trades; and
- Set up defaults or preferences.

SBT Brokers and Proprietary Traders would operate the SBT workstations for the following functions:

- Enter, cancel, cancel/replace, and maintain orders;
- Hit bids and take offers;
- Submit RFQs;
- Enter cross-notification and cross-execution orders;
- Communicate with contra-parties for nullifying trades; and
- Set up defaults or preferences.

Orders from SBT Brokers and Proprietary Traders could be entered through the Exchange's existing member firm front-end system. CBOE estimates that, initially, 80% of retail orders for SBT products would continue to be submitted as wire orders via ORS. The remaining 20%—composed of contingency orders, spread orders, and orders that would have to be ''worked''—are currently transmitted to the floor by phone. For SBT products, this 20% would be submitted via the SBT workstations or through the API.

Clearing Firm Users would regulate the activities of SBT Market Makers that cleared through them. They would use the SBT workstation for the following functions:

- Set the volume limit of market maker orders, by class; and
- Force the logout of a market maker.

SBT System Operators/Administrators would operate workstations located at the Exchange or elsewhere for the following support functions:

- Start/stop the SBT System;
- Start/stop trading by class, by underlying security, or for the entire market;
- Add/change/delete trader IDs to the System;
- Add/change/delete products;
- Change market status such as open, closed, fast market, halt, *etc.* by class, by underlying security, or for the entire market;
- Determine the operating status of any workstation in the network;
- Send automated broadcasts of canned administrative messages to e-mail, fax, voice recording, trading groups, CBOE webpage, and SBT blackboard;
- Send text message to a trader or group of traders;
- Maintain class groups and market maker assignments to classes;
- Maintain market maker profiles which will identify the accounts where trades will settle;
- Maintain relationships between brokers and their executing firms/give-up firms;
- Monitor the log-in status of traders by class;
- Display operating status of various SBT System services;
- Display by class assigned and logged-in market makers;
- Display un-responded RFQs, including source of the RFQ;
- Display a trader's preferences;
- Enter, update, and display a market maker's appointments;
- Display a given terminal's activity for troubleshooting;
- Display trade log by trader ID of today's trades;
- Exercise full SBT workstation functionality by using a test product;
- Display a screen from a particular trader's point of view;
- Bust a trade;
- Force the logout of a market maker in response to a request from a clearing firm;
- Change Exchange-wide trading parameters; and
- Any other function provided for by the Exchange.

b. States of Operation

During the day, a particular class may be in one of the following states of operation: Pre-opening, Opening, Trading, Halted, and Closed.

Pre-opening. At this state, the System would accept quotes and orders, except time contingency and crossing orders, but no trading would take place. The System would provide market data, including data on any resting orders from the previous day and orders submitted before the opening, which could be viewed by any SBT Trader who subscribed to the data for that particular class.

Opening. The opening would be conducted using a ''maximum contract volume traded'' procedure. Under this procedure, when the primary market disseminated the underlying security's opening trade or opening bid and ask, the class would go into a second Pre-opening phase.[12] The System would send out an Opening Notice (*i.e.,* an RFQ) to SBT Market Makers that were assigned to that class to solicit their opening quotes.

The System would continue to accept quotes and orders, except time contingency and crossing orders, during this state. At the end of this Pre-opening time period, the System would go into an Opening where it would establish an opening price for each series, complete the opening trade, if any, and then change the state of the class to Trading.

Trading. During this state, the series would trade freely. All order types and quotes would be accepted during the Trading state, except for Opening-only contingency orders.

Halted. A particular class or all of the classes traded on CBOE*direct* could be placed in a Halted state for various reasons. The most common reason would be that the primary exchange had halted trading of the underlying security, or no underlying security prices or quotes were being received by the System. The System would send status alerts to OPRA for a product that had been halted. A product would have to go through the Pre-opening and Opening rotation procedures before it reverted to Trading after being Halted. When the System is operated during an ETH session, there might not be a primary market trading the underlying security. In such cases, the System might or might not automatically declare a trading halt if the underlying security had been halted on one or more of the markets trading the underlying security. The appropriate SBT Trading Committee would determine in advance from time to time whether to have the System automatically halt trading on the options if trading in the underlying had been halted in a market trading the underlying during an ETH session.

Closed. The System would change the state to Closed at a pre-determined time. Trading would be stopped but the System would continue to accept certain order types to allow traders to maintain their orders. At some designated time, the System would stop accepting orders and would enter into end-of-session procedures such as the purging of expiring orders (*e.g.,* day orders, if the System was used during the traditional trading hours), and reporting of Nothing Done order status to member firms.

Extended Trading Hours

During extended trading hours (*i.e.,* that period of time outside of the normal

[12] CBOE anticipates that, with index options trading during the ETH sessions, the Exchange's Help Desk would declare that the particular class was open at some point after the opening time since there would not be an underlying security price disseminated.

trading hours, when CBOE*direct* would be used to trade options), the same states of operation would be employed. Initially, the System would accept only limit orders during the ETH period and would not accept market orders or certain contingency orders. The obligations of SBT DPMs/LMMs and Standard SBT Market Makers might be reduced during the ETH period because of the possibility that liquidity in the underlying securities might be severely reduced during this period of time.

Unusual Market Conditions

CBOE*direct* would be capable of declaring both fast markets and trading halts upon the occurrence of certain events, as detailed in proposed CBOE Rule 43.4. Additionally, proposed CBOE Rule 43.4 would supplement the current unusual market condition rule, CBOE Rule 6.6.[13] Proposed CBOE Rule 43.4 would describe the reasons why a Trading Official may determine to declare either a fast market or a trading halt. As with existing CBOE Rule 6.6, once a fast market has been declared, Trading Officials could take such actions as they deemed necessary to maintain a fair and orderly market. Upon the declaration of a fast market, Trading Officials could widen permissible bid/ask spreads by which a market maker must quote in order to receive credit for meeting its quote obligations and the suspend the firm quote obligations pursuant to existing CBOE Rule 8.51.

c. Trade Allocation

Orders would be filled in CBOE*direct* according to the market order processing and limit order processing rules described below. The appropriate SBT Trading Committee would have the authority to apply one of various types of trade allocation methodologies. The System would send fill reports for executed orders to the SBT workstations for display to the traders or to ORS for sending fill reports for wire orders. Executed orders would be sent to the Exchange's Trade Match System as a matched trade.

There would be two basic types of trade allocation methodologies: price-time and price-time pro rata. On top of these may be overlaid optional priorities for public customers, the Market Turner, and/or the SBT DPM/LMM.[14] The appropriate SBT Trading Committee would apply, for each class of options, one of the rules of trading priority discussed below. CBOE has stated that it would issue a Regulatory Circular periodically that would specify which priority rules would govern which classes of options any time the appropriate committee changed the priority.

Price-Time Priority. Under this method, resting orders in the SBT Book would be prioritized according to price and time. If two or more orders were at the best price, priority among these orders would be afforded in the order in which they were received by the System.

Price-Time Pro Rata Allocation.[15] Under this allocation methodology, resting orders in the SBT Book would be prioritized according to price. If there were two or more orders at the best price, trades would be allocated proportionally according to size (in pro rata fashion). The executable quantity would be allocated to the nearest whole number, with fractions ½ or greater rounded up and fractions less than ½ rounded down. If there were two market participants that were both entitled to an additional ½ contract and there were only one contract remaining to be distributed, the additional contract would be distributed to the market participant whose quote or order had time priority.

Additional Priority Overlays. In addition to the basic allocation methodologies set forth above, the appropriate SBT Trading Committee could determine to apply, on a class-by-class basis, any or all of the following designated market participant overlay priorities, in a sequence determined by the appropriate SBT Trading Committee.

(1) *Public Customer.* If this priority overlay were in effect and no other priority overlays were in effect, the highest bid and lowest offer would have priority, except that a public customer order would have priority over a non-public customer order at the same price. If other priority overlays were also in effect, priority would be established in the sequence designated by the appropriate SBT Trading Committee. In either case, if there were two or more public customer orders for the same options series at the same price, priority would be afforded to such public customer orders in the sequence in which they had been received by the System, even if the price-time pro rata allocation method were the chosen allocation method.

(2) *Market Turner.* If this priority overlay were in effect and no other priority overlays were in effect, the Market Turner would have priority at the highest bid or lowest offer that it had established. If other priority overlays were also in effect, priority would be established in the sequence designated by the appropriate SBT Trading Committee. In either case, the Market Turner priority at a given price would remain with the order once it had been earned. For example, if the market moved in the same direction as the direction in which the order from the Marker Turner had moved the market and then the market moved back to the Market Turner's original price, the Market Turner would retain priority at the original price.

(3) *Trade Participation Right (''TPR'').* SBT DPMs/LMMs could be granted trade participation rights that would provide for priority over non-public customer and/or customer orders up to the applicable participation right percentage designated pursuant to the provisions of proposed Chapter XLIV. If other priority overlays were also in effect, priority would be established in the sequence designated by the appropriate SBT Trading Committee. In allocating the participation right, all of the following would apply:

(i) To be entitled to its participation right, the order and/or quote of the SBT DPM/LMM would have to be at the best price.

(ii) An SBT DPM/LMM could not be allocated a total quantity greater than the quantity that the SBT DPM/LMM was quoting (including orders not part of quotes) at that price. Additionally, an SBT DPM/LMM could not be allocated a total quantity that represented a greater percentage than the SBT DPM's/LMM's percentage of the total size[16] at

[13] The Commission notes that a responsible broker or dealer is relieved of its firm quote obligations under CBOE Rule 8.51 as well as Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1 (''Firm Quote Rule''), if there are unusual market conditions such that the exchange is incapable of collecting, processing, and making available to quotation vendors the data required to be available under the Firm Quote Rule in a manner that accurately reflects the current state of the market on such exchange.

[14] The Commission notes that, under the proposed CBOE*direct* rules, public customers may not necessarily receive the highest allocation priority, depending on the priority structure authorized by the appropriate SBT Trading Committee. The Commission requests commenters views regarding the proposed rules that would govern allocation priority for CBOE*direct* transactions.

[15] In the draft notice prepared by CBOE, the ''Price-Time Pro Rata'' allocation method is sometimes referred to as ''Combined Price-Time and Size Priority.'' For the sake of clarity, only the term ''Price-Time Pro Rata'' is being used in this notice.

[16] ''Total size'' in this context means the quantity of contracts that would remain after the interest of any participant with a higher priority had been satisfied. Telephone conversation between Nancy Sanow, Ira Brandriss, and Michael Gaw, Division, Commission, and Angelo Evangelou, Legal Division, CBOE, on April 5, 2002 (''Telephone conversation of April 5, 2002'').

the best price before the participation right had been applied.

(iii) If the trade participation right priority and the Market Turner priority were both in effect and the SBT DPM/LMM were the Market Turner, the Market Turner priority would not be applicable.

(iv) In establishing the counterparties to a particular trade, the SBT DPM/LMM participation right would first be counted against the highest priority bids or offers of the SBT DPM/LMM.

Contingency Orders. Contingency orders would be placed last in priority order, regardless of when they were entered into CBOE*direct* or which allocation method was in place. A contingency order that was entered before a limit order for the same series at the same price would be treated as if it were entered after the limit order. If customer priority were afforded to a particular option class, customer contingency orders would have priority over non-public customer contingency orders.

Spread Orders. Spread orders would not be afforded priority according to proposed CBOE Rule 43.2, but would be handled as provided in proposed CBOE Rule 43.8.

Below are examples of how trades would be allocated under the different priority allocation methods.

Price-Time Allocation

Example 1. The SBT DPM's TPR share is 30%. In this example the allocation gives the DPM its TPR share only. Assume that, within the price-time allocation procedure, customer priority is specified as first and DPM as second. Assume that there is an incoming market order to sell 20.

Book's Resting Bids:

Time	Category	Fill seq.	Bid qty.	Fills	DPM share n (30%)	DPM allocation	Remaining qty.	Notes
							20	
3	Customer	1	5	5			15	
8	Customer	2	1	1			14	
9	Customer	3	4	4			10	
					3.0	3	7	1
1	MM1	4	10	7			0	2
2	DPM bid1	5	10	3		−3		3
4	B/D1	6	10					
5	DPM bid2	7	50					
6	MM2	8	10					
7	MM3	9	10					
	Total		110					

Notes

1. The DPM TPR share is 30%. The DPM is allocated 3 contracts, leaving 7 for price-time allocation.

2. The first order, MM1, is partially filled with 7, leaving 0.

3. The DPMbid1 order is partially filled with 3 from the TPR allocation.

Example 2. The SBT DPM's TPR share is 30%. In this example, the allocation gives the DPM its TPR share plus a partial fill of its order in time sequence. Assume that, within the price-time allocation procedure, customer priority is specified as first and DPM priority as second. Assume that there is an incoming market order to sell 80.

Book's Resting Bids:

Time	Category	Fill seq.	Bid qty.	Fills	DPM share n (30%)	DPM allocation	Remaining qty.	Notes
							80	
3	Customer	1	5	5			75	
8	Customer	2	1	1			74	
9	Customer	3	4	4			70	
					21.0	21	49	1
1	MM1	4	10	10			39	2
2	DPM bid1	5	10	10		−10	39	3
4	B/D1	6	10	10			29	4
5	MM2	8	10	10			19	5
6	MM3	9	10	10			9	6
7	DPM bid2	7	50	20		−11	0	7

Notes

1. The DPM's TPR share is 30%. The DPM is allocated 21 contracts, leaving 49 for price-time allocation.

2. The first non-customer order, MM1, is filled with 10, leaving 39.

3. The DPMbid1 order has been fully filled with 10 from the TPR allocation of 21. The quantity for price-time allocation remains unchanged at 39.

4. The B/D1 order is filled with 10, leaving 29.

5. The MM2 order is filled with 10, leaving 19.

6. The MM3 order is filled with 10, leaving 9.

7. The DPMbid2 order is partially filled with 20, which comes from the TPR remainder of 11 plus the remainder of 9.

Example 3. The SBT DPM's TPR share is 30%. In this example, the allocation gives the DPM its TPR share only. Assume that, within the price-time allocation procedure, customer priority is specified as first and DPM priority as second. Assume that there is an incoming market order to sell 80.

DPM share = 30% × 70 = 21.0

Book's Resting Bids:

Time	Category	Fill seq.	Bid qty.	Fills	DPM share n (30%)	DPM allocation	Remaining qty.	Notes
						80		
3	Customer	1	5	5			75	
8	Customer	2	1	1			74	
9	Customer	3	4	4			70	
					21.0	21	49	1
1	MM1	4	10	10			39	2
2	DPM bid1	5	10	10		−10	39	3
4	B/D1	6	100	39			0	4
5	DPM bid2	7	50	11		−11	0	5
6	MM2	8	100				0	
7	MM3	9	10			0		
	Total		290					

Notes

1. The DPM TPR share is 30%. The DPM is allocated 21 contracts, leaving 49 for price-time allocation.
2. The first order, MM1, is filled with 10, leaving 39.
3. The DPM bid1 order is fully filled with 10 from the TPR allocation of 21. The quantity for price-time allocation is 39.
4. The B/D1 order is filled partially with 39, leaving 0.
5. The DPMbid2 order is partially filled with 11, which comes from the TPR remainder.

Price-Time Pro Rata Allocation

The SBT Book would store the orders from the best price to the worst. At each price level, the orders would be sorted in time sequence. Trades would be allocated in a manner that provided incentives to create deeper and tighter markets.

As discussed above, under the price-time pro rata allocation procedure, three optional priorities—customer priority, SBT DPM/LMM trade participation right, and Market Turner—could be specified, as well as their priority with respect to each other.

- *Customer Priority.* Customer priority, if it were provided, is recommended to be absolute. If customer priority were granted, customer orders would be filled ahead of any other order. Within the group of customer orders, the orders would be prioritized by time.
- *Market Turner.* The order that improves the market would earn Market Turner priority.
- *Trade Participation Rights.* To receive its TPR share, the SBT DPM/LMM would have to have a quote and/or order at the best price. The TPR would be calculated as a percentage—a minimum of *n* (30%)—of the remaining quantity after all higher priority orders (*e.g.,* customer) had been filled completely. The minimum TPR quantity would be allocated to the SBT DPM/LMM up to its size. If there were a remaining executable quantity, orders of lower priority than the SBT DPM/LMM (*e.g.,* Market Turner) would be filled completely. If there were remaining executable quantity, the remaining quote and/or order quantities of the SBT DPM/LMM, if any, would participate in the pro rata allocation of the remainder to the orders at the best price. However, the maximum participation quantity of the SBT DPM/LMM would be limited to its original pool share of the quantity before the minimum TPR quantity was calculated. In addition, if the Market Turner were an SBT DPM/LMM, that priority would be ignored. This algorithm is illustrated in examples 1 to 6 below.

Price-Time Pro Rata Example 1. Assume that priority is (1) customer, (2) DPM, (3) Market Turner. No customer orders are included to simplify the example. In this example, the Market Turner and the DPM are both filled, with the DPM getting less than its maximum possible allocation (*i.e.,* original pool percentage share). Note that the DPM has two orders. For this allocation method, the DPM size is aggregated and filled after the Market Turner is filled because the DPM gets its fill from a two-step allocation: First, from its TPR share and, second, from the pro rata calculation.

Assume there is an incoming market order to sell 20.

Time	Category	Bid qty
1	MT	10
2	DPM bid1	15
3	B/D1	20
4	DPM bid2	50
5	MM2	5
6	MM3	10
	Total	10

Category	Fill seq.	Bid qty	Bids for P.R. #1	Pro rata alloc #1	Fills	DPM 30% alloc.	Remaining qty	Notes
							20	
						6	14	1
MT	1	10			10		4	2
DPM size	2	65	59	3	9	−6	1	3
B/D1	3	20	20	1	1		0	4
MM2		5	5	0	0		0	4
MM3		10	10	0	0		0	4
Total		110	94	4	20			

DPM Pool % = (65/110) = 59.1%

DPM Max. Share, P = (65/110) × 20 = 11.8 or 12

DPM Min. Share, M = (0.3 × 20) = 6.0 or 6

Potential additional DPM share = 6

Notes

1. The DPM pool share is 65/110 or 59.1%, or a maximum allocation of 12 contracts. The DPM minimum TPR share is 30% of 20, or 6 contracts. The potential additional DPM share is (P–M), or (12 − 6) or 6 contracts. To begin,

the DPM TPR share of 6 is allocated, leaving 14.

2. The Market Turner is fully filled with 10, leaving 4.

3. The pro rata distribution of the remainder of 4 is calculated, using the remaining order sizes in the pool. The DPM's pro rata share is 3. Since 3 + 6 (M) is not greater than P(12), the pro rata shares are allocated. The DPM is allocated its pro rata share of 3.

4. B/D1 gets its pro rata share of 1. The other two orders get zero pro rata shares.

Price-Time Pro Rata Example 2. Assume that priority is (1) customer, (2) DPM, (3) Market Turner. No customer orders are included to simplify the example. In this example, the Market Turner and the DPM are both filled, with the DPM getting its maximum possible allocation (*i.e.,* original pool percentage share). Note that the DPM has two orders. For this allocation method, the DPM size is aggregated and filled after the Market Turner is filled.

Assume there is an incoming market order to sell 85.

Time	Category	Bid qty.
1	MT	10
2	DPM bid1	15
3	B/D1	20
4	DPM bid2	50
5	MM2	5
6	MM3	10
	Total	110

Category	Fill seq.	Bid qty.	Bids for P.R. #1	Pro rata alloc. #1	Bids for P.R. #2	Pro rata alloc. #2	Fills	DPM 30% alloc.	Remaining qty.	Notes
									85	
								26	59	1
MT	1	10					10		49	2
DPM size	2	65	39	26			50	−26	25	3
B/D1	3	20	20	13	20	14	14		11	4
MM2	3	5	5	3	5	4	4		7	4
MM3	3	10	10	7	10	7	7		0	4
Total		110	74	49	35	25	85			

DPM Pool % = (65/110) = 59.1%

DPM Max. Share, P = (65/110) × 85 = 50.2 or 50

DPM Min. Share, M = (0.3 × 85) = 25.5 or 26

Potential additional DPM share = 24

Notes

1. The DPM pool share is 65/110 or 59.1%, or a maximum allocation of 50 contracts. The DPM minimum TPR share is 30% of 85, or 26 contracts. The potential additional DPM share is (P–M), or (50 − 26) or 24 contracts. To begin, the DPM TPR share of 26 is allocated, leaving 59.

2. The Market Turner is fully filled with 10, leaving 49.

3. The pro rata distribution of the remaining 49 is done. The DPM's pro rata share is 26. Giving the DPM 26 more would put its fill (26 + 26 = 52) greater than its original pool share of 50 (P). Therefore, the DPM is filled only up to 50. This takes 24 out of 49, leaving 25.

4. A second pro rata calculation is done to distribute the remainder of 25 to the non-DPM orders in the pool.

Price-Time Pro Rata Example 3. Assume that priority is (1) customer, (2) DPM, (3) Market Turner. No customer orders are included to simplify the example. In this example, the Market Turner and the DPM are both filled, with the DPM getting less than its minimum TPR of *n* (30%) because of its size. Note that the DPM has two orders. For this allocation method, the DPM size is aggregated and filled after the Market Turner is filled.

Time	Category	Bid qty
1	MT	20
2	DPM bid1	10
3	B/D1	35
4	DPM bid2	10
5	MM2	25
6	MM3	10
	Total	110

Category	Fill seq.	Bid qty.	Bids for P.R. #1	Prorata alloc #1	Fills	DPM 30% alloc.	Remaining qty.	Notes
							85	
						20	65	1
MT	1	20			20		45	2
DPM size	2	20			20	−20	45	3
B/D1	3	35	35	23	23		22	4
MM2	3	25	25	16	16		6	4
MM3	3	10	10	6	6		0	4
Total		110	70	45	85			

DPM Pool % = (20/110) = 18%

DPM Max. Share, P = (20/110) × 85 = 15.5 or 16

DPM Min. Share, M = (0.3 × 85) = 25.5 or 26

Actual DPM share, limited by his size = 20

Notes

1. The DPM pool share is 20/110 or 18.2%, or a maximum allocation of 16 contracts. The DPM TPR share is 30% of 85, or 26 contracts. However, the DPM is allocated only up to its size of 20, leaving 65.

2. The Market Turner is fully filled with 20, leaving 45.

3. The DPM is filled with its allocation of 20. The remainder stays at 45 because 45 already account for the DPM allocation.

4. A second pro rata calculation is done to distribute the remainder of 45 to the non-DPM orders in the pool.

Price-Time Pro Rata Example 4. Assume that priority is (1) customer, (2) DPM, (3) Market Turner. No customer orders are included to simplify the example. In this example, the DPM is also the Market Turner. The Market Turner priority is ignored if the Market Turner order is a DPM order.

Time	Category	Bid qty
1	DPM bid1	15
2	B/D1	20
3	DPM bid2	50
4	MM2	15
5	MM3	10
	Total	110

Category	Fill seq.	Bid qty	Bids for P.R. #1	Pro rata alloc #1	Bids for P.R. #2	Pro rata alloc #2	Fills	DPM 30% alloc.	Remaining qty	Notes
									85	
								26	59	1
DPM MT	1	15					0		59	2
DPM size	2	65	39	27			50	−26	35	3
B/D1	3	20	20	14	20	16	16		19	4
MM2	4	15	15	11	15	11	11		8	4
MM3	5	10	10	7	10	8	8		0	4
Total		110	84	59	45	35	85			

DPM Pool % = (65/110) = 59.1%

DPM Max. Share, P = (65/110) × 85 = 50.2 or 50

DPM Min. Share, M = (0.3 × 85) = 25.5 or 26

Potential additional DPM share = 24

Notes

1. The DPM pool share is 65/110 or 59.1%, or a maximum allocation of 50 contracts. The DPM minimum TPR share is 30% of 85, or 26 contracts. The potential additional DPM share is (P − M), or (50 − 26) = 24 contracts. To begin, the DPM TPR share of 26 is allocated, leaving 59.

2. Since the Market Turner is a DPM order, the Market Turner order of 15 is not filled, leaving 59.

3. The pro rata distribution of 59 is calculated. The DPM's pro rata share is 27. Giving the DPM 27 more puts its fill (26 + 27 = 53), greater than its pool share of 50. The DPM pro rata share is then limited to 24, leaving 35.

4. A second pro rata calculation is done to distribute the remainder of 35 to the non-DPM orders in the pool.

Price-Time Pro Rata Example 5. Assume that priority is (1) customer, (2) Market Turner, (3) DPM. No customer orders are included to simplify the example.

Time	Category	Bid qty
1	MT	10
2	DPM bid1	15
3	B/D1	20
4	DPM bid2	50
5	MM2	5
6	MM3	10
	Total	110

Category	Fill seq.	Bid qty	Bids for P.R. #1	Pro rata alloc #1	Bids for P.R. #2	Pro rata alloc #2	Fills	DPM 30% alloc.	Remaining qty	Notes
									20	
MT	1	10					10	3	7	1
DPM size	2	65	62	5			7	−3	3	2
B/D1	3	20	20	1	20	2	2		1	3
MM2	4	5	5	0	5	0	0		1	3
MM3	5	10	10	1	10	1	1		0	3
Total		110	97	7	35	3	20			

DPM Pool % = (65/100) = 65.0%

DPM Max. Share, P = (65/100) × 10 = 6.5 or 7

DPM Min. Share, M = (0.3 × 10) = 3.0

Notes

1. The Market Turner is fully filled with 10, and the DPM is allocated its 30% or 3, leaving a remainder of 7.

2. The pro rata distribution of the remaining 7 is done. The DPM's pro rata share is 5. Giving the DPM 5 more would put its fill (3 + 5 = 8) greater than its original pool share of 7 (P). Therefore, the DPM is filled only up to 7. This takes 4 from 7, leaving 3.

5. A second pro rata calculation is done to distribute the remainder of 3 to the non-DPM orders in the pool.

Price-Time Pro Rata Example 6. Assume that priority is (1) customer, (2) Market Turner, (3) DPM. No customer orders are included to simplify the example. In this case, the DPM's original pool share is less than its minimum 30% TPR share. The DPM's participation is limited to the 30% TPR share.

Time	Category	Bid qty
1	MT	10
2	DPM bid1	10
3	B/D1	20
4	DPM bid2	10
5	MM2	50
6	MM3	10
	Total	110

Category	Fill seq.	Bid qty	Bids for P.R. #1	Pro rata alloc #1	Bids for P.R. #2	Pro rata alloc #2	Fills	DPM 30% alloc.	Remaining qty	Notes
									20	
MT	1	10	.....	.....	.....	.....	10	3	7	1
DPM size ...	2	20	17	1	.....	.....	3	−3	7	2
B/D1	3	20	20	2	20	2	2	.....	5	3
MM2	4	50	50	3	50	4	4	.....	1	3
MM3	5	10	10	1	10	1	1	.....	0	3
Total ..	.....	110	97	7	80	7	20	.....	.....	.....

DPM Pool % = (20/100) = 20.0%
DPM Pool Share, P = (20/100) × 10 = 2.0
DPM Min. Share, M = (0.3 × 10) = 3.0

Notes

1. The Market Turner is fully filled with 10, and the DPM is allocated its 30% or 3, leaving a remainder of 7.

2. The pro rata distribution of the remaining 7 is done. The DPM's pro rata share is 1. Giving the DPM 1 more would put its fill (3 + 1 = 4), greater than its original pool share of 2 (P) or its TPR share of 3. Therefore, the DPM gets zero additional contracts.

3. A second pro rata calculation is done to distribute the remainder of 7 to the non-DPM orders in the pool.

Pro Rata Calculation Example. Remaining quantity of 49 is to be allocated to four orders as shown below.

Alloc. % = (Order Qty × 100/Total Order Qty)

Calc. Qty = (Alloc. %) × Remaining Quantity

Alloc. Qty = Calc. Qty rounded up/down

In each step the allocated quantity is determined for one order. See the Final Allocations where the ''Calc. Qty'' is rounded up/down to the ''Alloc. Qty.'' In the last step, the ''Alloc. Qty'' for the two last orders is determined.

		Order 1	Order 2	Order 3	Order 4	Total order qty	Remaining qty to allocate
Step 1	Order qty	20	39	5	10	74	49
	Alloc. %	27.0	52.7	6.8	13.5	.....	.....
	Calc. qty	13.2	25.8	3.3	6.6	.....	.....
Step 2	Order qty	.....	39	5	10	54	36
	Alloc. %	.....	72.2	9.3	18.5	.....	.....
	Calc. qty	.....	.....	.....	26.0	3.3	6.7
Step 3	Order qty	.....	.....	5	10	15	10
	Alloc. %	.....	.....	33.3	66.7	.....	.....
	Calc. qty	.....	.....	3.3	6.7	.....	.....
Final Allocations							
Step 1	Alloc. qty	13	.....	.....	.....	13	.....
Step 2	Alloc. qty	.....	26	.....	.....	26	.....
Step 3	Alloc. qty	.....	.....	3	7	10	.....
				Total allocated qty =		49	

d. Crossing Orders

Interim Procedure. Initially, an SBT Trader would be able to cross orders only after giving all other market participants an opportunity to trade against the orders. Pursuant to proposed CBOE Rule 43.12A, if an SBT Broker held orders to buy and sell the same option series and wanted to cross such orders, the SBT Broker would first have to send an RFQ with the size of the orders to be crossed. The RFQ response period would be for a period of time established by the appropriate SBT Trading Committee and initially would be set at 30 seconds.[17]

At the end of this RFQ response period and by the end of a second time period of 20 seconds or some other duration as established by the appropriate SBT Trading Committee, the SBT Broker would have to expose one of the orders to the SBT Book. If the SBT Broker had two customer orders to cross, the broker would use his or her discretion to determine which of the orders to expose to the SBT Book. Both orders would receive price improvement, however, because the cross would have to be consummated between the best bid and offer. After the SBT Broker had entered the order to be exposed on the book, other SBT Traders would have a specified time period in which to trade against it. This time period would be established by the appropriate SBT Trading Committee and initially would be set at ten seconds.[18] If the exposed order were not completely taken out by other SBT Traders at the end of this period, the SBT Broker could enter the opposite order to cross any balance of the exposed order that remained.[19]

An SBT DPM/LMM would not be entitled to receive its participation right on a cross transaction executed pursuant to proposed CBOE Rule 43.12,

[17] CBOE has advised that it intends to amend the proposed rule change to establish a minimum time period for response to the RFQ. Telephone conversation of April 5, 2002.

[18] *Id.*

[19] *Id.*

Crossing Mechanism, or 43.12A, *Interim Crossing Procedure*, because the trade would necessarily occur at a price between the best bid and offer previously established.

It would be a violation of proposed CBOE Rule 43.12 (described below) or of proposed CBOE Rule 43.12A for an SBT Broker to be a party to any arrangement designed to circumvent CBOE Rule 43.12 or Rule 43.12A by providing an opportunity for a customer to regularly execute against agency orders handled by the SBT Broker immediately upon their entry into the System.

It also would be a violation of proposed CBOE Rules 43.12 or 43.12A for an SBT Broker to cause the execution of an order it had represented as agent on the Exchange by orders it solicited from members and non-member broker-dealers to transact with such orders, whether such solicited orders were entered into the System directly by the SBT Broker or by the solicited party (either directly or through another member), if the member failed to expose orders on the Exchange as required by proposed CBOE Rules 43.12 or 43.12A.

CBOE has represented that it would surveil for instances where an SBT Broker had entered orders that were executed against each other without being executed pursuant to proposed CBOE Rules 43.12 or 43.12A. CBOE believes that this activity would be relatively simple for it to identify.

Crossing Mechanism. CBOE has stated that the System would eventually provide for a participation right for SBT Brokers wishing to cross orders. Once the System has been enabled to provide for such right, the Crossing Mechanism would be a process by which an SBT Broker could facilitate an original order or cross two original orders.[20] The Crossing Mechanism would permit an SBT Broker, after requesting and receiving a market from other SBT Traders through the RFQ process, to cross a guaranteed percentage of an original customer order with a facilitation order or second customer order at a price that improved upon the market that the SBT Broker had received. The Crossing Mechanism would then expose the remaining portion of the original order to other SBT Traders, giving them an opportunity to trade against it, ahead of the SBT Broker, within a specified time period of 20 seconds.

As with the Interim Procedure, to use the Crossing Mechanism, an SBT Broker would first have to submit to the System an RFQ designating a size equal to the quantity to be crossed. SBT Traders would then have an RFQ response period for a length of time established by the SBT Trading Committee to enter orders or quotes that matched or improved upon the existing quotations on the System.[21]

At the end of the RFQ response period and by the end of the second time period to be established by the SBT Trading Committee (likely to be 20 seconds), the SBT Broker would have to enter the terms of the proposed cross transaction.[22] The required terms would include the terms of the original order and the proposed facilitation order (or two original orders), a proposed crossing price, the quantity of the original order that the SBT Broker would be willing to facilitate (in the case of a facilitation cross), and an indication of which order is to be exposed to the market (in the case of a cross of two original orders)—*i.e.*, after the guaranteed crossing percentage had been applied as described below. The customer order would be the exposed order in a facilitation cross.

The following two conditions would have to be satisfied at the time the cross transaction was entered or the System would reject the cross transaction: (1) A legal width market would have to exist for the particular series to be crossed, and (2) the proposed cross price would have to be between the best bid and offer displayed by the System.

If all the terms were properly entered and the two aforementioned conditions were satisfied, the System would immediately cross the two orders up to the amount of the guaranteed crossing percentage (*i.e.*, 40%) of the crossing quantity. For example, if the crossing quantity were 1,000 and the guaranteed crossing percentage were 40%, the System immediately would trade 400. After this immediate execution of the guaranteed percentage of the cross, the System would expose the remaining volume of the original customer order in the SBT Book at the same price for a period of 20 seconds.[23] During this period, the other SBT Traders would be given the opportunity to trade against the remaining 60% of the original order ahead of the submitting SBT Broker, while the System placed the opposite order on hold as a shadow order that would not be visible except to the submitter.[24] The exposed order's price and quantity would be disclosed but the System would not indicate that the order was part of an overall crossing transaction, 40% of which had already been executed, and the remaining part of which would be pending as a cross of the exposed order with the shadow order.[25]

As long as the exposed order was the highest priority order at the best price, other SBT Traders could trade against the exposed order during the 20-second exposure period. If the exposed order were fully filled by other traders, the System would cancel the remaining quantity of the shadow order and send the crossing firm a message that the crossing transaction was completed.

At the end of the exposure period, if the exposed order had quantity remaining and if it were at the best price and had the highest priority, the System would fill the remainder of the order with the shadow order. The System would cancel the remaining quantity of the shadow order and send the crossing firm a message that the crossing transaction was completed. If the exposed order had quantity remaining and it were not the highest priority order at the market (*i.e.*, it were not the highest bid/lowest offer), the System automatically would cancel the remainder of the exposed order and send the SBT Broker a message that the crossing transaction was completed.

For example, assume the exposed (customer) order buy quantity is 1,000 and 500 were filled before the end of the exposure period. If the order were at the best price and had the highest priority, the remaining 500 would be filled by the shadow (firm) order at the crossing price. However, if the exposed order were not at the best price or did not have the highest priority at its price, the remaining 500 of the exposed order would be canceled.

Proposed CBOE Rule 43.12A would apply until the System has been enabled to provide for this Crossing Mechanism.

[20] CBOE has advised that it intends to amend the proposed rule change to establish a minimum eligible order size for transactions using the Crossing Mechanism. *Id.*

[21] CBOE has advised that it intends to amend the proposed rules change to establish a minimum time period for response to the RFQ. *Id.*

[22] *Id.*

[23] In the example above, the System would show only an order for 600 contracts, and the original size of 1,000 would not be exposed to the other SBT Traders. However, a trade of 400 contracts at the crossing price would appear on the tape of the reported trades.

[24] CBOE has advised that it intends to amend the proposed rule change to incorporat e an interpretation advising that it would be a violation of an SBT Trader's duty of best execution to its customer if it were to cancel a crossing transaction to avoid execution of the order at a better price. Telephone conversation of April 5, 2002.

[25] *Id.*

e. Market Order Processing

Proposed CBOE Rule 43.7 would govern the processing of market orders on CBOE*direct*. CBOE has stated that, in developing the market order processing rules, it sought to balance two customer protection interests: (1) Ensuring that an order is executed against current quotes, and (2) ensuring that an order is executed quickly.[26] To ensure the order is executed against current quotes, the System would protect a market order by automatically executing it against the best bid/ask only if there were a legal width market.[27] The System would match market orders against orders at the best price in the SBT Book and against the other orders behind the best price at varying prices until, after trading against the bids or offers, a legal width market no longer existed.

If there were no legal width market when the order was entered in the System, or if any portion of the market order were not executed because there were no longer a legal width market, the System would hold the order (or any remaining portion of the order) in queue, send an RFQ to SBT Market Makers currently providing quotes, and send a notice to the originator of the order about the order status.

An RFQ sent pursuant to these procedures would include the market order quantity but not whether the order was a buy or a sell. RFQ responses would be sent to the SBT Book. From this point, the System would attempt to execute the market order if any one of the following conditions became true (as specified in proposed CBOE Rule 43.7):[28]

1. During the RFQ expiration response time, if the best quote width became a certain prescribed percentage (*e.g.*, 75%)—as set by the appropriate SBT Trading Committee—of the legal width market.[29]

2. If an incoming immediately executable limit order were received on the same side of the market as the market order and at least one legal width quote were received.[30]

3. If a certain prescribed percentage of the market makers currently providing quotes in the class—the percentage to be set by the appropriate SBT Trading Committee—had responded to the RFQ.

4. If the RFQ period expired and there were at least one quote response.

5. If one or more market orders were entered on the opposite side and there were a legal width market at the time the particular order arrived.

If any of the above conditions were met, the System would execute the market order against orders in the SBT Book or immediately against an incoming market order on the opposite side. If there were volume remaining in the market order, the System would hold it in queue and repeat the RFQ cycle. The System also would send a notice to the originator of the order status and give the originator the option to cancel the order.

If the RFQ period expired and there were no RFQ response, the System would send an alert message to the Help Desk. The Help Desk could solicit quotes from the SBT Market Makers and require a response from them.

The following describes the price at which the System would execute the market order. If the System were executing the market order against a market order that had been entered on the opposite side at the time a legal width market was present, the System would cross the market orders at a price between the bid and offer, as further described in proposed CBOE Rule 43.7.

If an incoming RFQ response could execute against a market order as well as older limit orders (at a particular price), then:

1. If the incoming RFQ response were of large enough quantity to fill all the older limit orders and the market order, all of those orders would be filled at the price of the older limit orders.

2. If the incoming RFQ response were not large enough to fill all of the older limit orders, the market order would be executed at the minimum price interval ahead of the older limit orders.[31]

If a market order for a certain series became subject to an RFQ as described above, then subsequent market orders for the same series and side would be queued to ensure that these incoming market orders were processed in time sequence.

If trading were halted while a market order was on hold waiting for RFQ responses, the SBT System would do the following:

1. If the market order were a GTC order, the System would hold and execute it at the next opening, in the same day or the next day.

2. If the market order were a day order, the System would execute it at re-opening if trading resumed for the same day.

3. If trading did not resume, the System would purge the market order as part of the end-of-day procedure for purging day orders.

Market Order Processing Examples

Example 1. When the System receives a market order, it would check for the presence of a legal width market. If there were no legal width market, the System automatically would hold the market order in queue and send an RFQ. If a legal width market existed, the market order would execute against the best order in the SBT Book and against the other orders behind the best, at varying prices until the market order was fully filled or until a legal width market no longer existed.

Assume there are six SBT Market Makers assigned to the product. The maximum allowable quote width, and the legal width market, for a bid range of $5.01 to $10.00 is $0.50. The SBT Book looks as follows:

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
5	6.25	.....	.....
25	6.20	.....	.....
5	5.95	.....	.....

A market order to buy 35 arrives.

Since a legal width market exists (6.75 − 6.25 = 0.50), the market order is filled with 10 at 6.75, leaving 25 to be executed. Now, the market width is no longer standard (6.90 − 6.25 = 0.65, *i.e.*, wider than the 0.50 allowed). The System places the remaining 25 contracts of the market order on hold and automatically issues an RFQ for a quantity of 25.

The System reports the best quote to OPRA as 6.25 − 6.90, 5 × 20. The market order is not exposed in the SBT Book. The book now looks as follows:

[26] In most cases, at least if the System were used during an RTH session, market orders would execute immediately because CBOE expects there would be a legal width market for most series at most times.

[27] A pair of unrelated bid and offer orders, whose sizes may be less than the minimum quote size, separated by the Exchange-prescribed width, would be sufficient to trigger the trade of an incoming market order. It would not be necessary to have a standard quote (*i.e.*, a pair of bid and ask orders that are part of the same quote) meeting the minimum quote size and the prescribed width requirements.

[28] In determining to provide for an execution upon the occurrence of any of these particular events, CBOE sought to balance the interests of the Exchange's customers in receiving a quick and certain execution against the desire of the Exchange and the interests of its customers in ensuring that executions occur only in circumstances where there is a high level of market participation and/or liquidity.

[29] CBOE believes that this condition would help to minimize the queuing time of the market order.

[30] CBOE believes that this condition would prevent the later-arriving limit order from executing ahead of the market order, thus preserving time priority. Under this condition, if no quote had been received, the limit order would execute ahead of the market order.

[31] CBOE believes that this condition would prevent a violation of time priority because the market order would be executed at a price to which the limit order would not be entitled.

MARKET ORDER FOR 25

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
5	6.25		
25	6.20		
5	5.95		

Example 2. The System would expose the incoming quotes (*i.e.*, RFQ responses) in the SBT Book. During the RFQ expiration time, if the best quote width became the designated percentage of the legal quote width (*e.g.*, 75%) or less, the System would execute the market order against the quote and any other eligible booked order until the order were fully filled or until the legal width market no longer existed. If the latter occurred, the System would hold the market order in queue again, send an RFQ, and send a notice to the originator about the order status.

Continuing with the example from above, assume the first quote, 6.25 – 6.75, 10 × 10, arrives. The market order does not trade even if the market is legal width (6.75 – 6.25 = 0.50) because none of the requirements is met. The market width is not 75% (assuming this is the designated percentage) or less of the legal width market. In addition, 50% (*i.e.*, 3) or more of the market makers have not responded. Finally, the RFQ response time has not expired. This rule would protect the market order by ensuring that it did not trade against the first quote that came in that could have a standard width yet be off the market expressed by the other market makers. The System reports the best quote to OPRA as 6.25 – 6.75, 15 × 10.

The SBT Book now looks as follows:

MARKET ORDER FOR 25

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
5	6.25		
25	6.20		
5	5.95		

Now assume a second quote, 6.25 – 6.55, 10 × 10 arrives. Since the market width is now 0.30 (*i.e.*, 60% of the legal width market), the market order trades with the best order on the opposite side and any other orders behind it, until the market width is no longer standard. The market order is filled for 10 at 6.55, then for 10 more at 6.75.[32] The System then automatically issues a second RFQ for the remaining quantity of 5. The System reports the best quote to OPRA as 6.25 – 6.90, 25 × 20. The book now looks as follows:

MARKET ORDER FOR 5

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
25	6.25		
25	6.20		
5	5.95		

Now assume that a quote, 6.25 – 6.75, 10 × 10, arrives. Again, the market order does not trade even if a legal width market exists. Only one market maker of six has responded. The quote width is not 75% or less of the legal width market. The System reports the best quote to OPRA as 6.25 – 6.75, 35 × 10. The book now looks as follows:

MARKET ORDER FOR 5

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
35	6.25		
25[33]	6.20		
5	5.95		

Example 3. If the System received a limit order on the same side of the market as the market order that could match the best bid/offer and at least one quote had been received, creating a legal width market, the System would execute the market order against the best bid/offer. The market order would trade ahead of the just-arrived limit order because it had time priority. The presence of a legal width market coupled with a limit order on the same side as the market order, ready to trade against the best opposite side order, would protect the market order from trading at an unreasonable price. If there were no legal width market, the market order would be ''protected'' from trading and the limit order would be filled ahead of the market order.

Continuing with the example above, assume a limit order to buy 10 at 6.75 arrives. The buy limit order matches the best offer and there is a legal width market. Therefore, the market order trades against 5 of the best offer of 6.75. The limit order to buy then trades with the remaining 5 offered at 6.75. The System reports the best quote to OPRA as 6.75 – 6.90, 5 × 20. The book now looks as follows:

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
5	6.75		
35	6.25		
25	6.20		
5	5.95		

Example 4. If an incoming RFQ response could execute against a market order as well as older limit orders (*i.e.*, limit orders that were on the SBT Book before the market order was entered) at a particular price, then, if the incoming RFQ response were of large enough quantity to fill all the older limit orders and the market order, all of those orders would be filled at the price of the older limit orders.

Assume that a market order for 5 is on hold and that the bids for 6.25 are older than the market order. Assume that the book looks as follows:

MARKET ORDER FOR 5

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
35	6.25		
25	6.15		
5	5.95		

Now assume that a quote of 6.00 – 6.20, 50 × 50 arrives. The market is crossed for an instant at 6.25 – 6.20, 35 × 50. The System does not report this instantaneous best quote to OPRA. It will send a best quote report after the cross is traded out (which will happen immediately). Since the 50 offered at 6.20 could fill all the limit orders to buy at 6.25 and the market order (total quantity of 35+5) at 6.25, then the market order is filled at 6.25. When the market is crossed the execution price is the price of the older order. The System reports the best quote to OPRA as

[32] CBOE believes that it is appropriate for a portion of the balance of the market order to execute at a price outside of the designated percentage of the legal width market in accordance with the market order processing procedures because, among other things: (1) An opportunity was provided for additional market participants to submit quotes priced within the designated percentage of the legal width market; (2) continuing to hold the balance of the order would cause unnecessary queuing of marketable orders; and (3) under CBOE market order processing procedures, no portion of the market order would be executed outside of a legal width market. Further, CBOE notes that, for multiply listed option classes, NBBO considerations would also protect the market order. E-mail from Angelo Evangelou, Legal Division, CBOE, to Michael Gaw, Division, Commission, dated November 13, 2001.

[33] Exhibit 1 of Amendment No. 1 contains a typographical error, and this figure was incorrectly reported as 30. CBOE has confirmed that 25 is in fact the correct figure. Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Michael Gaw, Division, Commission, on November 9, 2001.

6.15 – 6.20, 25 × 10. The book now looks as follows:

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
		6.20	10
25	6.15		
50	6.00		
5	5.95		

Example 5. If an incoming RFQ response were not large enough to fill all the older limit orders, the market order would be executed at the minimum price interval ahead of the older limit orders. Executing at a better price would enable the market order to trade ahead of the older limit order, thus preserving time priority.

Assume that there is a market order to buy 5 on hold and that the bids at 6.25 are older than the market order. Assume that the book looks as follows:

MARKET ORDER OF 5

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
35	6.25		
25	6.15		
5	5.95		

Now assume that a quote 6.00 – 6.25, 10 × 10 arrives. The market is locked for an instant at 6.25 – 6.25, 35 × 10. The System does not report the instantaneous best quote to OPRA (because the quote will be traded instantly). The System will send a best quote report after the locked market is traded out. Because the 10 traded at 6.25 could not fill all the limit orders to buy at 6.25 and the market order (total quantity of 35 + 5 = 40) at 6.25, then the market order is filled at 6.30, one minimum tick ahead of the older limit orders at 6.25.[34] The remaining 5 offered at 6.25 trades with 5 of the older limit orders to buy at 6.25. The System reports the best quote to OPRA as 6.25 – 6.75, 30[35] × 10. The resulting book looks as follows:

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
30[36]	6.25		
25	6.15		
10	6.00		
5	5.95		

Example 6. If the older limit order is a Fill or Kill (''FOK'') order or an All or None (''AON'') contingency order and the just-arrived order could trade with the contingency order, the market order would be executed at the price of the contingency order. The market order need not trade at a minimum price interval to step ahead of the older contingency order because contingency orders would have to yield priority to market orders even if they were received before the market order.

Assume that there is a market order to buy 5 on hold. Assume that the 10 bid at 6.25 is older than the market order and that this bid is a FOK or an AON contingency order. The System reported the best quote to OPRA as 6.20 – 6.75, 25 × 10. Note that the FOK or AON contingency order does not affect the best quote report sent to OPRA. Only limit orders and IOC orders are reflected in the best quote report sent to OPRA. Assume the book looks as follows:

MARKET ORDER FOR 5

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
10	6.25		
25	6.20		
5	5.95		

Now assume that a quote 6.00 – 6.25, 10 × 10 arrives. Because the 10 offered at 6.25 could not fill all the older limit orders and the market order (total quantity of 10 + 5 = 15) at 6.25, the market order is filled at 6.25, at the price of the contingency order. Now the book looks as follows:

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
		6.25	5
10	6.25		
25	6.20		
10	6.00		
5	5.95		

The book is displayed as locked because the 10 AON or FOK bid at 6.25 has to be filled in its entirety. Note that only the SBT Traders using the System are aware of this lock condition. The System reports to OPRA a best quote of 6.20 – 6.25, 25 × 5.

To summarize, if the designated percentage (*e.g.*, 50%) of the assigned market makers had responded to the RFQ or if the RFQ period had expired and there were at least one standard quote response, the System would execute the market order against the book. If there were volume remaining in the market order, the System would hold it in queue and repeat the RFQ cycle. The System also would send a notice to the originator of the order status and give the originator the option to cancel the order.

If the RFQ expired and there were no RFQ response, the System would continue to hold the market order, repeat the RFQ cycle, send a notice to the originator about the order status, and send an alert message to the Help Desk about the lack of an RFQ response. The originator of the order could cancel the order if the originator wished. The Help Desk would contact the assigned market makers.

If the market order could be executed under the conditions cited above and there were one or more market orders on the opposite side, the System would cross the market orders at a price determined as follows:

1. At the middle of the best bid/offer in the book if the middle price were a legal price (*i.e.,* a price that could be quoted in the System).

2. If the middle price were not a legal price, at the next legal price from the middle that was closer to the last trade price of the product.

f. Limit Order Processing

Until CBOE*direct* is enabled to provide price protection under proposed CBOE Rule 43.8A, after the opening, upon being entered into the System, limit orders would be matched against the best prices available in the SBT Book under the priority rules set forth in proposed CBOE Rule 43.1. If there were no orders in the SBT Book that matched the limit order when it was entered, the limit order would be held in the book and could be traded against later submitted orders.

When CBOE*direct* is enabled to provide price protection, the System would protect limit orders by automatically executing the limit order against the best bid/ask only if one or both of the following conditions were met:

1. A legal width market existed for that series; or

2. The limit price on the order was between the bid of the series with the same expiration month and one strike price lower and the offer of the series

[34] CBOE assumes the minimum tick for purposes of this example is $0.05.

[35] Exhibit 1 of Amendment No. 1 contains a typographical error, and this figure was incorrectly reported as 35. CBOE has confirmed that 30 is in fact the correct figure. Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Michael Gaw, Division, Commission, on November 9, 2001.

[36] 36 *See id.*

with the same expiration month and one strike price higher, and a legal width market existed for both of these series.

Example: Assume the SBT Book looks like the following:

Series	Size	Bid	Ask	Size
July 50	10	*10	11	20
July 55			9.75	10
July 60	50	1.5	*1.75	25

* The marked (*) prices set the range for an acceptable execution price.

A limit order to buy 10 July 55s at 9.75 is entered. This trade would be executed at 9.75 because the price of execution is between the bid of the July 50s (the next lower strike) and the offer of the July 60s (the next higher strike).

If a limit order could execute against the best bid/ask and neither of the conditions set forth above were met, a message would be sent stating that an RFQ would be generated. The RFQ would include the order quantity, but not whether the order was a buy or sell. Quote responses would be exposed in the book as they were received. The SBT Trader linked to CBOE*direct* through the API could direct the System to override the RFQ and determine to enter the limit order into the SBT Book and possibly trade against standing orders or subsequent orders in the book, although there might not be a legal width market at the time. If the limit order's price prevented it from matching with the best bid/ask, the System would place the order in the SBT Book in its appropriate priority position.

Subject to the details set forth in proposed CBOE Rule 43.8A, when the limit order price protection feature has been implemented, the System would execute the limit order after either one of the following conditions became true:

1. During the RFQ response time, if the best quote width became a certain prescribed percentage (*e.g.,* 75%)—as set by the appropriate SBT Trading Committee—of a legal width market, the System would execute the limit order against the quote and any other eligible booked order.

2. If an incoming market or limit order were received (independent of the RFQ responses) on the opposite side that would match the original limit order and if a legal width market existed for the series, the System would match the limit order with the incoming order.

3. When a certain prescribed percentage of the SBT Market Makers currently providing quotes in that class—the percentage to be set by the appropriate SBT Trading Committee—had responded to the RFQ, or when the RFQ period expired and there were at least one quote response, the System would execute the limit order against the SBT Book.

If a limit order for a certain series were queued, subsequent limit orders for the same series and side would be queued behind the first one to ensure that they were processed in time sequence. Market orders for the same series and side would be queued. If a legal width market remained upon completion of limit order processing, the market order would be executed against orders resting in the book. If there were not a legal width market, market order processing would begin in accordance with Exchange rules.

g. Contingency Order Processing

CBOE has asserted that CBOE*direct* eventually would be enabled to handle a number of types of contingency orders pursuant to the terms of proposed CBOE Rule 43.9. A contingency order that had been entered before a limit order with no contingency at the same price and for the same series would nonetheless be treated as if it were entered after that limit order. The System would notify the originator of the order if the contingency order expired or were canceled. The System would handle the following contingency orders as described below once it had been enabled to handle such contingency orders.

1. *Opening Only Order.* The System would accept an opening only order only during the Pre-opening, Halted, or Closed states. The order would be executed during the Opening state if there were orders to execute it against. The order or any unexecuted portion thereof would expire after the opening trade or after the opening quote had been disseminated.

2. *All or None Order.* An AON order would be executed only if it could be executed in its entirety. The order would remain in the book until filled or canceled. An AON order would not be disseminated as part of the best bid/ask.

3. *Fill or Kill Order.* An FOK order has a time contingency and would have to be fully filled within a period of time, or the System automatically would cancel the order. The System would attempt to execute the full quantity of the FOK order upon receipt. If the FOK order were at the best price and there were a legal width market, and it could not be filled fully, the System would indicate its presence to SBT Traders by displaying its quantity for the Time Contingency Period as determined by the appropriate SBT Trading Committee. If the FOK order did not equal or better the market (i.e., if it were a buy order lower than the best bid or a sell order higher than the best offer), the System would reject the order.

4. *Immediate or Cancel (''IOC'') Order.* An IOC order has a time contingency and would have to be filled fully or partially within a period of time, or the System automatically would cancel the remainder. If the IOC order were at the best price and there were a legal width market, and it could not be filled fully, the System would indicate its presence to SBT Traders by displaying its quantity for the Time Contingency Period as determined by the appropriate SBT Trading Committee. If the IOC order did not equal or better the market (*i.e.,* if it were a buy order lower than the best bid or a sell order higher than the best offer), the System would reject the order. The System would cancel the residual order volume after the IOC process period, if the IOC order had not been executed completely.

5. *Minimum Volume (''MIN'') Order.* A MIN order could be accepted by the System at any time. A MIN order would have two quantities specified: the total quantity and the minimum acceptable quantity that can be filled. The fill would have to equal at least the minimum quantity specified. The System would attempt to execute at least the minimum volume specified against orders in the book. If the minimum volume were not executed, the order would remain in the book.

6. *Stop Order.* A stop order to buy becomes a market order when the product trades or is bid at or above the stop price. A stop order to sell becomes a market order when the product trades or is offered at or below the stop price. The System would not display a stop order to anyone other than the originator of the order, except as part of the contingency count in the book depth information.

7. *Stop Limit Order.* A stop limit order has two prices: the stop limit price and

the limit price. A stop limit order to buy becomes a limit order at the second price when the product trades or is bid at or above the stop limit price (first price). A stop limit order to sell becomes a limit order at the second price when the product trades or is offered at or below the stop limit price (first price). The System would not display a stop limit order to anyone other than the originator of the order, except as part of the contingency count in the book depth information.

8. *Market On Close (''MOC'') Order.* An MOC order is executable only during some defined period of time prior to the close. If there were no legal width market when an MOC was received, an RFQ would be sent at a certain amount of time before the Closing, as determined by the appropriate SBT Trading Committee. If no RFQ response were received, the order would be canceled after Closing.

h. Processing of Spread Orders

Proposed CBOE Rule 43.10 would govern the processing of spread orders. The System initially would support the following types of spread orders (''Spread Orders'') only:

1. Two-legged spreads where the ratio is 1:1 and 1:2;
2. Three-legged spreads where the ratio is 1:1:1 or 1:2:1;
3. Four-legged spreads where the ratio is 1:1:1:1; and
4. Any other spread type approved by the appropriate SBT Trading Committee.

The System would treat each spread order as a unique product and would assign each a unique product name. The System would maintain a book for every unique spread product with bids and offers for individual spread packages. The System would keep track of and disseminate internally the best bid and offer for every unique spread to SBT Traders.

i. Processing of Requests for Quotes

Proposed CBOE Rule 43.11 would govern the processing of RFQs. Any SBT Trader could initiate an RFQ for a series. The SBT Trader could specify a size at his or her option but would not specify whether the RFQ is for a buy or sell. The System would send the RFQ to the SBT Market Makers who were currently providing quotes in that class. The System also would automatically send an RFQ when it received a market order and the current market width was wider than the Exchange-prescribed width, as set forth in proposed CBOE Rule 43.5.

An RFQ would have an expiration period for the SBT Market Makers to respond. SBT Market Makers would be required to respond to RFQs in accordance with obligations set forth in proposed CBOE Rule 44.4(b)(ii). RFQ responses would be submitted to the SBT Book and would be exposed as they arrived.

j. Trading Directly Against Orders in the Book

CBOE*direct* would provide SBT Traders the means to electronically hit a bid or take an offer. An SBT Trader could do a full or partial execution of an existing bid or offer.

1. *Hit the Bid.* If the bid were no longer available for trading (*e.g.,* because the bid had been hit by another trader), the System would book the full order (*i.e.,* the order entered to hit the bid) as a day or IOC order at the discretion of the trader. If another trader had not hit the bid, the results of the trader's attempt to hit the bid would be as follows:

Change to price field	Change to quantity field	Results
None	None	Full execution of bid orders at bid price.
None	Lower	Partial execution of bid orders at bid price.
None	Higher	Full execution of bid orders at bid price and book new order to sell at bid price with remaining quantity.
Lower	None	Full execution of bid orders at bid price.
Lower	Lower	Partial execution of bid orders at bid price.
Lower	Higher	Full execution of bid orders at the bid price and new order to sell with remaining quantity that could either execute against lower bid orders, if any, or be booked.
Higher	Any	No execution, book new order to sell.

2. *Take the Offer.* If the offer were no longer available for trading (*e.g.,* because the offer had been taken by another trader), the System would book the full order (*i.e.,* the order entered to take the offer) as a day or IOC order at the discretion of the trader. If another trader had not taken the offer, the results of the trader's attempt to take the offer would be as follows:

Change to price field	Change to quantity field	Results
None	None	Full execution of offer orders at offer price.
None	Lower	Partial execution of offer orders at offer price.
None	Higher	Full execution of offer orders at offer price and book new order to buy at offer price with remaining quantity.
Higher	None	Full execution of offer orders at offer price.
Higher	Lower	Partial execution of offer orders at offer price.
Higher	Higher	Full execution of offer orders at the offer price and new order to buy with remaining quantity that could either execute against higher offer orders, if any, or be booked.
Lower	Any	No execution, book new order to buy.

3. *Hit the Debit Spread.* If the debit spread were no longer available for trading (*e.g.,* because the debit spread had been traded by another trader), the System would book the new spread order (*i.e.,* the order entered to take the offer), as a new GTC credit spread order. If debit spread were still available, the results of the trader's attempt to ''hit the debit spread'' would be as follows:

Change to price field	Change to quantity field	Results
None	None	Full execution of spread order at spread price.

Change to price field	Change to quantity field	Results
None	Lower	Partial execution of spread order at spread price.
None	Higher	Full execution of original spread order at spread price and book new credit spread at spread price with remaining quantity.
Lower	None	Full execution of spread order at the original spread price.
Lower	Lower	Partial execution of spread order at original spread price.
Lower	Higher	Full execution of spread order at the original spread price and new credit spread order at the lower price with remaining quantity that could either execute against lower debit spread orders, if any, or be booked.
Higher	Any	No execution, book new credit new spread order at entered price.

1. *Take the Credit Spread.* If the credit spread were no longer available for trading (*e.g.,* because the credit spread had been traded by another trader), the System would book the new spread order (*i.e.,* the order entered to trade the spread) as a GTC debit spread order. If the credit spread were still available, the results of the trader's attempt to ''take the credit spread'' would be as follows:

Change to price field	Change to quantity field	Results
None	None	Full execution of spread order at spread price.
None	Lower	Partial execution of spread order at spread price.
None	Higher	Full execution of spread order at spread price and book new debit spread order at spread price with remaining quantity.
Higher	None	Full execution of spread order at the original spread price.
Higher	Lower	Partial execution of spread order at original spread price.
Higher	Higher	Full execution of spread order at the original spread price and new debit spread order with remaining quantity that could either execute against higher credit spread orders, if any, or be booked.
Lower	Any	No execution, book new debit spread order at entered price.

k. Intermarket Price Protection

When CBOE *direct* is enabled to provide such protection, public customer orders would not be automatically executed at prices inferior to the best bid or offer on another national securities exchange, as those best prices would be identified by the System. The System would allow the SBT DPM/LMM[37] to specify its parameters for automatic step-up, perform the automatic step-up when the NBBO was away, and send orders away to the NBBO exchange. The SBT DPM/LMM could establish different parameters for different classes to which it had been assigned. CBOE has represented that it would not trade any multiply listed options on the System unless the Exchange had procedures to handle executions that occur at prices inferior to the best bid or offer on another national securities exchange, as those best prices are identified by the System.[38]

l. Market Maker Obligations and Benefits

Option classes would be assigned to SBT Market Makers in the same way they are assigned today in the open outcry system. It is possible, however, that different members would be assigned to be the SBT DPM for the same option class for different trading sessions (*i.e.,* an SBT DPM could be assigned to a particular option class in one trading session but not another). Also, the appropriate Market Performance Committee could appoint SBT LMMs on a rotating basis such that the SBT LMM assigned to a particular option class for a particular trading session would rotate between two or more SBT LMMs after a designated period of time.

Unlike in open outcry, there would not necessarily be a continuous quoting obligation; however, also unlike in open outcry, the majority of market makers logged onto the System would be required to provide their own independent quote in response to a specified percentage of RFQs. CBOE anticipates that active products would be quoted competitively and continuously by multiple market makers while inactive products would be quoted through RFQs. The appropriate Market Performance Committee would have the authority to recommend, and the board of directors of the Exchange to vary, the RFQ response rates to ensure that quality markets were available before an order executed. In addition, as stated earlier, the appropriate Market Performance Committee or two Trading Officials could exempt SBT Market Makers from the requirement to respond to RFQs and to provide opening quotes if the System were being used during a time when there was little liquidity in the underlying securities (*i.e.,* during an ETH session).

i. Market-Maker Obligations

In addition to the other market maker obligations set forth in proposed CBOE Rule 44.4, a Standard SBT Market Maker would be obligated to respond to a designated percentage of RFQs for the series in its assigned classes. The appropriate Market Performance Committee would decide the applicable percentage. In addition, an SBT DPM/LMM would be obligated, among other things, to provide opening quotes for all series in assigned classes and to respond to a certain percentage of RFQs (as

[37] In the original draft notice, CBOE discussed the handling of orders when there are better prices on away markets only with respect to SBT DPMs. CBOE has confirmed that this discussion also applies to SBT LMMs. Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Michael Gaw, Division, Commission, on November 16, 2001.

[38] The Commission notes that the proposed rule change does not address how the System (or SBT DPM/LMMs assigned to option classes on the System) would handle orders when there is a better price in another market. CBOE has advised that, initially, CBOE*direct* will be employed to trade only option classes that are not multiply listed; consequently, it does not need to address this issue at this time. CBOE has represented that, to comply with its obligations under the Linkage Plan Order, *see* Securities Exchange Act Release No. 43086, 65 FR 48023 (August 4, 2000); Securities Exchange Act Release No. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); Securities Exchange Act Release No. 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000), it would amend the CBOE*direct* rules to address better prices on other markets prior to employing the System to trade multiply listed option classes. Telephone conversation of April 5, 2002.

determined by the appropriate Market Performance Committee) for the series in assigned classes.

RFQ Response Rate. For each series that an SBT Market Maker had been obligated to quote via RFQ, the System would calculate at the end of the day the market maker's RFQ response rate. The response rate would be computed as the number of times the market maker responded with an acceptable quote within a designated number of seconds (as determined by the SBT Trading Committee), divided by the number of RFQs to which the market maker was obligated to respond, expressed in percentage terms.

The appropriate Market Performance Committee would set the percentage of RFQs to which a market maker would be required to respond to ensure that a high quality of markets were available before any order was executed. CBOE anticipates that the Market Performance Committee would establish the RFQ response rate at a fairly high percentage, although it is likely to be much lower during an ETH session. To be credited toward a market maker's percentage requirement, the following requirements would have to be met: (1) The market maker must respond to the RFQ within a designated number of seconds (as established by the appropriate Market Performance Committee); (2) the quote width must be equal or narrower than the prescribed legal width market (as it may have been adjusted by the appropriate Market Performance Committee); (3) the quote size must be at least equal to the specified minimum size (established by the appropriate Market Performance Committee); and (4) the SBT Market Maker must provide a continuous market for 30 seconds, unless the SBT Market Maker's quote is filled in the meantime. The market maker could change its quote during this period but could not cancel it if the quote were to count toward the market maker's RFO percentage response requirement.

The System would send duplicate RFQs, which are RFQs for a series for which an RFQ was outstanding. Duplicate RFQs would be sent in order to give the SBT Market Maker an indication of the increasing level of interest in the product. SBT Market Makers would not be obligated to respond to each duplicate RFQ for a particular series in order to satisfy their percentage response requirement. The SBT Market Maker would be obligated to respond only once to the group of duplicate RFQs. For example, if two RFQs for a series were sent by the System within the life of the initial RFQ, there would be the first RFQ and two duplicates. The SBT Market Maker would be obligated to respond only once to all three to satisfy its percentage response requirement with respect to all three.

RFQ responses (*i.e.,* quotes) would be submitted to the SBT Book and exposed as they arrived.

The RFQ response rate would be calculated on a daily basis and cumulated over the evaluation period (weekly, monthly, or quarterly).

To avoid the unreasonable use of the RFQ process and in order to maintain reasonable loads on the System capacity, the System would monitor the ratio of RFQs to trades generated by each trader. CBOE has stated that it might impose a non-discriminatory charge per RFQ above a certain ratio.[39]

ii. Market Maker Benefits

Both Standard SBT Market Makers and SBT DPMs/LMMs could be entitled to a reduction in fees for market data regarding, for example, book depth and underlying security data. SBT DPMs/LMMs also could receive the additional benefit of a trade participation right for trades done at their quoted bid or offer.

m. Quote Entry

SBT Market Makers could enter quotes in two ways: manually or through an autoquote facility. A quote would exist as a pair of bid and ask day orders in the SBT Book. An SBT Market Maker could have only a single quote for any particular option series (*i.e.,* the System would process a new quote as a cancel/replace of the old quote). An SBT Market Maker could, however, enter other orders in the same series for which it had a quote.

The System would recognize and remember which orders were plain orders (*i.e.,* unrelated to quotes) and which orders were part of a quote. Distinguishing between quotes and orders in this manner would allow the System to monitor how SBT Market Makers were fulfilling their obligation to respond to RFQs and also would allow for quotes to be regenerated automatically as described below.

In the special case where an SBT Trader had half a quote in the market (*i.e.,* its bid or ask had been hit) and it wanted to keep the remaining side, the System would allow the market maker to update only the missing side. In the case where the market maker was updating only one side of a quote, the System would allow the market maker to enter a quote with one side updated and the other side unchanged, and update only the changed side. In these two cases, the market maker might not want to replace the bid/ask it already had in the market because that order had price/time priority.

n. Quote Maintenance

An SBT Market Maker would have the following functional capabilities for maintaining its quotes in the SBT Book: (1) Cancel a specific quote; (2) cancel all of its quotes in a specified class, or all quotes in all classes; (3) cancel/replace or update an existing quote; and (4) inactivate its quotes for a certain period of time. An update would not necessarily cause the order to lose its priority position. An order would be considered to have undergone a cancel/replace if its position had changed due to a price change or quantity increase.

Depending on how a quote was modified, the order's position could change as follows:

1. If the price were changed, the changed side would lose priority position and the order would go behind all orders at the same price.
2. If one side's quantity were changed, the unchanged side would retain priority position.
3. If the order's quantity were decreased, the order would retain position.
4. If the order's quantity were increased, the order would lose position and the order would go behind all orders at the same price.

Cancel a Quote. If the cancel arrived in the SBT Book after one or both sides of the quote had been partially executed, the System would cancel the remainder and return a ''too late to cancel'' message for the filled quantity.

Inactivate All Quotes. There is a difference between canceling quotes and inactivating quotes. ''Cancel'' would permanently delete the SBT Market Maker's quotes from the SBT Book. ''Inactivate'' would remove the SBT Market Maker's quotes temporarily from the SBT Book without deleting them. CBOE anticipates that the System ultimately would provide for such orders to be available for a specified time for ''activation'' or re-submission to the SBT Book without manual re-entry.

Quote Risk Monitor Function. CBOE believes that the quote risk monitor function would provide benefits to both the customers and SBT Market Makers. For the customer, CBOE expects that markets would be deeper and more liquid—with quotes of larger size and more market makers providing quotes—because market makers would have

[39] *See* Securities Exchange Act Release No. 45075 (November 16, 2001), 66 FR 59038 (November 26, 2001) (SR–CBOE–2001–57) (establishing fees for excessive RFQs). *But see* Securities Exchange Act Release No. 45231 (January 3, 2002), 67 FR 1382 (January 10, 2002) (rescinding SR–CBOE–2001–57).

better control of their risk and, therefore, would be more willing to quote aggressively. SBT Market Makers would be able to control their risk after they had traded a certain number of contracts.

CBOE has stated that SBT Market Makers that would provide quotes on the System would be exposed to certain types of risks different than those who trade in open outcry. For example, a market maker on CBOE*direct* could have a large number of its bids hit by a set of incoming orders within a few seconds if the bids were the best available or close to the best available. The market maker could, thus, be subject to taking on a large position before it could react and change its quotes. In open outcry, a market maker is often better able to manage its risk because it can change its market at the point that it believes that the orders that have been traded on one side of the market justify such a move.[40]

To encourage market makers to provide deep and liquid markets on CBOE*direct,* the quote risk monitor feature would automatically delete a market maker's quotes from a class when the System determined that its resting orders (quotes) had been filled within a defined period of time (*e.g.,* the most recent ten-second period) for a defined number of contracts. When the System deletes a market maker's quotes in a particular class, the System would notify the market maker to give it a chance to react and update its quotes.

In determining whether to delete a particular market maker's quotes pursuant to this feature, the System would consider only trades with the market maker's resting quotes, not trades that the market maker had initiate by hitting a bid or taking an offer. The function also would take effect even if the incoming orders were uncoordinated (*i.e.,* coming from one or more sources). The time period within which the trade takes place and the net contract volume would be configurable by the SBT Market Maker for each class.

Automatic Quote Regeneration. CBOE*direct* has been designed to allow for an SBT Market Maker's quotes to be automatically regenerated, although this feature is not yet available as part of the CBOE*direct* pilot program.[41] This feature would make certain that an SBT Market Maker could maintain continuous quotes in the System and retain priority for those quotes not traded. The SBT Market Maker would be able to request the System to regenerate its quote when its bid or offer had been filled. The System would regenerate a new quote where the bid/offer was a pre-defined number of ticks worse than the prior bid/offer that was filled, and the size for the bid/offer would be the default size that the market maker had established.

When a bid/offer is regenerated, the System would keep the opposite side at the same price unless the resulting spread would be wider than the prescribed legal width market. If the resulting spread was wider than the Exchange-prescribed width, the System would adjust the opposite side's price (*i.e.,* cancel/replace the old order) to keep the same spread before the regeneration, or adjust it to bring the spread to the legal width market. The market maker would have to make this choice as a pre-defined selection when it specifies its defaults for quote regeneration.

Except under one circumstance, the System would position the regenerated quote based on price/time priority. This exception would provide for the regenerated quote to move ahead of other orders in priority position. If the regenerated quote (order) could immediately execute against the same order that traded against the original quote, that portion of the regenerated quote (order) equal to the original size executed would go ahead of all orders at the regenerated price and would be executed. The System would position the rest of the regenerated quote based on price/time priority.

Example. Assume the System receives a market order for 20 contracts that is traded against a quote for 5 contracts at a bid of 5.50. The market order still has 15 contracts left to be filled. There are no other resting orders at the execution price. The regenerated bid for 10 (*i.e.,* the default quote size for the market maker who had bid at 5.50) is at the next lower price, 5.45 with other standing orders. The portion of the regenerated bid that is equal to the original execution size (*i.e.,* 5) is placed ahead of all orders at the regenerated price and receives first execution priority. The remaining portion of the regenerated bid (*i.e.,* 5) is positioned behind all other resting orders at 5.45.[42]

Managing Autoquote Traffic. Proposed CBOE Rule 44.6 would provide that the Exchange may limit the number of market makers that may access CBOE*direct* through an API, or the number of messages sent by market makers accessing the System through an API, in order to protect the integrity of the System. In addition, CBOE has proposed to be able to impose restrictions on the use of a computer connected through an API if it believed such restrictions were necessary to ensure the proper performance of the System. CBOE has represented that these proposed restrictions are not intended to permit the Exchange to discriminate against certain traders but would be used pursuant to some objective measure to limit the messages sent through the API, if necessary.

CBOE does not intend to allocate bandwidth to each SBT Trader (*i.e.*, the System would not programmatically limit the number of messages that a trader may send). To minimize the potential of a particular SBT Trader from unnecessarily burdening the System, CBOE has proposed to be able to do one or both of the following: (1) Specify the number of quotes over a certain time period that may be sent free by an SBT Trader, or (2) impose a fee per message for sending a number that is clearly above the free number and for producing a ratio of quotes to trades over a certain time period that is higher than what would be considered a reasonable ratio.[43] For example, assume that the free number is 4,000 quotes per class per day and the reasonable ratio of quotes to trades is 50:1. A fee might be assessed such that an SBT Market Maker is charged for every quote above 4,000 if the ratio is between 56:1 and 65:1, and two pennies per message if the ratio is between 66:1 and 75:1, *etc.* CBOE believes that this fee would provide an incentive to market makers to provide aggressive and narrow quotes that are likely to trade against orders sent to the System. This fee would, therefore, supplement the market maker quote obligations by providing for market makers not only to provide quotes but also to ensure their quotes are reasonably likely to trade.

CBOE also may implement a message throttle in the API to further limit the potential harm to the System from quote traffic. CBOE has represented that any measures used to throttle quotes or to limit quotes would be objective

[40] CBOE has noted that, to the extent there is an automatic execution system (*e.g.,* RAES) that is available in the open outcry market, the market makers logged onto the automatic execution system are subject to the same kind of risks as market makers on an SBT System.

[41] E-mail from Angelo Evangelou, Legal Division, CBOE, to Michael Gaw, Division, Commission, dated April 25, 2002.

[42] This example has been corrected slightly from the example provided in Exhibit 1 of Amendment No. 1 to reflect decimalized rather than fractional prices. E-mail from Angelo Evangelou, Legal Division, CBOE, to Michael Gaw, Division, Commission, dated November 16, 2001.

[43] The Commission notes that any proposed rule change relating to fees must be filed with the Commission pursuant to Section 19(b) of the Act, 15 U.S.C. 78s(b). After such a filing has been made, the Commission would consider whether the proposed fee was consistent with the Act.

measures imposed in a non-discriminatory manner.

o. Order Entry

All SBT Traders, including SBT Market Makers, would be able to enter orders for any class. These orders would be plain orders, handled differently by the System from orders that are part of market maker quotes.

Order Status and Maintenance. An SBT Market Maker would have the capability to display the status of its active orders (submitted to the SBT Book), both regular and quote-related orders. It also would have the capability to keep orders in the System that were inactive (*i.e.*, not in the SBT Book). An SBT Market Maker could inactivate some or all of its quotes but keep them in the System so it could activate them again when it wanted to get back into the market.

Spread Order Entry. Any SBT Trader would have the capability to enter spread orders. The System would support spread orders whose legs were options of the same underlying security. The System would provide support for the most common, two-legged spread orders: vertical, combo, straddle, and time. The System also would allow a market maker to enter a customized spread order with more than two legs. The System would calculate and display the current bid and offer for the spread with a net credit or debit indication, if a market were available for each leg.

p. SBT Brokers

An SBT Broker would be an individual (either a member or a nominee of a member organization) who was registered with the Exchange for the purpose of accepting and executing orders received from members, registered broker-dealers, or public customers on CBOE*direct.* As with brokers operating in the Exchange's auction market, an SBT Broker would not be permitted to accept an order from any source other than a member or a registered broker-dealer, unless it were either the nominee of, or had registered its individual membership for, a member organization approved to transact business with the public in accordance with CBOE Rule 9.1.

SBT Brokers would have the same obligations as brokers on the Exchange's auction market to use due diligence in the representation of orders for which they were agent. SBT Brokers and Proprietary Traders could use the SBT workstations or API to perform the following functions:

- Enter, cancel, cancel/replace, and maintain orders;
- Hit bids and take offers;
- Submit RFQs;
- Enter cross notifications and cross execution orders; and
- Set up defaults or preferences.

The Exchange could provide other means for the submission of orders or other functions other than through the use of the SBT workstations or API.

q. Clearing Firm Brokers

Proposed CBOE Rule 45.11 would govern the functions of Clearing Firm Brokers. A Clearing Firm Broker would be an individual who represented the Clearing Firm of a particular SBT Market Maker and had the authority to take certain actions with respect to that SBT Market Maker's use of the SBT System.

A Clearing Firm Broker could request the CBOE Help Desk to force the logout of a trader when, for example, that trader had financial difficulty. The forced logout of a trader also could be necessary when the trader is having technical difficulties that prevent the trader from logging off on his or her own. The System would provide two options for logging out an SBT Trader: (1) Force logout, and (2) force logout and disable. ''Force logout'' would log out the trader, cancel all of the trader's quotes, leave the trader's regular orders unchanged, and would not affect the trader's ability to log in. This option would be used for situations where the trader could not log out on his or her own for any reason. ''Force logout and disable'' would log out the trader, cancel all of the trader's quotes, cancel all the trader's regular orders, and de-authorize the trader as a user. The Help Desk would have to re-enable the trader before he or she could log in again under this second option. In this case, the Clearing Firm could have another trader trade the logged out trader's account for some period of time to manage the positions.

r. Data Dissemination

Internal Dissemination of Quote and Best Bid and Offer. CBOE*direct* would disseminate the best bid and offer internally. As each new limit order (whether as an order or as part of a market maker quote) was entered into the SBT System, the best bid and offer displayed in the System would be updated to the extent the new bid or offer changed the previously displayed bid or offer. The System would send quote/order information—series, price, size, and order source (market maker, customer, or non-customer professional order)—to the SBT workstations that were trading a given class. The System also would provide the current best bid or offer in any other market as such best bids and offers were identified in the System.

Internal Dissemination of Price/Last Sale. CBOE*direct* would disseminate internally to SBT Market Makers appointed to a given class, and to all subscribers' workstations that have indicated interest in a given class, last sale information including series, price, and size.

Booked Order Dissemination. When an SBT Trader or subscriber requests market data for an option class, CBOEdirect would provide the SBT Book's best bids, asks, and their total volumes for each series of the class requested. The data also would include the last sale, day's trade volume, and the SBT Trader's orders for each series. CBOE could delete or add information to the market data disseminated as it deemed appropriate. The market data would be accessible to any SBT Trader, although the Exchange could charge varying fees to different categories of traders for access to the information.

Book Depth Data. Upon request, traders could access from the System market depth information, including the aggregate size and the number of contracts at each price. CBOE could charge fees for access to this information. The information might not be provided upon request if the Exchange believed that it could lead to degradation of the System.

Dissemination to OPRA. CBOE*direct* would disseminate quote and trader (*i.e.,* last sale) information externally to OPRA and/or to some other distribution network to the extent permitted by agreement or by rule. Series, price, and size would be disseminated for trades. Series and price would be disseminated for quotes. Quote size also would be disseminated if OPRA were capable of accepting quotes with size. Every best book bid/ask change would generate a quote report to OPRA and/or some other network. The CBOEdirect quote might not have a bid/ask spread that was equal to or narrower than the Exchange-prescribed spread because two unrelated orders, separated by more than the Exchange-prescribed spread, might be the best orders, causing the System to send their prices as the best quote. Changes in best quote and size due to AON or FOK contingency orders would not update quotes in OPRA. CBOE has stated that it would notify recipients that information sent over the System to SBT workstations would be considered proprietary information of the Exchange and could not be distributed or shared without written permission of the Exchange.

2. Statutory Basis

CBOE believes the proposed rule change would provide for a fair and innovative electronic medium for the trading of securities options that will be registered by the established procedures and personnel of the Exchange. Accordingly, CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act [44] in general, and furthers the objectives of Section 6(b)(5) [45] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulation 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.

[44] 15 U.S.C. 78f(b).

[45] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or with such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. In particular, the Commission requests commenters to address the proposed trade nullification procedures, crossing procedures, and allocation methodologies, especially the proposal that customer orders may not necessarily be accorded the highest priority. 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 filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–55 and should be submitted by May 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11098 Filed 5–7–02; 8:45 am]

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[46] 17 CFR 200.30–3(a)(12).

Federal Register

Wednesday,
May 8, 2002

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 2 and 35
Revised Public Utility Filing Requirements; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 35

[Docket No. RM01–8–000; Order No. 2001]

Revised Public Utility Filing Requirements

Issued April 25, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this final rule, the Federal Energy Regulatory Commission (Commission) is amending its filing requirements for public utilities under the Federal Power Act (FPA) to require public utilities to electronically file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and transaction information for short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter. Under this rule, public utilities may file standard forms of service agreements for Commission approval for all cost-based transmission and power sales services they offer under 18 CFR part 35 and will file agreements for such services provided under this Part that do not conform to an applicable standard form of service agreement. Executed market-based power sales agreements need not be filed.

The procedures adopted in this rule will replace the current procedure whereby public utilities file short-term and long-term service agreements for market-based sales of electric energy, service agreements for generally applicable services, such as point-to-point transmission service, and Quarterly Transaction Reports summarizing their short-term sales and purchases of power at market-based rates. This rule also further clarifies the book outs that must be reported in Electric Quarterly Reports. Implementation of the reporting requirements will take place in two phases: an interim phase through October 31, 2002, and a final phase thereafter.

This rule will make available for public inspection, in a convenient form and place all relevant information relating to public utility rates, terms, and conditions of service; ensure that information is available in a standardized, user friendly format; and meet the Commission's electronic filing option obligation.[1] These actions also will allow the public to better participate in and obtain the full benefits of wholesale electric power markets while minimizing the reporting burden on public utilities.

EFFECTIVE DATE: This final rule will become effective on July 8, 2002.

FOR FURTHER INFORMATION CONTACT:

H. Keith Pierce (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0525.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0321.

Barbara D. Bourque (Information Technology Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2338.

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Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

1. Introduction

2. On July 26, 2001, the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed a change in the reporting requirements for jurisdictional public utilities. Specifically, the NOPR proposed to eliminate the requirements for filing the following documents: (1) Short-term and long-term service agreements [2] for market-based sales of electric energy; (2) agreements for generally applicable services, such as point-to-point transmission service, for which a public utility has a standard form of service agreement under its tariff; and (3) Quarterly Transaction Reports summarizing short-term purchases and sales of power at market-based rates.[3]

3. The NOPR proposed replacing these filings with an electronic filing to the Commission, known as the Index of Customers,[4] summarizing the contractual terms and conditions in each utility's agreements for jurisdictional service—that is, for market and cost-based power sales and transmission service—and transaction information for each utility's short and long-term power sales during the most recent calendar quarter. The NOPR also proposed that each utility would post its Index of Customers on its Internet web site. Comments in response to the NOPR were due by October 5, 2001. In response to the NOPR, comments were filed by 39 respondents.[5]

4. Existing filing requirements, the proposed filing requirements, and the filing requirements being adopted in this final rule are illustrated by the two tables below. Table 1 summarizes the Commission's current filing requirements.

5. TABLE 1.—SUMMARY OF CURRENT FILING REQUIREMENTS UNDER OPEN ACCESS AND COST-BASED TARIFFS, AND UNDER MARKET-BASED RATE AUTHORITY

Type of tariff or rate schedule	Filing party	Long-term service agreements	Short-term service agreements	Quarterly transaction reports
Open Access Transmission Tariff	Non-marketer Public Utility	x	x	
Cost-Based Power Sales Tariff	Non-marketer Public Utility	x	x	
Market-Based Power Sales Tariff	Non-marketer Public Utility	x	x	x
Market-Based Power Sales Tariff or Rate Schedule.	Affiliated or Unaffiliated Power Marketer	o [1]		x

Legend: ''x'' means agreement or report is required to be filed, ''o'' means requirement to file is in abeyance.
[1] *Southern Company Services, Inc. et al.,* 76 FERC ¶ 61,321 (1996); 87 FERC ¶ 61,214 at 61,849 (1999), *reh'g pending (Southern),* rescinded on a prospective basis previously-granted waivers of the requirement that power marketers file long-term service agreements, effective thirty days after the issuance of a final order in that proceeding. The Commission delayed the effectiveness of this finding until the issuance of a final order in the *Southern* proceeding. In an order being issued concurrently with this rule, there rehearings are being denied as moot.

6. Table 2 summarizes the filing requirements proposed in the NOPR and adopted in this rule.

7. TABLE 2.—SUMMARY OF PUBLIC UTILITY FILING REQUIREMENTS PROPOSED IN THE NOPR AND ADOPTED IN THIS FINAL RULE

Type of tariff or rate schedule	Filing party	Do standard forms of service agreements apply?	Are conforming service agreements to be filed?	Are nonconforming service agreements to be filed?	Reported in electric quarterly reports [1]
Open Access Transmission Tariff.	Non-marketer Public Utility	Yes	No	Yes	C
Cost-Based Power Sales Tariff.	Non-marketer Public Utility	Yes	No	Yes	C, T
Other Generally Applicable Services.	Non-marketer Public Utility	Yes	No	Yes	C
Market-Based Power Sales Tariff or Rate Schedule.	Affiliated or Unaffiliated Power Marketer.	No	N/A	N/A	C, T
Market-Based Power Sales Tariff.	Non-marketer Public Utility	No	N/A	N/A	C, T

Legend: ''N/A'' means not applicable, ''C'' means file contract data, ''T'' means file transaction data.
[1] Referred to in NOPR as the Index of Customers

[2] All references to ''agreements'' in this rule include all the forms an agreement may take under 18 CFR 35.2(b), including contracts, purchase or sales agreements, lease of facilities, *etc.*

[3] Revised Public Utility Filing Requirements, 66 FR 40929, FERC Stats. & Regs., Proposed Regulations, ¶ 34,554 at 34,056–57 (2001).

[4] As discussed below, the Commission is changing the name ''Index of Customers'' to ''Electric Quarterly Report.'' Thus, when we discuss the NOPR and Data Sets Order proposals, and comments in response thereto, we will refer to the Index of Customers, but when we refer to the filing requirements adopted in this final rule we refer to the Electric Quarterly Report.

[5] Attachment A lists the persons and entities who filed comments in response to the NOPR and the abbreviations used to identify them.

8. On December 20, 2001, the Commission issued an order seeking comment on the specific data elements that public utilities would report in the Index of Customers.[6-8] These items were generally described in the NOPR, but the Data Sets Order provided more specificity as to the actual information in each data field. The Data Sets Order also clarified that any ''book out or net out based on the physical characteristics * * * of the transactions must be reported as separate transactions'' [9] and that utilities would be required to ''report book outs and net outs of physical transactions on a disaggregated basis showing each individual leg of the transaction that generated the book out or net out.'' [10] Finally, the Data Sets Order declined to postpone action on a final rule pending the Commission's completion of a review of the information needed for market monitoring purposes.[11] Comments in response to the Data Sets Order were due by January 28, 2002. In response to the Data Sets Order, comments were filed by 19 respondents.[12]

9. Discussion

10. Overview

11. The Commission's Part 35 regulations, 18 CFR Part 35, implement FPA section 205(c), which allows the Commission to prescribe the rules and regulations under which public utilities shall file with the Commission schedules showing their rates, terms, and conditions of jurisdictional services.[13]

12. In its July 26, 2001 NOPR, the Commission proposed to revamp its filing requirements to improve the quality and accessibility of information available to the public and the Commission, while at the same time reducing the filing and reporting burden on public utilities. The Commission specifically examined the filing requirements under Part 35 of the Commission's regulations applicable to the filing of service agreements by traditional public utilities, and the filing of Quarterly Transaction Reports by traditional public utilities and power marketers with a view towards making these filings less burdensome and more usable and understandable. For the most part, based on comments received on the NOPR, the Commission has decided to retain the reported data currently reported for both traditional public utilities and power marketers. However, through this final rule, the Commission will change the format through which these entities will satisfy their FPA section 205(c) reporting responsibilities for filing agreements.

13. The revised filing requirements the Commission is adopting here are one part of a larger and on-going assessment of information needs for regulating and monitoring current and evolving energy markets. The final rule is part of a comprehensive review of information and reporting requirements the Commission is undertaking to assess the adequacy of energy market infrastructure, the adequacy of the supply of electricity and natural gas, the efficiency of market rules and industry compliance with them.

14. The revised filing requirements will allow the Commission to perform its historic regulatory functions over transmission and cost-based power sales while providing information on market-based power sales in a usable format. This will also better allow customers and the Commission to identify situations that indicate the possible exercise of market power that warrant specific investigation. The importance of these goals requires the issuance of this final rule now, before the Commission completes the comprehensive information needs assessment.

15. The revised filing requirements also reflect the Commission's commitment to using information technology to both reduce the burden on reporting entities and to increase the usefulness of the data reported. In Order No. 619,[14] the Commission established an electronic filing initiative to meet the goals of the Government Paperwork Elimination Act, which directs agencies to provide for the optimal use and acceptance of electronic documents and signatures and electronic record-keeping, where practical, by October 2003.[15] Similarly, Office of Management and Budget (OMB) Circular A–130 requires agencies to use electronic information collection techniques where such means will reduce the burden on the public, increase efficiency, reduce costs and help provide better service.

16. The regulations the Commission is adopting here meet these goals by replacing paper filings with electronic filings that will be easy for customers to access and use. The Commission has also decided to establish a place on its own web site for the posting of Electric Quarterly Reports, which will make the reports of all public utilities easily accessible in one place and eliminate the burden on public utilities of having to maintain postings on their own web sites.

17. The revised filing requirements also reflect the Commission's careful balancing of the need for data transparency against the concern that price information can be used for anti-competitive purposes. The Electric Quarterly Reports will be filed 30 days after each calendar quarter. This time delay will greatly reduce the usefulness of the data as a tool for collusion but gives customers data they need for long-term decision making.

18. The proposals adopted in this final rule have five main features. First, public utilities that have standard forms of agreements in their transmission, cost-based power sales tariffs, or tariffs for other generally applicable services will no longer file conforming agreements with the Commission. The filing requirements of FPA section 205(c) will be satisfied by the standard forms of agreements and by the electronic filing of Electric Quarterly Reports. Electric Quarterly Reports will be filed with the Commission, and the Commission will post them on FERC's Internet web site.

19. Second, agreements for transmission, cost-based power sales, and other generally applicable services that do not conform to an applicable standard form of agreement in a public utility's tariff, including agreements with individualized terms and conditions or unexecuted agreements for any service, must continue to be filed with the Commission for approval before going into effect.

[6-8] Revised Public Utility Filing Requirements, 67 FR 67134, FERC Stats. & Regs. ¶ 35,541 (2001) (Data Sets Order).

[9] FERC Stats. & Regs. ¶ 35,541 at 35,806. As explained in the Data Sets Order and as further discussed below, ''book outs'' occur when the cumulative effect of a number of separate power sales between two parties is such that they mutually agree to exchange their obligations to physically deliver power to each other, while maintaining all their other obligations, including payment. ''Net outs'' are an accounting device to minimize offsetting payments.

[10] *Id.*

[11] *Id.* at 35,804.

[12] Attachment A also lists the persons and entities who filed comments in response to the Data Sets Order and the abbreviations used to identify them.

[13] Section 205(c) of the FPA provides:

Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

[14] Electronic Filing of Documents, Final Rule, 65 FR 57088, FERC Stats. & Regs., Regulations Preambles 1996–2000, ¶ 31,107 (2000).

[15] Pub. L. 105–277, Sections 1702–1704.

20. Third, the standard forms of service agreements are not applicable to market-based rate agreements. Public utilities will continue to file requests for market-based rate authority on a case-by-case basis, and agreements under the umbrella tariffs approved in these cases need not be filed with the Commission. However, public utilities (both traditional utilities and power marketers) will include data about their market-based power sales in their Electric Quarterly Reports.

21. Fourth, the Electric Quarterly Report will include contract data and transaction data. The transaction data will provide information about all the power sales the public utility made during the reporting period.

22. For the filing periods ending July 31, 2002 and October 31, 2002, respondents will use the FERC electronic filing system (available on the FERC Internet site, *www.ferc.gov*) using the link labeled e-Filing. Contract data for agreements entered into between April 1, 2002 and June 30, 2002 will be reported in the July 31, 2002 filing and thereafter. Contract data for agreements entered into between July 1, 2002 and September 30, 2002 will be reported in the October 31, 2002 filing and thereafter. Electric Quarterly Reports filed on July 31, 2002 will include transaction data for all power sales made between April 1, 2002 and June 30, 2002. Electric Quarterly Reports filed on October 31, 2002 will include transaction data for all power sales made between July 1, 2002 and September 30, 2002. The public will be able to view and download filed documents from the FERC Internet site using either the RIMS or FERRIS document management systems. In the near future, the Commission will issue an instruction manual to govern the filing of the July 31, 2002 and October 31, 2002 Electric Quarterly Reports. For reports filed after October 31, 2002, this filing format will be replaced by a relational database now under development. The final format will be implemented in a subsequent order. The final format will incorporate the same data sets adopted in this rule.

23. Fifth, in the Data Sets Order, we clarified that we were seeking additional information on book outs and net outs. In this final rule, in response to comments on this issue, we further clarify the book out information that must be reported and drop the requirement to report net outs.

24. The reporting of disaggregated book outs and transaction data for cost-based power sales are new reporting requirements. The burden associated with reporting these data are reflected in the burden estimate and is more than offset by the burden reductions achieved by the reduction in required filings.

25. Regarding the specific data sets adopted in this final rule, we have made only minor revisions to the data sets proposed for comment in the Data Sets Order. These changes for the most part further reduce the amount of data that must be filed in the Electric Quarterly Reports. With these exceptions, the data sets change only the format and not the substance of data to be reported.

26. The current requirements for public utilities to file agreements and Quarterly Transaction Reports detailing their market-based rate transactions are rescinded as of July 1, 2002. Public utilities may begin to file their standard forms of service agreements for Commission approval immediately.[16] Finally, the Commission will take a further look at filing requirements when it completes its Standard Market Design initiative. We will ensure that the data public utilities report are consistent with and support a standard market design.

27. Justification for Actions Taken in this Final Rule

28. This rulemaking was initiated in response to the dramatic changes that have occurred in the electric power industry in recent years as a result of numerous factors, including the onset of open access transmission under Order Nos. 888 and 889[17] and the Commission's approval of umbrella tariffs under which public utilities may make wholesale sales of power at market-based rates. Each of these market-based rate authorizations contained the condition that the public utility (whether a traditional utility or a power marketer) would file Quarterly Transaction Reports detailing the short-term power sales they had made during the period. In addition, traditional utilities were required to file their long-term and short-term service agreements with the Commission. Further, although the Commission had determined that power marketers would file their long-term service agreements with the Commission for approval, this requirement has not yet gone into effect, pending issuance of a further order in the *Southern* proceeding.[18]

29. While the industry has changed dramatically since public utilities began making wholesale power sales at market-based rates, the Commission's filing requirements have not been changed to keep abreast of new developments. The volume of transactions taking place has grown significantly. Moreover, the quality of information provided in quarterly transaction reports has proven to be inconsistent and not always sufficiently informative for the Commission and the public. The number of service agreement filings have also increased. The Commission estimates that, based on the number of filings in Fiscal Year 2000, approximately 2500 annual filings would be eliminated, although this amount will vary from year to year. These factors led the Commission to initiate this proceeding to revise the Commission's filing requirements to improve the quality and accessibility of information available to the public and to the Commission, while at the same time reducing the burden on filing public utilities.

30. We believe that with issuance of this final rule, we accomplish these goals. We note, however, that as actual experience is gained in implementing these procedures, we will be receptive to consensus suggestions that would improve the Data Sets and to recommendations on other technical matters.[19]

31. The revised public utility filing requirements adopted in this final rule create a level playing field vis a vis the filing requirements applicable to traditional utilities and power marketers. While the data to be reported in the data sets reduces public utilities'

[16] Public utilities may wish to file their proposed standard forms of agreements for Commission approval as soon as possible. Until a public utility has standard forms of agreement in place for transmission (OATT), cost-based power sales and other generally applicable services, it must continue filing agreements for those services.

[17] *See* Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 *order on reh'g,* Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.,* Transmission Access Study Group, *et al.* v. Federal Energy Regulatory Commission, No. 97–1715 (D.C. Cir. 2000), *aff'd sub nom.,* New York v. FERC, 122 S. Ct. 1012 (2002); Open Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (Apr. 24, 1996), *order on reh'g,* Order No. 889–A, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g,* Order No. 889–B, 81 FERC ¶ 61,253 (1997), *order on reh'g,* Order No. 889–C, 82 FERC ¶ 61,046 (1998).

[18] *See* note 6, *supra.*

[19] In Electricity Market Design and Structure, 97 FERC ¶ 61,289 (2001), the Commission invited industry to propose a single organization to make recommendations on electric standards. This organization could recommend further revisions to the data sets in the future, if needed. The Commission has not yet made any decisions on a standards-setting organization.

overall reporting burden as compared to existing requirements, it is hoped that the Electric Quarterly Reports' more accessible format will make the information more useful to the public and the Commission and will better fulfill the public utilities' responsibility under FPA section 205(c) to have rates on file in a convenient form and place. The data should provide greater price transparency, promote competition, enhance confidence in the fairness of markets, and provide a better means to detect and discourage discriminatory practices.

32. The reason we are collecting information about book outs is because these transactions, at a minimum, relate to sales for resale of electric energy in interstate commerce, and the information will provide the Commission and the public with a more complete picture of wholesale market activities which affect jurisdictional services and rates, thereby helping to monitor for any market power and to ensure that customers are protected from improper conduct.

33. Likewise, we are collecting information about cost-based power sales to obtain a more comprehensive picture of matters under our jurisdiction. Currently, we are receiving transaction reports about market-based transactions only. While we review the terms and conditions of cost-based power sale agreements, we have had an information void regarding the actual sales and rates that take place under those agreements. We now fill that void.

34. Commenters such as NARUC, PJM, and TDUS applaud the Commission's initiative and the enhanced price transparency the rule will foster. Other commenters express concern that disclosure of the data reported in the Index of Customers will harm them and the market. They also contend the rule is burdensome, although they are much more concerned about confidential treatment. After reviewing these arguments in detail, we find that confidentiality is not warranted. The Commission's primary focus is on implementing section 205(c), promoting competition and protecting customers, and not on protecting competitors. Because almost all the data that will be reported in Electric Quarterly Reports are already publicly available [20] and will be 30–120 days old when reported, negative competitive impact from disclosure is minimized.

35. Response to Comments

36. Reasons for Data Collection

37. Price Transparency and FPA Section 205 Filing Requirements

38. Comments

39. Numerous commenters state that posting or reporting price information regarding sales at market-based rates is unnecessary. Engage states that the Commission has not articulated a sound basis for imposing ''greater'' reporting obligations on public utilities. It argues that, unless the Commission shows there is a specific need for more information or transparency, it is premature to burden the industry with having to provide it.[21] EEI and others [22] argue that there is a mismatch between the data requested and the ends to which they will be used.[23]

40. SCE&G and others note that the Commission only grants market-based rate authority to those entities that lack market power in the relevant geographic and product markets. Thus, they argue, the rates charged by these entities are deemed to reflect the operation of market forces in a competitive market and are inherently just and reasonable. They further argue that, if a customer believes otherwise, it can always use the FPA section 206 complaint procedures or the Commission can institute its own investigation. SCE&G argues that FPA section 206 investigations and the higher standard for approving applications for market-based rate authorization [24] make it unnecessary for the Commission to require the posting of data on individual market-based transactions.[25]

41. Williams and others argue that the Commission has flexibility in satisfying the FPA section 205 requirements for filing and posting of terms, conditions and rates. These commenters argue that the data required to satisfy the FPA section 205 requirements are different from those required to monitor the market, and the two should not be mixed. They state that the Commission's precedent for the filing of individual agreements was based on a narrow justification.[26] They argue that the current transaction reports filed by power marketers more than satisfy the needs of FPA section 205. They argue that, if stricter reporting is needed from traditional utilities, this is not an adequate reason to burden power marketers.[27]

42. By contrast, APPA states that the Index of Customers ''will afford substantial savings to filing utilities, impose uniform requirements on all types of public utilities, and provide much needed data to customers and the public in a much more accessible format.'' [28]

43. Commission Conclusion

44. The Commission concludes that the reporting requirements adopted in this final rule are consistent with public utilities' filing obligations under FPA section 205(c). These requirements will provide transparency of prices and other information for both market-based and cost-based transactions. As shown on Table 1, different types of filing requirements currently apply to public utilities depending on whether the seller is a traditional utility or a power marketer, on whether the sale is short-term or long-term, and on whether the sale is market-based and cost-based. Based on the increase in transactions and the current state of information technology, we believe that the new reporting and filing formats are a better way to satisfy FPA section 205(c) both substantively and procedurally (*i.e.,* electronically rather than through paper formats). The current transaction reporting was designed at a time when market-based rates made up a very small part of trade in the electric power industry and the Internet was not a primary means of transferring and sharing information. We agree with APPA that the electronic filing of what we are now referring to as the Electric Quarterly Report will enhance the public availability of transaction information and secondarily will provide useful information for the Commission's market oversight and monitoring efforts.

45. Attachment B, adapted from Attachment A to the Data Sets Order, shows all the data elements required to be reported in Electric Quarterly Reports and also identifies existing Commission regulations and orders that require the filing and public disclosure of the same data.

46. The argument that the reporting requirements are not necessary because the Commission has approved the rates as just and reasonable overlooks several points. The Commission has held that the approval or acceptance of an umbrella market-based rate tariff, in

[20] *See* Attachment B.

[21] Engage NOPR Comments at 4.

[22] Morgan Stanley, Reliant, APGI, AEP, Dynegy, Engage, Excelon, SCE&G, Tenaska.

[23] EEI NOPR Comments at 7.

[24] SCE&G (NOPR comments at 4) cites a Staff Position Paper in Docket No. EX01–4–000 issued on October 1, 2001, as supporting more stringent standards for approving market-based rates.

[25] SCE&G NOPR Comments at 4, 5.

[26] Williams NOPR Comments at 26.

[27] Williams NOPR Comments at 25.

[28] APPA NOPR Comments at 1.

conjunction with the filing of quarterly reports, satisfies public utilities' filing obligations under FPA section 205(c).[29] The Commission has considerable discretion as to both the content and timing of filing requirements under section 205(c) and we conclude that the transparent price data required by section 205(c) and as reflected in this rule will better help the Commission in monitoring the reasonableness of prices and undue discrimination in the marketplace and also assist the public in filing complaints.[30] Without good information about energy transactions, it is difficult for anyone to prepare a well-documented complaint. In addition, an important goal of this rule is to convert the Commission's existing agreement filing and transaction data filing requirements into an electronic format. For these reasons, we believe that having these data reported, and having them reported in a more accessible format, will benefit the development of robust power markets and provide better protection of customers.

47. Information about Cost-based Transactions under Section 205(c) of the FPA

48. Comments

49. Whereas many commenters opposed the collection and publication of market-based power sales data, AEP, FPL and Consumers Energy argue that the Commission need not collect data about their cost-based power sales agreements. These commenters argue that actual rate and transaction data are not currently reported about cost-based power sales and, as the Commission's current filing requirements satisfy the requirements of FPA section 205(c), this shows that these data need not be reported to satisfy the FPA. They argue that confidentiality arguments are equally applicable to cost-based agreements,[31] and argue that the data are not needed for market monitoring, as the maximum rates are cost-based. They argue, further, that these rates have been reviewed by the Commission, and they are not the result of market power. They also point out that, if the Commission were not to adopt the proposed rule, it would still have authority to request the necessary data to fulfill its market monitoring functions for cost-based power sales agreements.[32] They argue that the Commission has the discretion to determine what is necessary to satisfy the filing requirements of the FPA, and has used that discretion many times in the past.[33] They argue that nothing has changed, nor are there any public policy reasons for the reporting of cost-based transactions.[34]NYSEG argues that pre-2000 agreements should not be reported.[35] Likewise, Pinnacle states that the Index of Customers should be filed only on a go forward basis.

50. Commission Conclusion

51. FPL is correct that the Commission does not currently require public utilities to report transaction data on cost-based power sales. However, this does not mean that the Commission is precluded from determining that reporting of this information is appropriate under the FPA.

52. We disagree with the assertion that nothing has changed to warrant reporting about cost-based rate transactions. First, the volume of trade and the variety of products and services sold in wholesale markets has increased significantly since the time the current requirements for reporting cost-based transactions were designed. Second, only with the advent of sophisticated business information systems and the ease of information transfer and sharing on the Internet has it become practical to make actual rate information open to public inspection for many of these transactions. Moreover, there are a number of ''cost-based'' rate agreements on file at the Commission for which the actual rate is not specified. These agreements include split-the-savings rates, discounts below a maximum rate, and formula rates. Under the new filing requirements, the actual rate being charged under these agreements will now be reported. We conclude that cost-based transaction data should be filed to provide the public with more accurate information as to the rates actually charged.

53. We also reject the suggestion that pre-2000 agreements need not be reported or that the data need only be filed on a go forward basis. The reporting requirement is for any agreement in existence (not expired) as of the reporting period. Contract data for pre-2000 agreements will be included in each public utility's Electric Quarterly Report filed using the final software now under development, and without subsequent revision will remain included in all subsequent Electric Quarterly Reports until the agreement is terminated. The Commission is trying to create a comprehensive picture of all jurisdictional sales. Eliminating pre-2000 data would prevent that from happening. To avoid imposing an additional burden on industry, the pre-2000 contract data will not be collected before the final software is fully developed and implemented.

54. The Transaction Data Will Also Be Useful for Market Monitoring Purposes.

55. Comments

56. EEI and others argue that the Commission is seeking transaction data to conduct market monitoring functions and that the data will not be useful in that endeavor [36]. Edison Mission states that it is unclear how these particular data sets achieve the Commission's objectives and that this exemplifies the continuing dissonance between the policy objectives of the Commission and the proposed data sets, and underscores its position that the administrative burden associated with the reporting requirements outweighs any expected benefits.[37]

57. EEI states that there is a danger in isolating segments of the wholesale industry and imposing reporting requirements that other segments do not have.[38] As an example, EEI states that public power utilities do not have to report, and, as ''recently been borne out,'' public power utilities may manipulate the market.[39] Similarly, APGI states that the California and Pacific Northwest refund proceedings make clear that many of the significant players in the bulk power markets are not subject to the Commission's jurisdiction and would not file an Index of Customers under the Commission's proposals. APGI argues that incomplete data will make analysis of the markets for legitimate purposes difficult because the market data will be incomplete. EEI and Southern contend that streamlining filings and market monitoring cannot be separated. Therefore, EEI and Southern contend, the Commission should focus on the larger and more important market monitoring issue.[40] EEI contends that the need for and type of information required will become apparent once

[29] *See* Power Company of America, L.P. v. FERC, 245 F.3d 839, 845–846 (D.C. Cir. 2001), which affirmed the termination of short-term market-based power sales by power marketers without 60-days' prior notice. Prior notice was not required because the agreements were not required to be filed. Instead, power marketers file umbrella tariffs and after-the-fact quarterly reports.

[30] Any provisions in agreements that purport to bind the Commission to a standard other than the just and reasonable standard of FPA section 206, and that are not explicitly ruled upon and accepted by the Commission, will not be binding on the Commission.

[31] FPL NOPR Comments at 1, 5, 7–8.

[32] FPL NOPR Comments at 4.

[33] FPL NOPR Comments at 5–6.

[34] FPL NOPR Comments at 6–7.

[35] NYSEG Data Sets Comments at 1.

[36] EEI NOPR Comments at 9.

[37] Edison Mission Data Sets Comments at 4.

[38] EEI NOPR Comments at 9.

[39] EEI NOPR Comments at 9.

[40] EEI NOPR Comments at 10.

markets are in place.[41] EEI contends that the transaction data are irrelevant, if not placed in the context of barriers to entry, load response, and net long versus net short trades.

58. Dynegy suggests that, in lieu of the transaction data proposed in the NOPR, the Commission should consider alternative means of monitoring the market, such as its Dynegy Direct on-line trading platform. These platforms, which Dynegy states the Commission has access to, provide real-time gas and electric commodity price information from around the country. Dynegy states that the Commission should make use of this meaningful information as opposed to the meaningless transaction data.[42] Enron suggests market monitoring would be better served if the Commission required the posting of outages, load flow studies, generation injection, consumption at nodes, and transmission system configuration. Such physical data, Enron contends, provide a better basis for price determination.[43] Enron also notes that the Commission's market monitoring goals may be better served by the removal of market barriers and the implementation of clear and consistent interconnection policies rather than adopting new reporting requirements.[44] Duke summarized its stance by recommending that the Commission should narrow its focus on information collected, and instead focus more on ''global market trends'' to monitor the markets.[45]

59. Commission Conclusion

60. While the Commission agrees that the reporting of transaction data proposed in this rulemaking may be used to help monitor the market, this is but a small piece of a much larger information assessment and monitoring effort the Commission will undertake. The Commission is already comprehensively assessing what information is currently filed by all the entities we regulate (electric, gas, and oil), what we no longer need to have filed for market monitoring purposes, and what will be needed in the future for comprehensive market monitoring purposes. The primary purposes of the reporting requirements adopted in this rule are to streamline and refine the current reporting requirements for public utilities and assure greater consistency in public utility compliance with FPA section 205(c).

61. EEI is correct that the transaction data reporting does not cover all transactions, *i.e.,* sales made by entities not subject to the Commission's rate jurisdiction under FPA sections 205 and 206. Congress has determined that FPA section 205(c) requirements extend only to public utility sellers. This rule is consistent with the Commission's statutory authority under FPA section 205(c). Moreover, while these limitations affect the secondary benefits of the proposal (*i.e.,* market monitoring) they do not interfere with the primary benefit of the proposal (*i.e.,* enhancing the rate information disclosed to the public under FPA section 205(c)).

62. The Commission will consider the commenters' suggestions on approaches to market oversight as it continues to expand this function. However, with respect to the commenters' suggestion that we rely on a single trading platform for our market monitoring data, while we believe that such platforms provide excellent real-time market data, they represent only one of the many sources of data that will support an effective market monitoring function.

63. The Commission Will Not Defer Action Until Completion of a Comprehensive Review of Market Monitoring Functions.

64. A number of commenters argued that the Commission should postpone action on a final rule until we complete a comprehensive assessment of our market monitoring efforts. In response to these arguments, the Data Sets Order included the following statement:

> [w]e find these arguments without merit because, although the Commission has not completed its comprehensive review of market monitoring data, we believe that the information proposed to be reported would be the minimum needed for market monitoring purposes, even if we later determine that additional data also will be necessary. Moreover, as we noted in the NOPR, we believe that the proposed reporting requirements would improve the quality of information reported to the Commission by prescribing that public utilities report information in a consistent, accessible format.[46]

65. Commission Conclusion

66. As noted above, the Commission is currently performing a comprehensive analysis of current information filings and what will be needed in the future. Theoretically, it may be preferable to wait and undertake the Part 35 ''clean-up'' at the same time. However, as a practical matter we are faced with a very rapidly changing marketplace and a lack of quality and consistency in what public utilities currently are filing pursuant to their market-based rate authorizations. The comprehensive information assessment we are undertaking will take more time to complete and we cannot afford to delay implementation of any realignment of our filing requirements, in light of current market conditions, including recent market dysfunctions in the West and major utility bankruptcies.

67. We reject the implication that the Commission cannot justify revising its reporting requirements unless it undertakes a comprehensive review of its market monitoring program. Commission reporting requirements rarely, if ever, spring from a single, comprehensive initiative. They evolve over time as the Commission's experience and understanding grows. For example, the Commission's requirements for market-based rates have evolved over the past 14 years and continue to change.[47] If the Commission had to wait until all things were known or decided before taking its first step, it would not be able to adequately protect customers pursuant to its statutory obligations under the FPA.

68. Further, as the Commission develops its market oversight and monitoring functions, we will explore what additional information is needed to enhance our market monitoring abilities, including ways to obtain relevant information about transactions in which non-public utilities are sellers. But we will not delay implementing the improved data reporting requirements adopted in this rule simply because non-public utilities are not covered by the rule. The Commission is aggressively pursuing the important market monitoring issues raised by EEI and Southern. However, although this information is likely to be a core component of the Commission's market monitoring program, our adoption of this final rule need not await these developments.

69. Finally, while the FPA's long-standing statutory mandate is unchanged, the Commission must adapt its filing requirements for public utilities to keep pace with recent growth in the number of transactions and in available information technology. The revised filing requirements promulgated in this final rule are needed so that the Commission can continue to properly fulfill its statutory responsibilities.

[41] EEI NOPR Comments at 10.

[42] Dynegy NOPR Comments at 7.

[43] Enron NOPR Comments at 9.

[44] Enron NOPR Comments at 10.

[45] Duke Data Sets Comments at 7.

[46] Data Sets Order. FERC Stats. & Regs. ¶35,541 at 35,804.

[47] *E.g.,* Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization, 97 FERC ¶ 61,220 (2001).

70. Electric Quarterly Reports Will Be Implemented in Two Phases

71. Comments

72. Several commenters [48] note that the Commission has not issued the Index of Customers Manual and ask the Commission for a Technical Conference. EEI, Southern, and Enron [49] request participation in the Technical Working Groups that the Commission suggested might follow issuance of the NOPR. EEI and Southern request that the Technical Working Groups include industry representatives. These representatives, EEI states, can also provide the Commission with input as to the impact Index of Customers will have on the industry.[50] EEI suggests Technical Working Group topics could include: how to report prices based on indices; [51] how to report pricing information not available until after the reporting period; how to report blended prices; how to report long-term agreements filed with the Commission; and settlement agreements/grandfather agreement reporting.[52] FirstEnergy supports EEI's position but believes that the Technical Working Groups should meet before issuance of a final rule.[53]

73. EEI is concerned that the NOPR is unclear about the parameters of the data to be reported. For example, EEI seeks clarification as to which services and/or markets must be reported: long and/or short-term; day ahead, 10-hour ahead, hour ahead, 10-minute ahead and/or 5-minute ahead markets; ancillary services; and new services.[54] Consumers Energy states several of the data sets would be difficult to obtain, such as buyers' DUNS numbers.[55]

74. Commission Conclusion

75. These comments were filed in response to the NOPR. The issuance of the Data Sets Order, issued subsequent to the NOPR, resolved a number of these questions, clarified issues about the data sets, and gave the content information that a manual would have had.

76. Before the final software for the Electric Quarterly Report is implemented, there will be an opportunity for utilities to test it and provide feedback. Instructions for the final format of the Electric Quarterly Report will be issued with the implementation of the software. This matter is further discussed in the implementation section. Issuance of this final rule need not await these developments. As discussed above, the Electric Quarterly Reports for the filing periods ending July 31, 2002 and October 31, 2002, will use the FERC electronic filing system (available on the FERC Internet Web site, *www.ferc.gov*) using the link labeled e-Filing. A sample Microsoft Excel format document will be posted on the FERC internet site prior to the filing period ending July 31, 2002. In the near future, the Commission will issue an instruction manual to govern the filing of the July 31, 2002 and October 31, 2002 Electric Quarterly Reports.

77. Confidentiality Issue

78. While NARUC, TDUS, and PJM support the Commission's proposals and the enhanced price transparency they will bring about, other commenters argue that we should extend confidential treatment to cover market-based transactions to prevent harm to competitors and to the market generally.

79. The Commission finds that the disclosure requirements proposed in the NOPR are appropriate to give customers better information to benefit from competitive power markets, and the disclosure requirements adopted in this rule differ from the proposals in the NOPR in only one respect. Points of Delivery (PODs) will be reported at the level of detail specified in the agreement. With this change, the Commission believes that the information that will be disclosed better fulfills the mandate of FPA section 205(c) to make rate and agreement information available to the public ''in a convenient form and place,'' and will enhance competitive markets.

80. The Transaction-Specific Information Is Not Commercially Sensitive and Will Not Be Given Confidential Treatment

81. Comments

82. Some commenters applaud the Commission's efforts to make public utility rate filings more transparent. For example, NARUC states that competition and robust markets demand more, not less, transparency of data. It applauds FERC for giving priority to this issue and states that the greater transparency that the Commission's proposals will provide will be helpful not only to the Commission, but to state Commissions and the public.[56] NARUC states that transparency is important to ensure well-functioning electricity markets and to ensure the integrity of electricity markets.[57] Likewise, TDUS states that there is a need for greater data transparency in competitive wholesale markets.[58] PJM also states its support for the Commission's proposals and for the level of detail provided by the proposed data sets.[59] PJM states that the ''principle benefit of the proposed rulemaking is its potential to make more market information public and to make it available in a much more accessible, convenient, and usable form.'' PJM views this as helpful to its own market monitoring activities and as even more important to the public interest than the burden reductions achieved by the rule.[60]

83. Southern and others argue [61] that disclosure of data on power sales could cause competitive harm, and that there is no countervailing policy requiring disclosure.[62] Williams argues that the proposed mandatory disclosure of sensitive and confidential commercial and financial information would create unwarranted market risks and may undermine competition.[63]

84. Southern contends that competitors would be harmed by ''their competitors'' free access to information about their supply curve and about their innovative product and marketing efforts that directly benefit their customers.'' [64] Southern contends this would harm customers because public utilities will be less likely to engage in such innovative efforts.[65] Moreover, Southern argues customers are likely to be harmed by the disclosure of information about the prices they will pay and because the required disclosures will facilitate collusion among suppliers on output and pricing decisions.[66] In addition, National Grid

[48] EEI, Southern, Enron, FirstEnergy, PSEG, Consumers Energy.

[49] EEI NOPR Comments at 2, Southern NOPR Comments at 19, Enron NOPR Comments at 6, 7.

[50] EEI NOPR Comments at 6.

[51] EEI NOPR Comments at 6.

[52] EEI NOPR Comments at 7.

[53] First Energy NOPR Comments at 3.

[54] EEI NOPR Comments at 8.

[55] Consumers Energy NOPR Comments at 5. ''DUNS numbers'' refer to the Data Universal Numbering System, maintained by Dunn and Bradstreet.

[56] NARUC Data Sets Comments at 2–3.

[57] *Id.*

[58] TDUS NOPR Comments at 8, 9.

[59] PJM Data Sets Comments at 2.

[60] *Id.*

[61] Southern NOPR Comments at 5, 9, FP&L, NOPR Comments at 3, Mirant NOPR Comments at 1, Pinnacle NOPR Comments at 8–10, PSEG NOPR Comments at 4, 10–12.

[62] Southern NOPR Comments at 5, 9.

[63] Williams NOPR Comments at 1, 11–14.

[64] Southern NOPR Comments at 4. An example of a ''supply curve'' can be found in Atlantic City Electric Company and Delmarva Power & Light Company, 80 FERC ¶ 61,126 at 61,406 (1997) where the applicants listed all of the generating units that were their potential suppliers in ascending cost order and referred to this list as the suply curve.

[65] Southern NOPR Comments at 4, Williams NOPR Comments at 16–17. CMS, Reliant, EEI, and Tenaska make similar claims.

[66] Southern NOPR Comments at 4, Williams NOPR Comments at 17–19.

argues that the regulated industry has invested large sums in the development of trading strategies and risk management tools and this should not be made available to free rider competitors.[67]

85. Williams argues[68] that the Commission must exercise its broad discretion under FPA section 205(c) in a manner that not only respects its obligations under that provision but also its obligations under Freedom of Information Act (FOIA)[69] and the Trade Secrets Act.[70] Williams further argues that the Trade Secrets Act prohibits the public release of information qualifying under FOIA Exemption 4, *i.e.,* the exemption for ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' Thus, Williams argues that any rule that mandates public disclosure without exception, thereby removing an entity's opportunity to show that the information is exempt under FOIA and protected from disclosure by the Trade Secrets Act, is necessarily unlawful.[71]

86. SCE&G fears that with transaction data available in electronic format, public utilities will have the ability to develop an accurate understanding of the trading policies, strategies, and practices of their competitors. Thus, allowing unfettered access to such data, could have the effect of changing the behavior of market participants to the detriment of the market and consumers. For example, it argues that public utilities might refrain from conducting transactions or signing service agreements with new customers near the end of a reporting quarter and instead wait until a new quarter has begun in order to delay the availability of information to its competitors.[72]

87. Commission Conclusion

88. The argument that the rule calls for the disclosure of commercially sensitive information that should be given confidential treatment overlooks the key fact that nearly all of the information claimed to be confidential is already being publicly disclosed on a quarterly basis pursuant to the Commission's regulations and as set forth in prior determinations.[73] This can best be illustrated by Attachment B to this rule, a table demonstrating that, in main part, the information to be reported in Electric Quarterly Reports is currently required to be reported quarterly by public utilities and publicly disclosed.

89. The Data Set Order established two new data elements: DUNS number, and the contact's e-mail address. No objections were made to either of these being made publicly available.

90. The OASIS SC&P Document requires the reporting of customers' DUNS numbers as part of OASIS' electronic data interchange information. The Commission will now also require DUNS numbers for all customers and sellers reported in Electric Quarterly Reports. This puts both the power sale and the transmission reporting requirements on the same basis. The Commission is using public utility DUNS numbers to reduce possible confusion among similarly named, but different, providers of service. DUNS are available at no cost.[74]

91. The Commission is also requiring for the first time the contact's e-mail address. The Commission is proposing that utilities will file Electric Quarterly Reports using the Internet. E-mail uses the Internet, and it is a common business tool available to the industry. E-mail will facilitate any discussions between the Commission and the public with regard to the formatting or completeness of the filed material.

92. The controversy over disclosure is limited to those that concern rates and does not concern the new elements. But FPA section 205(c) requires public utilities to disclose their rates and contracts for all transmission and sales subject to the jurisdiction of the Commission. As a result, these rate elements as well as the data public utilities currently file are not protected from disclosure under Exemption 4 of the FOIA or by the Trade Secrets Act. Although the Commission has discretion to determine the time and form for disclosure, the underlying decision to disclose rate and contract information was made by Congress.

93. Because nearly all of the information at issue is already publicly available, we give little credence to predictions of competitive harm, based on conjecture, and which are not supported by evidence of actual harm from the Commission's current reporting requirements. Moreover, the allegations of harm are exactly the kind of ''conclusory and generalized allegations of substantial competitive harm'' that do not suffice to show substantial harm to a company's competitive position or to competition in general.[75]

94. We also disagree with predictions that disclosure would be harmful to the market generally. To the contrary, we believe that disclosure will promote competition and make the market operate more efficiently. We agree with NARUC that competitive and robust markets demand more, not less, transparency of data and this final rule advances that goal. As to concerns that disclosure might lead to illegal price fixing and collusion, the Commission and other federal agencies will take strong actions if public utilities engage in such illegal acts. However, we reject the arguments that this will be the outcome of providing the public with better price information. To the contrary, the data will help the Commission and the public detect instances of undue discrimination and abuses of market power.

95. Although nearly all of the information at issue is already publicly available under the Commission's existing filing requirements, with the requirements we are adopting in this final rule, the public will be provided with better access to the information and the format will make the information more consistent and understandable. As a result, we find that the filing requirements we are adopting in this final rule better meet the statutory requirement of FPA section 205(c) to make rate information accessible in a convenient place and form.

96. Our decision to disclose rate information is consistent with judicial directives to focus on the needs of the overall market, rather than focusing on protecting the interests of individual competitors within the market.[76] For

[67] National Grid NOPR Comments at 5.

[68] Williams NOPR Comments at 4.

[69] 5 U.S.C. 552 (1994).

[70] 18 U.S.C. 1905 (1994).

[71] Williams NOPR Comments at 3–4, 20–24.

[72] SCE&G NOPR Comments at 6.

[73] Attachment B identifies the relevant Commission regulations and prior determinations that each data element is to be made publicly available.

[74] DUNS numbers are available at http://www.dnb.com.

[75] *See, e.g.,* Center for Auto Safety v. NHTSA, 244 F.3d 144, 148 (D.C. Cir. 2001) (*Center for Auto Safety*). Commercial information is ''confidential'' under Exemption 4 of FOIA if its disclosure is likely either to: (1) Impair the government's ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. As to ''substantial harm,'' a company making this claim must ''show with 'sufficiently specific' evidence that disclosure is likely to cause substantial competitive harm.'' A company ''need not conduct a sophisticated economic analysis of the likely effects of disclosure,'' but ''conclusory and generalized allegations of substantial competitive harm'' will not suffice.

[76] *See* Open Access Same-Time Information System and Standards of Conduct, 83 FERC ¶ 61,360 at 62,456 & n.48 (1998) in which similar concerns led us to unmask source and sink data reported on utilities' OASIS sites.

This focus on the competitive process, rather than on the fortunes of particular competitors was also present in Town of Concord v. Boston Edison Company, 915 F.2d 17 (1st Cir. 1990), *cert. denied,* 499 U.S. 931 (1990), where the court found that,

example, in *Alabama Power Company* v. *FPC,* 511 F.2d 383, 390–91, (D.C. Cir. 1974) (*Alabama Power*), the court affirmed the Commission's refusal to amend a rule that required affected utilities to publicly disclose their monthly Form No. 423 reports of fuel purchases. The court in *Alabama Power* considered various arguments that ''disclosure of information would lead to bargaining disadvantages in future fuel contract negotiations,''[77] as well as opposing arguments that any bargaining disadvantage as a result of disclosure would merely reflect the removal of information imperfections in an otherwise competitive market thereby facilitating efficient allocation of resources.[78]

97. The court concluded that the dissemination of information in a competitive market tends to ''facilitate prompt adjustment to the market clearing price by all parties to transactions.''[79] Here, commenters opposing disclosure fear that, by making this information more accessible and easy to understand, its disclosure will take on added importance. However, easy access to contract and transaction data will give customers a basis on which to compare a variety of suppliers and monitor for market power and anti-competitive behavior. This information will allow customers to reap further benefits from open access transmission by giving them improved tools to use in making buying decisions. In addition, the Commission hopes that making this information more understandable and accessible will promote competition and confidence in the fairness of the market.

98. Disclosure will help the public detect and bring to the Commission's attention any instances of undue preferences, discrimination, or market power abuse by public utilities[80] and will promote confidence in the fair operation of the market. Moreover, the mere fact that this scrutiny will occur will have a prophylactic effect and discourage improper conduct. However, the Commission can only take action to remedy abuses, if the Commission has available adequate information to detect them. In our view, the benefits of disclosure strongly outweigh the generalized claims of potential harm to competitors, unsupported by actual evidence of harm to competitors or to the market.[81]

99. There Is Good Reason to Treat Data in Electric Quarterly Reports Differently than Natural Gas Sales Data

100. Comments

101. Southern cites the Commission's *Reporting of Natural Gas Sales to the California Market,* 96 FERC ¶ 61,119 at 61,466–68 (2001) *order on reh'g,* 97 FERC ¶ 61,029 (2001) (*California Gas Order*), where the Commission found that gas sellers' contract and transaction data fall under FOIA Exemption No. 4 as trade secrets and commercial or financial information obtained from a person and privileged or confidential; and that potential harm from public disclosure outweighs any public interest.[82] Similarly, Mirant argues that these kinds of data are treated confidentially by the Department of Energy, PJM Interconnection LLC, New York ISO, ISO New England, and the California ISO.[83] Thus, they argue that the Commission should make the same finding here.[84]

102. Commission Conclusion

103. The Commission found that gas sellers' contract and transaction data could be considered trade secrets and commercial or financial information and that disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained. The Commission then found that the potential of competitive harm from public disclosure outweighs any public interest in disclosure of data concerning individual sales transactions, and stated that the Commission would not disclose individual sales information to the public.[85] The finding of competitive harm, however, was based on the unregulated nature of much of the data sought there. In the *California Gas Order,* we acknowledged that not all parties from whom information was requested were jurisdictional under the Natural Gas Act. We further acknowledged that it was likely many of the gas sales for which information was requested were not or are no longer jurisdictional services under the Natural Gas Act. Confidential treatment of natural gas sales data was necessary in the *California Gas Order* to encourage non-jurisdictional entities to provide data to the Commission.

104. By contrast, the regulations and reporting requirements adopted in this final rule apply only to public utilities and are being adopted pursuant to FPA section 205(c). Under this statutory authority, the Commission is prescribing rules and regulations for the format jurisdictional public utilities must follow when they file with the Commission data related to their jurisdictional activities. The Commission is not applying this rule to non-public utilities or non-jurisdictional services.

105. The purpose of the instant rule differs from the purpose of the *California Gas Order* proceeding. The *California Gas Order* had the limited objective of requesting data from the industry to aid in prescribing rules and regulations necessary to carry out the Commission's responsibilities, and seeking information to serve as a basis for recommending further legislation to the Congress. The Commission terminated the data collection upon determining the conditions no longer required additional reports.[86] This is in contrast to the purpose of this rule, which is to establish rules and regulations governing the required format and content of contract and transaction data for purposes of reporting and public disclosure pursuant to FPA section 205(c). In these circumstances, there is a reasoned basis for treating electricity sales differently from the cited natural gas sales.

106. Similarly, information collected by the Department of Energy is pursuant to different statutory authority. Although ISOs keep bid data information confidential for six months, this rule does not require the reporting of bid data.

a practice is not ''anticompetitive'' simply because it harms competitors. After all, almost all business activity, desirable and undesirable alike, seeks to advance a firm's fortunes at the expense of its competitors. Rather, a practice is ''anticompetitive'' only if it harms the competitive process. It harms that process when it obstructs the achievement of competition's basic goals—lower prices, better products, and more efficient production methods. [915 F.2d at 21, 22.]

[77] *Alabama Power,* 511 F.2d at 390.

[78] *Id.*

[79] *Id.* at 391, n.13.

[80] We note that the Supreme Court recently affirmed the Commission's Order No. 888 and the Commission's authority to remedy undue discrimination in the provision of interstate transmission services. *See* note 17, *supra.* The Commission is equally concerned about undue discrimination in wholesale power sales and in the provision of other jurisdictional services.

[81] The Commission recognizes that any person submitting a document to the Commission may request privileged treatment by claiming that some or all of the information contained in a particular document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act. *See* 18 CFR 388.112. Nevertheless, as explained, the information required to be filed by this rule must be public to achieve the purpose of its being filed in the first instance. Therefore, our expectation is that the Commission will deny requests for confidential treatment of these materials.

[82] Southern NOPR Comments at 8, 19–24.

[83] Mirant NOPR Comments at 2, 5–7, 9–11.

[84] AEP NOPR Comments at 5,7, EEI NOPR Comments at 4, FP&L NOPR Comments at 3, Reliant NOPR Comments at 3.

[85] 96 FERC at 61,466–468.

[86] Reporting of Natural Gas Sales to the California Market, notice of decision not to seek extension of reporting requirement, 67 FR 5585, 98 FERC ¶ 61,251 (January 30, 2002).

107. Transparency Regarding the Rates, Terms, and Conditions of Market-based Power Sales

108. Southern argues that the NOPR fails to consider that market-based rates have only been granted in instances where the Commission has found that an entity lacks market power to manipulate markets or act in an anti-competitive manner.[87] Thus, it argues, no across-the-board rule is needed covering a utility's wholesale power sales functions.

109. Commission Conclusion

110. When a public utility applies for authority to make wholesale sales at market-based rates, it presents evidence that it either lacks market power or has taken adequate steps to mitigate its market power.[88]

111. However, the Commission's market-based rate findings do not absolve the Commission from its continuing responsibility to assure that rates are just and reasonable. Because the Commission is concerned that circumstances may change, it imposes standard conditions on every market-based rate approval. The standard conditions include: the requirement to file Quarterly Transaction Reports, which are made available for public review; and the requirement to submit data on a triennial basis to confirm that the public utility continues to lack (or has mitigated) market power. The Electric Quarterly Reports will enable the Commission and others to ensure that market-based rates remain justified over time.

112. Disclosure Does Not Compromise National Security

113. EEI argues that the Commission needs to be sensitive to possible national security consequences from revealing vulnerabilities in the nation's infrastructure.[89]

114. Commission Conclusion

115. The Commission takes concerns about revealing vulnerabilities in the nation's infrastructure very seriously. Indeed, the Commission issued a policy statement in Docket No. PL02–1 on October 11, 2001, announcing the removal from the Internet and the Public Reference Room of certain documents such as oversized maps that detail the specifications of energy facilities.[90] Subsequently, on December 16, 2001, the Commission issued a Notice of Inquiry on the possibility of amending its rules to address the public availability of critical energy infrastructure information.[91] The information at issue here, however, does not present comparable concerns, as it does not reveal any system vulnerabilities. We therefore will not grant confidential treatment to Electric Quarterly Reports on this basis.

116. Proposals That Would Avoid Disclosure of Transaction-Specific Data Are Inadequate

117. CMS argues that, in devising filing rules for power marketers, the Commission determined that, to encourage the emergence of a competitive wholesale power market, power marketers would not be required to follow the same filing requirements as traditional utilities. CMS argues that this policy should be retained, because a fully competitive power market has not yet emerged.[92] Morgan Stanley argues that power marketers should be allowed to file certain transaction information on a confidential basis.[93]

118. Williams argues that, in lieu of adopting the proposals in the NOPR, the Commission should make only the reporting requirements currently applicable to power marketers applicable to non-marketers.[94]

119. SCE&G suggests the Commission lengthen the time before transactions must be reported. It argues that this would help to alleviate concerns over the harm to competitors caused by the dissemination of sensitive data.[95] Engage argues that the Commission should extend the reporting interval from quarterly to semi-annually and not require disclosure until (30) days after a transaction is completed.[96] Excelon argues that the Commission should ensure that data reported is current enough for market analysis, but stale enough to prevent harm to competitors filing the information.[97] Another suggested alternative is to have public disclosure of aggregated data.[98] Advocates of this approach argue that disaggregating data regarding individual sale transactions offers no benefit.[99]

120. Commission Conclusion

121. None of these suggested alternatives is adequate to meet the goals the Commission is seeking to accomplish in this rulemaking. Customers need data about power sales to realize the competitive advantages of open access transmission and to have confidence that markets are competitive. First, as to Williams' suggestion to disclose only summary data, this argument is based on the false premise that power marketers' quarterly transaction reports currently are limited to summary and aggregated data.[100]

122. Second, the suggestion to extend the lag before the information becomes publicly available overlooks the fact that the existing Quarterly Transaction Reports and the Electric Quarterly Reports that will replace them already create a lag of 30–120 days. This lag reduces any potential harm to competitors that could result from the disclosure of price data.

123. Nor will the Commission allow the data to be aggregated. Customers of market-based rate transactions are not each charged the same rate. Aggregated data do not provide sufficient disclosure of rates to the public. Further, market power is possible not just over a market area. It can also be exercised over individual customers. Aggregated data would prevent customers from detecting (and filing a complaint with the Commission about) improper conduct and would be less helpful in promoting competition. We conclude that section 205(c) does not allow the aggregation of this information. [101]

124. Moreover, aggregated data have never been allowed by the Commission for power marketers' Quarterly Transactions Reports. In *Enron*,[102] Enron requested (1) waiver of detailed purchase and sales transactions, and (2) permission to report the data on an aggregate basis (*i.e.,* without identifying the other parties or the terms of the individual transactions) or to file on a confidential basis.[103]

125. The Commission denied Enron's waiver requests and directed Enron to submit a quarterly informational filing on an unaggregated, public basis. Specifically, we stated:

[w]e will deny Enron's request to modify the reporting requirement in any way. Enron

[87] Southern NOPR Comments at 18.

[88] *See, e.g.,* Pinnacle West Capital Corp., Arizona Public Service Company and APS Energy Services Company, Inc., 91 FERC ¶ 61,290 (2000), *reh'g denied,* 95 FERC ¶ 61,300 (2001) and Pinnacle West Energy Corp., 92 FERC ¶ 61,248 (2000), *reh'g denied,* 95 FERC ¶ 61,301 (2001).

[89] EEI NOPR Comments at 5–6.

[90] *See* Treatment of Previously Public Documents, 97 FERC ¶ 61,030 (2001).

[91] *See* 67 FR 3129 (Jan. 23, 2002).

[92] CMS NOPR Comments at 4.

[93] Morgan Stanley NOPR Comments at 9.

[94] Williams NOPR Comments at 4.

[95] SCE&G NOPR Comments at 8, 9.

[96] Engage NOPR Comments at 11.

[97] Excelon NOPR Comments at 6.

[98] Enron NOPR Comments at 9, PSEG NOPR Comments at 5, Pinnacle NOPR Comments at 9–10.

[99] EEI NOPR Comments at 7.

[100] *See* Enron Power Marketing, 65 FERC ¶ 61,305 at 62,406 (1993) (*Enron*), where the Commission denied Enron's request to file aggregated data in Quarterly Transaction Reports.

[101] *See* Maislin Industries U.S. Inc. v. Primary Steel, Inc., 497 U.S. 116 (1990) (*Maislin*) and Southwestern Bell Corp. v. FCC, 43 F.3d 1515 (D.C. Cir. 1995) (*Southwestern Bell*).

[102] *Id.*

[103] *Id.* at 62,404.

misreads the Commission's purpose in requiring quarterly reporting of a marketer's transactions. None of our orders indicates that the purpose for requiring information from power marketers is to assess the size and strength of the market. On the contrary, the Commission has indicated that informational filings are necessary so that the marketer's rates will be on file as required by section 205(c) of the FPA, 16 U.S.C. § 824d(c), to evaluate the reasonableness of the charges, and to provide for ongoing monitoring of the marketer's ability to exercise market power * * * .

With respect to Enron's request that its informational filings be afforded confidential treatment, we note that we previously denied a similar request in *National Electric Associates Limited Partnership,* 50 FERC ¶ 61,378 (1990). In that case, the marketer sought to reserve the right to seek confidential treatment of its informational reports. The Commission rejected this request, stating that section 205(c) of the FPA requires all public utilities, including power marketers, to file with the Commission for public inspection all rates, charges, classifications and practices, as well as any contracts that affect or relate to such charges, classifications and practices. For the same reason, we will deny Enron's request for confidentiality.[104]

126. On August 9, 1994, in *Heartland Energy Services, Inc.,* 68 FERC ¶ 61,223 (1994), the Commission held Heartland, an affiliate of Wisconsin Power and Light Company, to the reporting standards in *Enron.*[105] Heartland's filing was the first application by an affiliated power marketer for open-ended authorization to transact at market-based rates.

127. The Commission also rejected the use of aggregated data in *Commonwealth Electric Company,* 78 FERC ¶ 61,191 (1997). In this order, the Commission directed the reporting of prices for short-term transactions and the reporting of separate prices for wholesale generation, transmission and ancillary services in the quarterly reports. Pursuant to Order Nos. 888 and 888–A, the Commission stated:

[a]ccordingly, we will direct the Applicants to revise their market-based power sales tariffs to state explicitly separate prices for generation, transmission and ancillary services.[106]

128. Further, the Commission stated:

[W]e are permitting the Applicants to report prices for short-term transactions * * * in quarterly summaries * * * the separate prices for the unbundled services in such short-term transactions should be included in those quarterly summaries.[107]

129. Therefore, the requirement to report disaggregated data is not new, and this final rule merely continues our prior practice.

130. Power Marketers and Traditional Utilities Are Treated Equally

131. Williams suggests, as an alternative to disclosure, that, if the Commission wishes to streamline its reporting requirements and move toward a uniform system applicable to power marketers and traditional utilities alike, it could merely extend the requirement to file quarterly transaction reports, currently applicable to power marketers, to non-marketers. This approach, it argues, would achieve true efficiency while protecting confidential data and promoting competition.[108]

132. Conversely, CMS argues that, in devising filing rules for power marketers, the Commission determined that, to encourage the emergence of a competitive wholesale power market, power marketers would not be required to follow the same filing requirements as traditional utilities. This policy should be retained, because a fully competitive power market has not yet emerged.[109] Morgan Stanley argues that power marketers should be allowed to file certain transaction information on a confidential basis.[110]

133. Commission Conclusion

134. In this rulemaking, the Commission affirms the principles outlined in *Southern.* We agree with Williams that there should be consistent reporting requirements for both power marketers and traditional utilities. We will apply equal filing requirements for both traditional utilities and power marketers. These filing requirements will provide information consistent with the requirements of FPA section 205(c). The public interest in the disclosure of the information to be reported is the same regardless of whether the agreements and power sales at issue are made by power marketers or traditional utilities.

135. However, this in no way eliminates the need to improve our existing Quarterly Transaction Reports. While the Commission could, on a case by case basis, address the inconsistencies and inadequacies of current quarterly transaction filings, we believe it would be more productive and efficient to correct the problems we are experiencing regarding the quality of Quarterly Transaction Reports by replacing them with the Electric Quarterly Reports mandated by this rule.

136. Burden Issue

137. *The Information Collections Do Not Impose an Unreasonable Burden*

138. Comments

139. NARUC states that competition and robust markets demand more, not less, transparency of data and it applauds the Commission for giving priority to this issue.[111] It also endorses reducing the number of routine agreements to be processed by the Commission so that greater resources can be devoted to the complex and important issues that arise in competitive markets. These resources are needed, NARUC states, because ''achieving well-functioning electricity markets will require diligent oversight by both FERC and State utility commissions.''[112] PJM agrees that the revised filing requirements will achieve reductions in the administrative burdens on the Commission and regulated companies, but views these as less important than the greater public benefit that will result from making market information available in a much more accessible, convenient, and usable form.[113]

140. The California Commission argues that the Commission's electronic filing requirements should complement, not replace, the Commission's existing filing requirements. The California Commission would have public utilities file Indexes of Customers, but would also retain the current requirement for public utilities to file for approval of all new agreements, with notice to the public, so that third parties such as state Commissions can review those agreements before they become effective, and file protests where appropriate.

141. By contrast, many commenters (*e.g.*, EEI, Avista, Puget, Wisconsin, and Otter Tail) state that the transaction data required by this rule is a large increase in content and detail as compared to the data currently required in power marketers' Quarterly Transaction Reports. While they support efforts to minimize the reporting burden and to modernize data collection methods in general, they state that the Index of Customers will not achieve these goals. Avista, in a representative comment states:

[f]ar from 'minimizing the reporting burden on public utilities,' the December 20 Order imposes a reporting requirement template

[104] 65 FERC at 62,406.

[105] *See also* LG&E Power Marketing, Inc., 68 FERC ¶ 61,247 (1994) and Detroit Edison Company, *et al.,* 80 FERC ¶ 61,348 (1997).

[106] 78 FERC at 61,813.

[107] 78 FERC at 61,813.

[108] Williams NOPR Comments at 2, 4.

[109] CMS NOPR Comments at 5.

[110] Morgan Stanley NOPR Comments at 8, 9.

[111] NARUC Data Sets Comments at 2–3.

[112] *Id.* at 2.

[113] PJM Data Sets Comments at 2.

that will create undue burdens on public utilities and will result in the disclosure of commercially sensitive information. Thus, it is clear that the Commission's efforts to 'streamline' regulations in this proceeding is likely to have a detrimental effect on wholesale electric power markets, and should be modified * * * .[114]

142. Likewise, Wisconsin Electric states that,

[t]he proposal will require significant efforts on the part of [the utility] * * * to convert all of the relevant data, which is currently maintained in disparate databases, into the format requested by the Commission. It will also require that Wisconsin Electric expend significant resources to develop and maintain the database necessary to post the relevant information on its Web site. [115]

143. Puget and Avista state that the Commission:

has greatly underestimated the potential reporting burden of the proposed requirements and the complexity and cost inherent in posting such large volumes of data on utility web sites. FERC should reduce the number of proposed data elements and eliminate or significantly simplify the requirement to post information on utility web sites.[116]

144. Otter Tail argues that the filing requirements would be onerous for small entities.[117] Edison Mission states that the three year requirements for maintaining the information in a database adds to the cost.[118]

145. Commission Conclusion

146. We believe the views expressed by NARUC, TDUS, and PJM more accurately assess the burdens and benefits of this final rule than those argued by other commenters.

147. The Commission has balanced the need for data with efforts to minimize the burden on filers. Specific comments about the burden of creating an electronic file, creating an electronic file of transaction data, web-site development and maintenance, and data retention requirements are discussed below.

148. We acknowledge that the filing of transaction data for cost-based power sales will create an additional burden. However, this burden will be offset by the fact that conforming service agreements will no longer be filed. In addition, the lack of a standard format in the current Quarterly Transaction Reports has led to power marketers to submit their reports using a multitude of formats. To the extent power marketers use the same format for each quarter's filing, they will have to expend time and effort to map their data into the new required format. But once a utility's system is mapped to the interim and final formats, the burden will be reduced. There will be no more paper to print, mail or file. The public utilities will be able to file Electric Quarterly Reports with the Commission electronically over the Internet. [119]

149. The burden of electronically filing contract data each quarter is less onerous than the current requirements to file executed copies of all service agreements. Since the system is being designed so contract data need only be entered once, after the initial filing, only certain data about new agreements and terminations will have to be reported. In comparison, under our current filing requirements, each service agreement must be filed as a rate filing within 30 days of commencement of service. Specifically, 18 CFR 35.7 and 35.8 currently require that a filer submit an original and five copies of a filing to the Commission. Each copy must contain a number of components: first, the formal letter of transmittal; second, all other materials and information required by these regulations (*e.g.*, the executed service agreements); third, a form of notice for the **Federal Register**; and, finally, a copy of the same notice in electronic format (in ASCII text or WordPerfect 8.0 format) on a 3½'' diskette. Also, the filer must serve a copy of the filing to the public utility's jurisdictional customers (including: other parties receiving service from the public utility, state public service commissions, other government agencies, *etc.*).

150. The current filing requirements for service agreements are based on the use of paper copies and are burdensome to both the filing parties and the Commission. The replacement of this archaic paper format will reduce the burden on filing utilities and the burden on the Commission of processing those filings.

151. The use of Electric Quarterly Reports will also avoid critical time delays. Incomplete filings have been a burden for both the filers and the Commission, due to lost time in processing and issuance of decisions. Omission of any required item could hold up the acceptance and processing of the filing (*e.g.*, if the filer omits the diskette, the processing stops and a request by the Commission to the filer for a proper submittal of the diskette is triggered). The filer must then be notified and resubmit the missing component(s) of the filing.

152. With the implementation of the revised filing requirements adopted in this rule, the processing of applications for approval will become much more streamlined. The resources currently devoted to processing paper filings involving routine noncontroversial matters will be freed up and available for further review and evaluation of nonconforming rate filings, enhanced market oversight, and other important matters. Currently, the Commission receives approximately 2,500 service agreement filings per year that would be eliminated by this order.[120]

153. We reject the suggestion by the California Commission that the Index of Customers (*i.e.,* the Electric Quarterly Report) should accompany and not replace current rate filings. This proposal would not accomplish the Commission's objective of streamlining the process. Instead, it would increase the reporting burden on public utilities and would retain the Commission's current administrative burden of processing these filings without enhancing the level of review. Moreover, the filing of standard forms of agreements will provide a safeguard to ensure that conforming agreements do not contain unreasonable terms and conditions.

154. Some commenters offer to aggregate the data, which would be an additional step on their part, at the same time that they object to the reporting unaggregated data as being too burdensome. They also state that they could cope with the reporting requirements, if the data are kept confidential. These inconsistent arguments suggest that the objections raised concerning the reporting burden reflect actual disagreement with other aspects of the rule (*i.e.,* confidentiality).

155. Moreover, maintaining the status quo for the current Quarterly Transaction Report is not a viable option. The Government Paperwork Elimination Act, Pub. L. No. 105–277, sections 1702–1704, requires that every agency develop electronic filing options by October 2003 for all of the data it requires to be submitted. Therefore, the Commission is required to move to an electronic filing format for all of its data, including Quarterly Transaction Reports, which currently are filed on paper. With a few exceptions discussed elsewhere, this data collection primarily involves an adaptation of our current filing requirements to an electronic format. Moreover, public utilities are currently converting their data from

[114] Avista Data Sets Comments at 1.

[115] Wisconsin Electric Data Sets Comments at 1.

[116] Puget Data Sets Comments at 4.

[117] Otter Tail Data Sets Comments at 2.

[118] Edison Mission Data Sets Comments at 3.

[119] Because informational filings are Class I filings under our fee structure, no filing fees are currently applicable.

[120] NOPR at 34,075.

different formats, often electronic, to a paper format to file with the Commission. They will now file electronically, thereby eliminating the step of making paper filings, and their filing burden will be reduced.

156. Several commenters expressed concerns over the expense of developing web sites to capture and display Index of Customers data. The Commission recognizes that this requirement would be a duplication of the data we will maintain on our own web site.

Therefore, we will eliminate the requirement for each company to develop and maintain an information site. An added benefit is that having one central location for the data will make it easy for the public to find and research power prices. Although the Commission will post the data, this does not eliminate the FPA section 205(c) requirement for public utilities to have actual agreements available for public inspection at their business locations.

157. Numerous commenters contend that the amount of data requested represents an increase in burden over the current requirements. We disagree.

158. In *Citizens Power & Light Corporation*, 48 FERC ¶ 61,210 (1989) (*Citizens Power*), the Commission stated that:

> Citizens Power must make informational filings describing its purchase and sale contracts for generation and transmission. These filings will be used to monitor Citizens Power's ability to exercise market power * * * The informational filings will also be used to monitor the rates being paid to Citizens.[121]

Citizens Power also stated that, for each purchase contract and sale contract, Citizens should provide the following information:

> For each purchase contract and sale contract, Citizens Power should provide the following information: the buyer's or seller's name; a brief description of the service, including degree of firmness; the delivery points for each service; the price of each service; the quantities to be served or purchased; the contract's duration; * * * and any other attributes of the product being purchased or sold which contribute to its market value. Citizens Power shall file this contract information quarterly as to all contracts signed within the time period. Citizens Power must file this information within thirty days of the end of each quarterly period.[122]

Thus, it can be seen that reporting this information is not a new requirement.

159. In *Southern II*, the Commission provided that power marketers need only report a limited data set in the Quarterly Transaction Report for short-term power sales.[123] The Commission, in the NOPR, proposed to retain the data reporting distinctions for short-term sales. This final rule does not change the data burden for short-term transactions.

160. As shown in Attachment B, all of the data requested for transactions reported in Electric Quarterly Reports are currently required of utilities selling at market-based rates, with the exception of contact e-mail address, company DUNS number, transaction identification, and a contract ID number. The reporting of cost-based transactions and book outs are new requirements and are discussed below. Offsetting those additions, the current requirement to report purchase data is being eliminated.

161. Finally, Otter Tail comments that the proposed rule would be prejudicial and burdensome to small entities. In *Southern*, the Commission removed the waiver commonly granted market-based rate power sellers, and required them to follow the same Part 35 filing requirements all public utilities, both large and small, have had to abide by for decades. The Commission believes that filing Electric Quarterly Reports constitutes a lesser burden for market-based rate agreements than the burden required by the current Part 35 filing requirements.

162. Consistent with the Paperwork Reduction Act, the Filing Requirements Are the Least Burdensome Possible

163. Comments

164. EEI argues that the Paperwork Reduction Act requires the Commission to design reporting requirements that are the least burdensome possible and that the Commission's proposal does not accomplish this.[124]

165. Commission Conclusion

166. We agree with EEI that, under the Paperwork Reduction Act, the Commission is required to minimize the reporting burden it imposes on the regulated community and to explain the need for proposed new information requests. But as shown on Attachment B, *infra,* almost all of the information that will be reported in Electric Quarterly Reports is currently filed in paper format and an electronic filing will reduce the burden. In addition, by including data in Electric Quarterly Reports, public utilities will no longer file conforming service agreements, Quarterly Transaction Reports or purchase data. Moreover, we believe we have shown that the proposed changes in transaction reporting are consistent with FPA section 205(c) and will help ensure that rates are and remain just and reasonable. For example, the Commission is no longer requiring purchase data. This rule also gives us the opportunity to make use of current technology to enhance the usefulness of the data.

167. The Information Reported Will Be Useful

168. Comments

169. PSEG states that Index of Customers filings, as proposed, would constitute a ''data dump.'' [125] PSEG and Reliant ask, for example, what use are prices that change by the minute or hour? [126]

170. Commission Conclusion

171. It is true that the volume of transactions in electric power markets is extensive and growing. This will produce a large number of reported transactions. Even so, the proposed reporting requirements are likely to reduce reporting burden with a standard electronic reporting format. We reject the contention that this reporting requirement would only produce a data dump. The reason for the specific formatting of the data is to enable Commission staff and other interested parties to perform analyses of the data.

172. Uniform Data Sets Are Needed

173. Comments

174. Avista states that it does not currently maintain its data in the format that the template requires. It states that many of the elements are not maintained in electronic format and compiling the data will be both costly and labor intensive. [127]

175. Commission Conclusion

176. We acknowledge that not all public utilities are currently keeping their data in formats that match the data sets adopted in this rule. This current chaotic diversity, however, may explain why the current quarterly transaction reports are so inconsistent and why uniform data sets are so necessary. Because some of the contract data elements may not currently be in

[121] 48 FERC at 61,778.

[122] ''In deciding that informational filings are to be made on a quarterly basis, we have balanced the need to ensure that the data are not stale for purposes of any market analysis, against the desire that Citizens Power not be competitively disadvantaged by having to file sensitive marketing information while it might still be useful to Citizens Power's competitors.'' 48 FERC at 61,778.

[123] Southern Company Services, Inc., 75 FERC ¶ 61,130 at 61,444–445 (1996) (*Southern II*).

[124] EEI Data Sets Comments at 4.

[125] In other words, it would be filed, but it would never be of any use or even looked at.

[126] PSEG NOPR Comments at 8–9.

[127] Avista Data Sets Comments at 6.

utilities' computer systems, we will be providing in the final format (for Electric Quarterly Reports due on January 31, 2003 and thereafter) a user-friendly application through which the data can be entered.

177. Reporting the Termination Dates of Agreements, Instead of Filing Notices of Termination, Constitutes a Significant Burden Reduction

178. Comments

179. Duke argues that the data element for ''actual_termination_dt'' is burdensome because it seeks data that Duke does not currently collect. Duke argues that this information can only be produced if Duke manually monitors each and every transaction to determine if the transaction ends prior to the agreed time and date.[128]

180. Commission Conclusion

181. Duke's understanding of the data reported in this data element is incorrect. The actual termination date to be reported in Electric Quarterly Reports refers to the dates when public utilities' agreements terminate. As proposed in the NOPR,[129] reporting this data element in Electric Quarterly Reports replaces the existing requirement that public utilities file notices of termination requesting approval to terminate their agreements and a cancellation sheet.[130] Thus, this item yields a burden reduction, not an increase.

182. Data Will Be Collected Efficiently, Without Duplicate Entries

183. Comments

184. Constellation states that the data sets in Appendices A and B of the Data Sets Order did not eliminate duplication in required data elements as promised by the Commission's NOPR. Constellation notes that the Appendices identify multiple data elements as required for both contract and transaction data sets. Further, it argues, the Data Sets Order provided no instructions on how to report these fields without duplication.[131]

185. Commission Conclusion

186. Although some data elements are related to both contract and transaction data, this does not mean that they will necessarily be entered twice. The software being developed for the final format of the Electric Quarterly Reports will use a relational database, so one data entry (*e.g.*, company name) will automatically show up in both the contract data and transaction data portions of the Electric Quarterly Report without duplicate data entries being made. This feature will not be implemented for the July 31 and October 31, 2002 periods. For these periods, the individual files will be posted on the Commission's website.

187. Filing Procedures and Related Issues

188. All Unexecuted and Nonstandard Non-Market-Based Rate Agreements Are Nonconforming Agreements and Must Be Filed with the Commission for Approval

189. In the NOPR, we proposed to revise 18 CFR 35.1 to add paragraph (g). The NOPR proposed that agreements that conform to approved forms of service agreements in a public utility's tariff and any market-based rate agreement need not be filed with the Commission.

190. Comments

191. Southern argues that the filing of agreements is unnecessary for negotiated, bilateral market-based sales now that purchasers have numerous choices and agreements are negotiated under market-based umbrella tariffs and service agreements. [132]

192. Other commenters raise concerns about unexecuted and nonstandard agreements. Calpine urges that all unexecuted and nonstandard agreements continue to be filed with the Commission to help the Commission remedy instances of discrimination.[133] Otherwise, Calpine states, the proposed regulation could have the unintended effect of increasing opportunity for discrimination. Calpine is concerned that case-by-case review of interconnection agreements could lead to disparate treatment.[134] Engage states that, in the event of an FPA-related dispute, the Commission should honor any negotiated terms for dispute resolution contained in a power agreement. Engage further argues that the Commission should confirm that it will honor such negotiated dispute resolution procedures and not open itself to forum shopping by any of the parties.[135] TDUS states that executed service agreements must be made available to customers, such as through a central clearinghouse. In addition, TDUS states that ''material deviations'' must be clearly spelled out. Third parties should be able to object to terms and conditions to the Commission.[136]

193. National Grid states nonstandard agreements should be permitted to be posted in PDF on utilities' web sites and filed electronically with the Commission, and the Commission would then put the file in RIMS.[137]

194. The California Commission argues that the electronic filing requirements should complement, not replace, the Commission's existing filing requirements. Otherwise, the burden would be put on third parties, such as state Commissions to challenge the reasonableness of contracts in FPA section 206 proceedings.

195. Commission Conclusion

196. We believe that, because the Commission will review the reasonableness of the terms and conditions of the standard agreements for transmission, cost-based sales, and other generally applicable services, and because utilities will be required to retain copies of these agreements and make them available for public inspection and copying, the requirement for public utilities to file all individual service agreements with the Commission can be eliminated so long as those agreements are consistent with a public utility's applicable approved standard forms of service agreements. However, if an agreement does not precisely match the applicable standard form of service agreement, or if the agreement is unexecuted, it is necessarily nonconforming and must be filed individually for Commission approval. Given these safeguards, we do not believe that the proposals adopted in this rule in any way compromise the Commission's ability to review substantive issues.

197. It is true that conforming agreements will not be filed before becoming effective. Thus, third parties will first learn of them when they are reported in a public utility's Electric Quarterly Report. It is also true that, a third party (such as the California Commission) finding the agreement objectionable would have the option of filing a complaint, but not a protest. The opportunity to file a protest would come earlier in the process, when the public utility submits its standard forms of agreement or market-based rate tariff for Commission approval. In response to such filings, third parties may protest

[128] Duke Energy NOPR Comments at 6,7.

[129] NOPR, FERC Stats. & Regs. ¶ 32,554 at 34,068.

[130] Similarly, the 60-day notice provisions for new filings is inapplicable to conforming agreements that are not filed.

[131] Constellation Data Sets Comments at 6.

[132] Southern NOPR Comments at 4.

[133] Although Calpine's particular concern is with transmission and interconnection agreements, it also expresses support for the continued filing of all unexecuted and nonconforming agreements. Calpine NOPR Comments at 6.

[134] Calpine NOPR Comments at 5–6.

[135] Engage NOPR Comments at 8–8.

[136] TDUS NOPR Comments at 5–6.

[137] National Grid NOPR Comments at 5.

any terms and conditions in those proposed standard forms that they find objectionable.[138] Moreover, if a public utility fails to file an agreement on the incorrect assumption that it is a conforming agreement, it does so without Commission approval.

198. Excelon and Calpine are concerned that the revised filing requirements will change utilities' obligations to file with the Commission or change the Commission's review process for non-market-based agreements that do not conform to a standard form of service agreement. However, that is not the case. There is nothing is this proceeding proposing any change on how the Commission will process, analyze and review unexecuted and/or nonconforming agreements.[139] The regulation specifically requires that utilities must continue to file unexecuted and nonconforming agreements with the Commission under the existing and otherwise unchanged filing requirements of Part 35.

199. TDUS states that the Commission should define material deviations from the cost-based standard form of service agreement. The Commission does not believe it is appropriate to try to enumerate all the potential variations to a standard form of service agreement. Public utility services are diverse and will require significant differences in form, structure and elements that may be negotiated without prior Commission review. This issue may be addressed as standard forms of service agreements are proposed by the public utilities and are reviewed by the Commission.

200. Calpine is concerned as to the impact this proposed regulation may have on Commission review of interconnection agreements. Part 35 of the Commission's regulations does not make a distinction between an interconnection agreement and other agreements for services that must be filed in conformance with this part of the Commission's regulations. If an interconnection agreement conforms with a Commission approved standard form of interconnection agreement,[140] the utility does not have to file it with the Commission, but it must be reported in Electric Quarterly Reports. The Commission will review any proposed standard form of service agreement to ensure that the terms are just and reasonable, and not unduly discriminatory or preferential.

201. National Grid argues that nonstandard agreements should be permitted to be posted on utilities' web sites and filed electronically with the Commission. The Commission has no objection to utilities posting either standard or nonstandard agreements on their Web sites. The Commission has initiated other proceedings in preparation of receiving rate filings and tariff sheets electronically.[141] However, this is beyond the scope of this proceeding.

202. Scope of Standard Service Agreements

203. In the NOPR, we proposed adoption of § 35.10a, containing guidelines for the inclusion of a standard form of service agreement in a public utility's tariff. We proposed that the standard agreement format for each service must describe the service to be rendered and must provide spaces for the insertion of the customer's name, effective date, expiration date, and term. Depending on the type of agreement, spaces for other information may also be included, as appropriate. For example, spaces may be provided for receipt and delivery points, contract quantity, and other specifics of each transaction. New standard agreements must be filed in accordance with the form and style required of rate schedule filings.

204. Comments

205. Pinnacle states that streamlined OATT agreements would be beneficial. Wisconsin argues that the Commission should clarify that all generally applicable services offered under a tariff may be included in the form of service agreements under that tariff.

206. EEI requests an opportunity to discuss with Commission staff opportunities to further reduce service agreement filings with nonstandard, customer specific, conditions.[142]

207. Commission Conclusion

208. Pinnacle's and Wisconsin's concerns about the content and scope of standard forms of service agreements are beyond the scope of this rulemaking. The Commission has already prescribed the OATT standard forms of service agreements in Order No. 888. The Commission has also approved other standard forms of service agreements as part of utilities' individual tariffs and rate schedules. This rulemaking was not intended to reexamine those standard forms of service agreements.

209. Just as the Commission is not reexamining standard forms of service agreements already found to be consistent with the FPA, the Commission's regulations and policy, this rulemaking is not adopting a rule or finding that predetermines whether a particular standard form of service agreement is just and reasonable. Utilities must file and support their proposed standard forms of service agreements. The Commission will review these filings consistent with the FPA, the Commission's regulations and Commission policy in the same manner as it did prior to this rulemaking.

210. EEI requests an opportunity to discuss with Commission staff opportunities to further reduce service agreement filings with nonstandard, customer-specific conditions. EEI and public utilities are welcome to discuss their ideas with Commission staff, consistent with 18 CFR 35.6.

211.Duration of Requirement to Report Data

212. Comments

213. Engage states that the NOPR is unclear as to whether the Commission intends that public utilities post the terms of the agreements when negotiated or only after performance commences. Engage urges that postings about a transaction not be required until performance commences.[143] Edison Mission argues that,

> FERC does not need contract-specific data for the life of the contract in order to satisfy market monitoring or legitimate filing requirements. A shorter time frame on which contract information is to be provided, as well as reasonable limits on long-term contract information, is more appropriate.[144]

214. Southern asks the Commission to clarify that umbrella agreements that have not experienced a transaction need not be included in Index of Customers. Southern explains that these umbrella agreements are non-transactional. They are merely authorizing agreements that

[138] This is the same procedure that the Commission uses regarding conforming gas transportation agreements reported in the gas Index of Customers. *See, e.g.,* ANR Pipeline Company, 97 FERC ¶ 61,224 at 62,022 (2001), where the Commission explained that interested parties have an opportunity to review whether standard forms of agreement are just and nondiscriminatory before they are approved and thus, there is no need to review conforming agreements to determine if they comply with requirements of the NGA. By contrast, nonconforming agreements are individually filed and carefully reviewed before approval.

[139] Engage's request for the Commission to presume any negotiated term and condition of service is just and reasonable goes beyond the scope of this proceeding.

[140] *See* Standardization of Generator Interconnection Agreements and Procedures, *Notice of Proposed Rulemaking,* Docket No. RM02–1–000, which is being issued concurrently with this rule.

[141] *See* Docket No. RM01–5–000, where Electronic Tariff Filings, Notice of Inquiry and Informational Conference, 66 FR 15673, FERC Stats. & Regs. ¶ 61,270 (2001) was issued and Docket Nos. RM00–12–000, where Order No. 619, *supra* at n.14, was issued.

[142] EEI NOPR Comments at 14.

[143] Engage NOPR Comments at 6.

[144] Edison Mission Data Sets Comments at 5.

allow the customer to later submit specific requests for that type of service.

215. Commission Conclusion

216. In response to comments from Engage and Southern, we clarify that under this rule, the requirement to file contract data and transaction data begins with the first Electric Quarterly Report filed after service commences under an agreement, and continues until the Electric Quarterly Report filed after the agreement expires or by order of the Commission. We reject Edison Mission's suggestion that contract data should be reported only in the quarter when the agreement is entered. Removing information about agreements that are still in effect does not adequately comply with the requirements of FPA section 205(c). Moreover, once the data are entered into an Electric Quarterly Report, it takes no work to retain this information in subsequent Electric Quarterly Reports.

217. Umbrella agreements are commonly filed under market-based rate tariffs. They allow the parties to transact business from time to time without waiting to obtain specific approval for each transaction. These agreements may ''sit on the shelf'' until such time as the customer requests service. Under the this rule, umbrella agreements are first reported in the first Electric Quarterly Report filed after service commences. The Commission agrees with Southern that agreements for which service has not commenced as of the reporting period do not have to be reported in Electric Quarterly Reports. However, once reported, the contract data continues to be reported in all subsequent Electric Quarterly Reports until the agreement terminates by its own terms or by order of the Commission, even if no further transactions occur under the agreement.

218. Consequences of Noncompliance

219. Comments

220. TDUS states that the Commission should clarify the penalties for failure to comply with the new filing requirements. [145] APPA states that the Final rule should outline the Commission's plan for auditing the Index of Customers for accuracy.[146] Similarly, TDUS is concerned with the apparent self-policing of the filed reports.[147] EEI expressed concern with the potential penalties should a utility's Index of Customers contain inadvertent or inconsequential omissions.[148]

221. Commission Conclusion

222. While the Commission is not proposing any specific audit procedures as a part of this rulemaking, the Commission expects to audit utilities' reports either as the result of a filed complaint or on our own initiative. This does not mean, however, that there are no incentives for utilities to make full and complete reports, or that there are no consequences for failing to make complete or accurate reports. Electric Quarterly Reports are intended to satisfy the FPA section 205(c) filing requirements. If utilities are found to have violated the requirements of the Commission's regulations, the Commission will not hesitate to impose remedies, as appropriate. If a public utility has not received approval for a cost-based rate transaction and neglects to include in its Electric Quarterly Report relevant contract data, the Commission may determine that the agreement was not on file and adjust the rate in that agreement as appropriate.[149] If a public utility fails to file a Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.

223. The Electric Quarterly Reports are designed to satisfy the FPA section 205(c) requirements. For power marketers, the Electric Quarterly Report is intended to replace the current filing of Quarterly Transaction Reports summarizing their market-based rate transactions and the filing of long-term agreements. Electric Quarterly Reports are also intended to replace the Quarterly Transaction Reports and rate filings required of traditional utilities with market-based rate authority. Once this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.

224. This Rule Does Not Nullify Existing Tariff Conditions or System Agreements

225. Comments

226. WSPP asks for clarification of whether it must continue to comply with the reporting requirements currently in its tariff. It also asks for clarification of whether it should file a joint Index of Customers on behalf of its members, or should they individually file for themselves. WSPP also asks whether any postings will be required on the WSPP web site as a result of this NOPR.

227. Commission Conclusion

228. WSPP's tariff contains a requirement for it to file certain margin data. This requirement was imposed in 1991. In Docket No. ER91–195–035, WSPP asked the Commission to rescind this requirement because it is not required of other comparable entities. WSPP's request is being addressed in an order being issued in Docket No. ER91–195–035 concurrently with this rule.

229. Each WSPP member has its own tariff on file with the Commission, and each WSPP member must satisfy the various reporting requirements for utilities. The proposed regulations do not change the nature of the relationship between organizations, such as WSPP, and their members or agency arrangements, such as Southern Services, Inc., have with its affiliated utilities.

230. We also note that the current Commission orders granting market-based rate authority each contain a requirement to report any material changes in circumstances. This rule does not rescind this requirement.

231. Timing and Frequency for Filing Electric Quarterly Reports

232. The NOPR proposed, in § 35.10b(a), that the Index of Customers must be filed quarterly 30 days after the end of the reporting quarter.

233. Comments

234. PJM supports the NOPR proposals, but would have Index of Customers filed monthly rather than quarterly. It takes this view because this would make the data more useful for market monitoring purposes. [150] Likewise, TDUS is concerned that the three month time gap in reporting the agreements will inhibit the public from discovering potential reporting or contracting problems in a timely fashion. In addition, TDUS suggests that public utilities should post a downloadable and searchable copy of

[145] TDUS NOPR Comments at 8.

[146] APPA NOPR Comments at 4.

[147] TDUS NOPR Comments at 8.

[148] EEI NOPR Comments at 9.

[149] *See, e.g.,* Central Maine Power Company, 56 FERC ¶ 61,200, Order on Rehearing, 57 FERC ¶ 61,083 (1991), where the Commission established a policy that remedies would be provided in instances of late-filed agreements.

[150] PJM Data Sets Comments at 2.

each service agreement referenced in their Index of Customers within five days after they become effective.[151]

235. Commission Conclusion

236. The Commission will not adopt PJM's proposal. We are not prepared to impose this additional burden at this time because it is not necessary to switch from quarterly to monthly reporting to meet the Commission's objectives in this rulemaking.

237. However, the Commission is not finished with its review of its market monitoring data requirements. This may require re-examination of whether Electric Quarterly Reports should be filed on a quarterly basis or on some other basis. This examination would occur at a later date as part of the Commission's ongoing review of its market monitoring responsibilities.

238. Use of Utility Web Sites

239. The NOPR addressed the use of OASIS or other public utility web sites to post Index of Customers filings in two provisions (§§ 35.10(b) and 37.6(g)). In § 35.10b(b), the NOPR proposed that each public utility with an OASIS web site post its Index of Customers in the portion of its OASIS web site that is accessible to the public without registration or fee. We proposed that each public utility that does not have an OASIS web site shall post its Index of Customers on a web site that also is accessible to the public without registration or fee. We explained that, in the alternative, we would consider allowing the use of a joint web site so that data about numerous public utilities could be found at one common site.

240. In addition, we proposed to revise § 37.6 to add paragraph (h) that would require OASIS sites to include Index of Customers postings that would be available to the public without registration or fee. The information would be required to be available for online review, copying or download. Index of Customers filings would remain posted at the same location for three years after they are filed.

241. Comments

242. Various commenters raised objections to the use of OASIS and other web sites as locations to post Electric Quarterly Reports. Midwest ISO suggests a two year retention period, instead of the three years proposed in § 35.10b(d), to reduce posting burden.

[151] TDUS NOPR Comments at 4, 7.

243. Commission Conclusion

244. The Commission has reconsidered the use of OASIS and other web sites to post Electric Quarterly Reports and has decided that it will be more efficient to maintain a single web site for Electric Quarterly Reports at FERC's Internet site rather than to require each utility to maintain its own site. Thus, the Commission will not adopt the proposed revisions on this subject. These changes make MISO's comment moot. The existing requirements for public utilities to retain copies of their contracts and other data are unchanged by this rule.[152]

245. Procedures for Cancelling Expiring Agreements

246. Comments

247. Southern supports the proposal that a utility would merely delete from its Index of Customers canceled and terminated agreements that expire by their own terms instead of having to make a separate filing with the Commission.[153] TDUS suggests that cancellations of service agreements that do not expire of their own terms should be filed with the Commission.[154]

248. Commission Conclusion

249. Under this rule, agreements that conform to approved standard forms of service agreement and market-based rate agreements may terminate by their own terms without the need for the public utility to file a notice of cancellation or cancellation tariff sheet with the Commission. The public utility simply removes the agreement from its Electric Quarterly Report the quarter after it terminates.[155] For agreements that remain in public utilities' Commission-maintained tariffs after the implementation date of this rule (basically non-conforming agreements), public utilities also must comply with the requirements to file a notice of cancellation and a cancellation tariff sheet. TDUS' request assumes that there is no consent between the parties to terminate a service. All proposals to change terms of an agreement without the consent of the customer must be filed with the Commission. Additionally, if an agreement terminates on a date other than the original agreement termination date (for instance, due to extension provisions being executed or termination by mutual agreement), the utility must enter the actual termination date in the subsequent Electric Quarterly Report, regardless of whether that agreement is a conforming agreement, a non-conforming agreement, or a market-based rate agreement.

250. If an agreement terminates on a date within the reporting quarter, the utility must enter the actual termination date in the Electric Quarterly Report for that calendar quarter, and remove the agreement from the subsequent Electric Quarterly Report.

251. Data to Be Filed in Electric Quarterly Reports

252. In the NOPR, the Commission provided a general description of the data to be reported in Index of Customers filings. In the Data Sets Order, the Commission added specific details about the exact data definitions and data elements to be used in Index of Customers filings. These data fall into two main categories, contract data and transaction data. The Data Sets Order also clarified the Commission's policy regarding the reporting of book outs and net outs. The Data Sets Order invited comment on these issues. In the discussion below, we will address each of the issues raised by the commenters.

253. Transaction Data

254. Public Utilities Will Report Actual Prices for All Transactions, Including Those Lasting Less than One Day

255. Comments

256. AEP states that the Commission's decision to allow marketers to report only the high, low and average price for transactions shorter than one day is ''somewhat of an improvement.''[156]

257. PJM recommends that hourly reporting along with the actual transaction specific data is essential for market development and analysis. PJM supports hourly reporting of transaction data as essential to be combined with load data that is already, or will soon be, publically available in areas with structured markets.[157] It argues that reporting only high, low and weighted average prices does not give sufficient information needed for understanding, characterizing and monitoring markets.[158]

258. Consumers asks if there are a limited number of price changes, could the reporting utility report real data that

[152] *See* 18 CFR 125.3, which provides that contracts are to be retained for the later of 4 years after they expire, or until all proceedings or disputes are concluded.

[153] Southern NOPR Comments at 27.

[154] TDUS NOPR Comments at 5–6.

[155] The simplified termination procedures will not apply to agreements entered into before the final software is developed and ready for implementation. Further instructions on this issue will be included in a subsequent order.

[156] AEP Data Sets Comments at 4.

[157] PJM Data Sets Comments at 1.

[158] PJM Data Sets Comments at 1–2.

would be more useful and easier to provide?[159]

259. Commission Conclusion

260. As stated, section 205(c) of the FPA requires that ''every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges. . . .'' The Commission concludes that public utilities reporting the actual rates charged for transactions lasting less than a day complies with the requirements of section 205(c) of the FPA.[160]

261. We agree with PJM that reporting actual prices would actually be less burdensome than reporting the prices of transactions lasting less than one day on a high, low, and weighted average basis (when the prices change during the day) because the data could be reported as is, without the extra steps of identifying the high and low prices and computing the weighted average. This was confirmed in site visits conducted by Staff to observe how these data are currently maintained.

262. Report Reactive Power as an Ancillary Service

263. Comments

264. Consumers is not clear how or where to report reactive power. Consumers suggests that the option of using ''NA'' for appropriate fields, such as in rates, should be available.[161]

265. Commission Conclusion

266. Reactive power will be reported as an ancillary service. If reactive power service is rendered, required contract data summarizing the terms and conditions applicable to this service should be provided. When a service is not provided, we agree that the use of ''NA'' in certain fields will be permissible.

267. Report Transaction Data for Ancillary Services Associated with Power Sales

268. Comments

269. Southern seeks clarification that no transaction information is required for OATT ancillary services.[162]

270. Commission Conclusion

271. We clarify that ancillary service transaction data associated with transmission need not be reported when the transmission services are provided on an unbundled basis.

272. On the other hand, ancillary service transaction data associated with power sales are currently required to be filed in Quarterly Transaction Reports and the requirement to file these data is retained in this rule.[163] This matter is discussed in *Commonwealth Electric Company,* 78 FERC ¶ 61,191 at 61,813 (1997), where we stated,

> [t]he prices for wholesale generation, transmission and *ancillary services must be separately stated* for sales under requirements or coordination contracts executed after July 9, 1996. [Emphasis added.]

273. Book Outs

274. Defining Book Outs

275. Comments

276. Commenters recommend that the Commission eliminate the proposed requirement to file information pertaining to the offsetting of transactions (called book outs). Commenters argue that the Commission's characterization of book outs in the NOPR is inaccurate and unclear, that it fails to adequately distinguish between physical and financial transactions, and that it shows a fundamental misunderstanding of the market and what these transactions really are.

277. Wisconsin states that book outs more closely resemble financial transactions that the Commission has exempted from its reporting requirements. Others argue that book outs are purely financial transactions and, as a result, are beyond our jurisdiction. Commenters claim that the proposal to require marketers to report book outs ignores Commission precedent that only transactions that go to physical delivery are subject to our jurisdiction.[164]

278. Commission Conclusion

279. As we explained in the Data Sets Order, a ''book out'' is the offsetting of opposing buy-sell transactions. The Data Sets Order gave the simplified example of a sale of 100 MW of power from A to B and a sale of 90 MW of power from B to A, which would result in these transactions being booked-out and treated as a 10 MW sale from A to B. These book out transactions are currently being reported, without objection, in Quarterly Transaction Reports, albeit in aggregated form. The Data Sets Order proposed that, under this hypothetical situation, public utilities would report both the 100MW and 90MW sales, and not just the 10MW delivered.

280. Typically, however, book outs involve a chain of transactions (*e.g.*, A sells 50MW of power to B, B sells 55MW of power to C, C sells 60MW of power to A). Under this hypothetical, if no further transactions were made, 50MW would be booked out, B would deliver 5MW to C, and C would deliver 10MW to A. If the parties wished to use book outs to avoid making physical transmission for power deliveries, A could sell an additional 10MW of power to B and B could sell an additional 5 MW of power to C, in which case all three transactions would be booked out in their entirety and all delivery obligations would be offset, although all other obligations under the agreements, including payment, would remain in effect.

281. Now that the Commission is considering requiring book outs to be reported on a disaggregated basis, objections are being raised arguing that the Commission lacks jurisdiction over these transactions, unless they result in an actual physical delivery of power. We find that these objections focus on the wrong issue and are without merit. The Commission is not here asserting (or disclaiming) jurisdiction over the underlying sales transactions. Instead, the Commission is deciding what information must be reported to us by public utilities.

282. The power sales that make up book out transactions on their face typically are for the sale for resale of electric energy in interstate commerce by a public utility. The buyer, seller, price, quantity and other agreement details in such agreements are indistinguishable from those in any other power sale agreement. The

[159] Consumers Data Sets Comments at 6.

[160] The courts have repeatedly emphasized the importance of statutory requirements to have rates on file as a critical component of complaint-based statutory enforcement mechanisms. In *Maislin,* the Supreme Court rejected an Interstate Commerce Commission policy permitting carriers to charge undisclosed negotiated rates, finding that disclosure of rates was required both to allow the agency to review the rates and to allow other shippers to know whether they should challenge a carrier's rates as discriminatory. 497 U.S. at 132. *See also Southwestern Bell* 43 F.3d at 1524, and MCI v. AT&T, 512 U.S. 218, 230 (1994).

[161] Consumers Data Sets Comments at 2–4.

[162] Southern NOPR Comments at 28–29.

[163] This occurs in instances when the power is sold in a bundled transaction covering the underlying power sales and any ancillary services associated with transmission of the power.

[164] In support of this claim, they cite Morgan Stanley Capital Group, Inc. (*Morgan Stanley 1*), 69 FERC ¶ 61,175 (1994), *order on reh'g*, 72 FERC ¶ 61,082 (1995) (*Morgan Stanley 2*); and Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, 87 FERC ¶ 61,074 (1999) (*Annual Charges*).

agreements obligate the seller to provide power and obligate the buyer to pay the agreed-on prices. Only after there are subsequent offsetting agreements entered (as shown in the illustration above) such that deliveries can be offset, does the book out result.

283. In *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶61,139, at 61,986 , *order on reh'g*, 65 FERC ¶ 61,081 (1993) (*Prior Notice Order*), the Commission explained that FPA section 205(a) gives the Commission authority to ensure that:

> [a]ll rates and charges made, demanded, or received by any public utility *for or in connection with* the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations *affecting or pertaining to* such rates or charges shall be just and reasonable * * * . [Emphasis in original.]

In addition, FPA section 205(c) requires all public utilities to file:

> schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, *together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.* [Emphasis added].

The Commission recognizes that this provision has the potential to be interpreted very broadly. Thus, we have devised a ''rule of reason'' to identify the agreements that must be filed under this provision.[165]

284. As we stated in the *Prior Notice Order:*

> [a]scertaining the extent of what the industry must file [under FPA section 205] depends on how expansively we define the terms ''for,'' ''in connection with,'' ''affect/affecting,'' ''pertaining to,'' and ''relate to.'' [[166]]

We further stated that, as a general matter, the Commission typically requires parties to file arrangements involving, among other matters, ''a public utility selling or exchanging wholesale power in interstate commerce.'' [167]

285. We believe that the power sales transactions that make up book out transactions fall within this category and should be reported to us. As noted above, the agreements obligate the parties to deliver power at a specified price and, but for the subsequent offsetting power sales, transmission of power would be made. Moreover, such transactions in the marketplace plainly affect or relate to those transactions and the prices paid for power sales that do go to delivery. Thus, under FPA section 205(c), we find that the power sales transactions that make up book out transactions must be reported to us in Electric Quarterly Reports.[168]

286. Reporting Book Outs Is Not Unduly Burdensome

287. Comments

288. Commenters claim that reporting book outs would be burdensome and unreasonable and would not provide data that is meaningful or useful. Commenters claim that the proposal shows a fundamental misunderstanding of the types and volume of purchase/sales transactions occurring on a daily basis in electricity markets. Commenters argue that the volume of sale/purchase transactions typically exceeds the volume of power delivered by three or four fold or more in today's liquid markets.

289. Commission Conclusion

290. Although we acknowledge that the number of market-based transactions taking place daily is large, we do not believe that this provides an adequate reason not to report them. The transacting entities are fully capable of keeping track of their own transactions, if for no other purpose than billing. Nothing presented by commenters shows that the incremental burden of making the information available would be significant. In this regard, none of the commenters gave any specific examples or explanations of how or why reporting book outs would be burdensome. Although a majority of market-based transactions at issue are delivered without physical transmission, there is physical delivery. The two sellers each physically deliver power when they exchange the power each produces.

291. We are amenable to working with the industry to come up with the most convenient format and meaningful way of presenting/transferring the data. But the Commission is charged with oversight of electric power markets, and we cannot perform this function adequately if we lack important information about how that market functions. We conclude that the transactions underlying the book outs must be reported if we are to adequately monitor wholesale markets, sellers in those markets and wholesale prices for electric energy.

292. Report Book Outs on a Disaggregated Basis

293. Virginia Power argues that book outs, if reported at all, should be reported in the aggregate because public disclosure of book outs of physical transactions reveals the negotiating positions of the parties and this would undermine competition. Other commenters add that utilities that aggregate their book outs would face the added burden of maintaining two sets of books—one for the Commission's filing requirements and one for accounting and billing purposes.

294. We will deny this request, consistent with our rulings in *Citizens Power,* where we directed information about wholesale power sales to be made on a disaggregated basis. [169]

295. Contract Data Requirement

296. All of the Contract Terms and Conditions To Be Reported Are Identified in the Data Elements

297. Comments on the contract data requirements focused on two major areas, identifying: (1) what contracts would be included in Electric Quarterly Reports and (2) specific perceived problems with the proposed contract data sets.

298. Comments

299. Excelon argues [170] that the requirement to include all terms and conditions in contract data reported in the Index of Customers is burdensome. From its comments, we surmise that it is concerned about reporting contractual terms and conditions beyond the data sets identified in the NOPR.

300. Commission Conclusion

301. If we have accurately interpreted commenter's concerns, we can alleviate this by clarifying that only the terms and conditions contained in Electric Quarterly Report data elements need be reported in Electric Quarterly Reports.

302. Data Elements Issues

303. Consistency with the OASIS Standards and Communications Protocols Document

304. Comments

305. Southern notes that in the NOPR, the Commission proposed to follow, to the greatest extent possible, the data element names and definitions contained in the Commission-approved

[165] *See, e.g.,* PJM Interconnection, L.L.C., *et al.*, FERC ¶61,251 at 61,894–95, *reh'g denied* 95 FERC ¶61,333 at 62,186 (2001); Western Systems Coordinating Council, 87 FERC ¶61,060 at 61,233–34 (1999); Public Service Company of Colorado, 67 FERC ¶61,371 at 62,267 (1994).

[166] *Prior Notice Order*, 64 FERC at 61,986.

[167] *Id.*

[168] In the Data Sets Order, FERC Stats. & Regs. ¶ 35,541 at 35,806, we also proposed the reporting of ''net outs.'' However, in consideration of the comments, we are withdrawing this proposal.

[169] 48 FERC at 61,778.

[170] Excelon Data Sets Comments at 2.

OASIS Standards and Communications Protocols Document, version 1.4 (OASIS S&CP Document). Southern contends that, notwithstanding this commitment, the Commission's Data Sets Order proposes data set names, definitions and formats that differ from their OASIS counterparts.[171] Southern argues that these discrepancies and differences may inhibit the construction of better reporting systems, and will create inefficiencies, undue burden, questionable data, and slower response times. Southern suggests that the Commission reconcile its Index of Customers data sets with its OASIS counterparts so that Index of Customers filings can be integrated with OASIS filings. Southern strongly opposes the imposition of another data set on top of the OASIS data set. Southern states that the Commission should work with the OASIS collaborative group as the Commission once suggested.[172]

306. Commission Conclusion

307. First, although we attempted to draft the Electric Quarterly Report data elements to match their OASIS counterparts wherever possible, as discussed in the Data Sets Order, certain apparent discrepancies were unavoidable because the OASIS data elements are exclusively designed to report on transmission-related transactions while the Electric Quarterly Report data elements must cover an entire range of transactions under 18 CFR Part 35. Southern states that the Commission should have used more of the OASIS S&CP data elements and their definitions than proposed in the Data Sets Order. However, the OASIS S&CP data set does not contain all the data elements or definitions that the Commission requires for contract data reported in Electric Quarterly Reports. For example, the OASIS S&CP product definitions are limited to those services under the OATT. However, public utilities provide many more jurisdictional services than those. An example of an element that is not in OASIS is the agreement termination date agreed on in the agreement.

308. As a result, Electric Quarterly Reports will include product definitions and termination data that are not in OASIS. The Commission believes that the resulting data set will not establish a new layer of data definitions on top of the existing S&CP data set. Rather, the Commission is expanding the S&CP data set as necessary to collect the contract data.

309. Deleted Data Elements

310. Comments

311. The Commission needs to clarify whether the data elements ''point_of_receipt_control_area'' and ''point_of_receipt_specific_loc'' apply to both sales and transmission services. It is Constellation's understanding that market-based sellers are required to report sales, not purchases, and, if this is indeed the case, Constellation sees no reason why a report of sales transactions should require receipt points. According to Constellation, reporting receipt points only makes sense for transmission.[173]

312. AEP proposes that the requirements to report Point of Receipt (POR) and Point of Delivery (POD) be replaced by identification of the NERC region of the transaction.[174] AEP argues that POR does not yield information that is useful in terms of examining the economics of a transaction because: (1) The POR could easily change on a daily basis depending on the requirements of scheduling needed to complete the transaction; (2) a seller with a defined POD may not have any control over the POR from which the seller's supplier chooses to deliver the energy; (3) each participant in the chain is unlikely to agree upon which of its transactions its upstream or downstream supplier is identifying;[175] (4) it would be difficult from a systems perspective to match daily physical schedules with term power sales in a meaningful manner other than by providing NERC tags for each day of physical flow and even then buyers and sellers are unlikely to agree on which specific agreement is moving from POR to POD because in practice they are not identified in such a manner to buyer to seller.[176] Consumers questions how PORs and PODs are to be provided on market-area and multiple point agreements.[177]

313. Commission Conclusion

314. We agree with the point made by Constellation. Since we are not collecting data on purchases, we will not require point of receipt (POR) data for power sales transactions. However, POR and POD information will be required for contract data. In response to Consumers' question, multiple POR and POD points will be allowed to be entered in the Electric Quarterly Report system, thus multiple points are accommodated. POR and POD should be reported the way it is written in the agreement. If, for example, the agreement lists the information at the Control Area level, then the use of the POR or POD control area data element will be accepted. If the agreement specifies a specific location, then respondents should use the POR or POD specific location data element. This is consistent with OASIS standards.

315. Transaction End Date.

316. Comments

317. Consumers argues that providing transaction end date would ''discourage long term transactions and unnecessarily divulge proprietary information about Buyers' and Sellers' positions for future quarters.''[178]

318. Commission Conclusion

319. The transaction end date does not provide sensitive proprietary information because it is reported on an historic basis. It is reported as the latter of the actual transaction end date or the last day of the quarter * * *. Therefore, Consumers' concerns are unwarranted.

320. Cancellation Date

321. The Commission will eliminate the ''cancellation_of_contract'' data element. When an agreement expires, the actual termination date will be entered into the contract data. Therefore, the ''cancellation_of_contract'' data element provides redundant data. Signatories to an agreement will receive notice pursuant to the terms of the agreement, and cancellations without the other parties' consent must be individually filed with the Commission for approval.

322. Other Services

323. Comments

324. Southern states the reference in the NOPR to ''other services'' should be clarified to be ancillary services under the OATTs because those are the only services provided under those tariffs other than transmission services.[179]

325. Commission Conclusion

326. That was not the intent of this reference. The ancillary services definitions already exist in the OASIS S&CP, and the Commission proposes to adopt those definitions. However, the OASIS S&CP service definitions were limited to OATT services performed through the OASIS. The Commission's

[171] Southern provides an example of ''increment_peaking_name.'' Southern states that Appendix B definition defines the field length as 15 characters, whereas the associated OASIS S&CP data element of ''TS_PERIOD'' is 20 characters.

[172] Southern Data Sets Comments at 3–5.

[173] Constellation Data Sets Comments at 7.

[174] AEP Data Sets Comments at 5.

[175] AEP Data Sets Comments at 6.

[176] AEP Data Sets Comments at 6–7.

[177] Consumers Data Sets Comments at 2–4.

[178] Consumers Data Sets Comments at 5.

[179] Southern NOPR Comments at 28–29.

Electric Quarterly Reports will require reports on many other types of jurisdictional services. The Commission was simply indicating other services could be defined for the purposes of completing Electric Quarterly Reports data fields.

327. Future Revisions to Data Elements

328. We invited comments as to whether the same voluntary industry working group(s) that seek industry consensus and periodically recommend revisions to the OASIS S&CP Document would be available to aid the Commission in developing and maintaining the various codes for Index of Customers Data Sets, or whether another approach would be preferable. Southern, EEI and others encouraged the Commission to consult with the industry to establish the initial Index of Customers data elements and any subsequent modifications. The Commission has determined the data elements it requires to be filed, but we recognize that several of the data element definitions will require updating as new and unique types of services are introduced to the market. The Commission recognized this possibility when we proposed using OASIS S&CP, version 1.4's ''{Registered}'' variable. The Commission prefers that the industry create standard definitions. The OASIS community currently maintains the definitions through variable registration on TSIN.COM. The Commission invites the industry to expand the use of this mechanism to include non-OATT services.

329. While we are today issuing our final rule in this proceeding, we are not yet implementing the final format for Electric Quarterly Reports because further work on software development remains to be completed. As a result, there is a short window of opportunity if the industry is able to make consensus recommendations for minor revisions to the Electric Quarterly Report data elements that would better match the data elements used in the OASIS S&CP Document. As we noted above, the Commission is looking for a single group to emerge to tackle the development of uniform industry standards. When such a group is in place, it would be the proper group to address this issue.

330. Role of RTOs

331. Comments

332. EEI asks what reporting requirements will the RTOs be required to satisfy? EEI argues that the Commission should delineate differences between transmission providers and RTOs. EEI, Enron, and Illinois Power argue that the NOPR may be premature and should be delayed until there has been more progress with RTOs and the Commission has established standards for the RTOs. They argue that the proposed regulations may become outdated with formation of RTOs. Illinois Power also argues that delaying the implementation of the rulemaking until after RTOs become functional will relieve transmission providers, such as itself, of the burden of having to electronically file its transmission contract information. In the alternative, Illinois Power asks that the Commission give transmission utilities who are actively engaged in good faith efforts to become part of an RTO an exemption from filing electronically.[180]

333. Commission Conclusion

334. Some commenters request clarification as to the role of RTOs in filing transmission and sales contract data and transaction data. RTOs, as public utilities, are required to abide by the provisions of Part 35 of the Commission's regulations, except where specifically exempted. Under § 35.34(k) of the Commission's regulations, 18 CFR 35.34(k), an RTO must administer its own transmission tariff, which includes transmission and ancillary services under its OATT. The requirements of this rule do not create any conflict or ambiguity as to the responsibilities of RTOs to file and report transmission agreements consistent with Part 35. RTOs are responsible under Part 35 of the Commission's regulations for making tariff filings and following related reporting requirements.

335. The NOPR did not distinguish between an RTO and a traditional public utility concerning the requirement to report power sale transaction data. To the extent that an RTO makes wholesale power sales or transmission sales, these sales are subject to the same reporting requirements that would be applicable to any other public utility. To the extent that an RTO facilitates transactions by its members but title to the power never passes to or from the RTO, these transactions would be reported by the parties making the sales and not by the RTO itself.[181]

336. Public utilities making power sales to an RTO, or though an RTO's power market, must report their power sales agreements and transaction data pursuant to § 35.10b. However, this rule does not prevent an RTO from filing power sales transaction information on behalf of its members or participants as an agent, if authorized by its members or participants to do so.

337. The commenters also suggest that the Commission delay the electronic filing of transmission contract data until the RTOs are either more fully defined or operating. The Commission denies this suggestion.

338. Section By Section Revisions

339. Deletion of § 2.8

340. In the NOPR, we proposed to delete 18 CFR § 2.8, concerning the simplification of public utility rate schedule filings, because that regulation has been superceded by the regulations promulgated by Order No. 614 and is no longer necessary. No comments were filed addressing this proposal. The Commission adopts the change as final.

341. Revised Heading for 18 CFR Part 35

342. In the NOPR, we proposed to revise the heading of 18 CFR Part 35 to reflect that 18 CFR Part 35 will now cover the filing of both rate schedules and tariffs. No comments were filed addressing this proposal. The Commission adopts the change as final.

343. Revisions to § 35.1—Conforming Service Agreements

344. In the NOPR, we proposed that conforming cost-based agreements and all market-based rate agreements would not be filed with the Commission. After a review of the comments on this issue, we concluded that we would adopt the NOPR proposal in this rule. Thus, we will adopt as final the same regulatory text we proposed in the NOPR.

345. Revisions to § 35.10a—Forms of Service Agreements

346. No comments were filed on this provision. We will revise the section as needed to reflect the name change from Index of Customers to Electric Quarterly Report. The Commission revised the first two sentences in (a) to remove redundant phrases.

347. Revisions to § 35.10b (a)—Electric Quarterly Reports

348. In the NOPR, we proposed adoption of § 35.10b(a), which stated that each public utility shall file, in an electronic format, an updated ''Index of

[180] EEI NOPR Comments at 16, Illinois Power NOPR Comments at 2–3, Enron NOPR Comments at 3, 4.

[181] The Commission will require PJM, ISO-New England, Inc., New York Independent System Operator, L.L.C. and the California ISO to follow the same reporting requirements as an RTO. The Commission will address particular filing requirements for auctions in the Standard Market Design proceeding in Docket No. RM01–12–000.

Customers'' with the Commission on a quarterly basis. We will revise the provision to reflect the name change from ''Index of Customers'' to ''Electric Quarterly Report.'' We also will revise the provision to delete the reference to an Instruction Manual. Although the Commission will be issuing an Instruction Manual in the near future, this manual will only apply to the Electric Quarterly Reports for the periods ending July 31, 2002 and October 31, 2002. Thereafter, this filing format will be replaced by a relational database now under development, which will be implemented in a subsequent order. The final format will not require a formal, separate Instruction Manual Document. It will use software that will be explained in guidance provided on the FERC web site. Thus, there is no need for the regulations to reference the Instruction Manual.

349. Revisions to §§ 35.10b(b), (c) and (d)

350. In § 35.10b(b) and (c), the NOPR proposed rules governing the utility's display of its web site address. The retention period for postings was covered in § 35.10(d). Given the Commission's findings that the Electric Quarterly Reports will be centrally posted by the Commission, we will not adopt these provisions.

351. Revisions to § 37.6

352. In the NOPR, we proposed to revise § 37.6 to add paragraph (h) that would require OASIS sites to include Index of Customers postings that would be available to the public without registration or fee. As discussed above, the Commission has reconsidered this issue and we will not make any revisions to § 37.6.

353. Revisions to Data Sets

354. Several data elements have been changed from what was issued in the Data Sets Order. Company_web_site_address has been eliminated as we are not requiring each utility to post its Electric Quarterly Report data on its web site. Cancellation_of_contract has been eliminated because that information can be derived from other data elements. Product_sub_type_name has been eliminated to simplify the filing requirement. Rate_min and rate_max will be used for contract data only as we will be collecting actual rates for transactions in the Electric Quarterly Report. Point_of_receipt_control_area and point_of_receipt_specific_loc will be used for contract data only as we are not collecting transaction data on purchases, just sales. Product_type_name will be collected for contract data only in order to simplify the transaction portion of the Electric Quarterly Report. The Transaction ID was added as a unique reference number assigned by a seller for each transaction.

355. Implementation

356. In the NOPR, we explained that we planned to ''complete work on developing software and an instruction manual for completing Index of Customers filings by the time we issued a final rule in this proceeding.'' [182] We also stated that ''the requirement to file Quarterly Transaction Reports will continue until we issue a final rule'' and that, ''[t]hereafter, these filings would be superseded by the Index of Customer filings.'' [183] Although this final rule has been completed and is being issued, further time will be needed before the software can be completed. The software will need to be thoroughly tested before it can be implemented.

357. Consequently, for the filing periods ending July 31, 2002 and October 31, 2002, respondents will use the FERC electronic filing system (available on the FERC Internet site, *www.ferc.gov*) using the link labeled e-Filing to file transaction data and contract data. Contract data for agreements entered into between April 1, 2002 and June 30, 2002 will be reported in the July 31, 2002 filing and thereafter. Contract data for agreements entered into between July 1, 2002 and September 30, 2002 will be reported in the October 31, 2002 filing and thereafter. Electric Quarterly Reports filed on July 31, 2002 will include transaction data for all power sales made between April 1, 2002 and June 30, 2002. Electric Quarterly Reports filed on October 31, 2002 will include transaction data for all power sales made between July 1, 2002 and September 30, 2002.

358. When submitting the July 31, 2002 and October 31, 2002 Electric Quarterly Reports, Respondents will file documents in either Microsoft Excel or ASCII Comma Separated Values (CSV) format. A sample Microsoft Excel format document will be posted on the FERC internet site before the first report is due on July 31, 2002. The public will be able to view and download filed documents from the FERC internet site using either the RIMS or FERRIS document management systems. For filings after October 31, 2002, this filing format will be replaced by the more advanced, relational database now under development. This will be implemented in a subsequent order. The final format will incorporate the same data sets adopted in this rule.

359. Once the software for the relational database is developed, the Commission will work with a number of public utilities to test the software and posting procedures after issuance of this final rule. During this testing period, the Commission will issue the formats and instructions for filing Electric Quarterly Reports using the software, and make the Electric Quarterly Report software available for download from the FERC Web site. Once testing is successfully completed, the Commission will issue an order requiring subsequent Electric Quarterly Reports to be filed using the software.

360. The NOPR further proposed that at the time public utilities make their initial Index of Customers filings under the final rule, they will also be required to identify the service agreements in their tariffs currently on file with the Commission that conform to the standard forms of service agreements. The Commission will implement this procedure only after the final software format is implemented and will discuss this issue further in the order implementing the final software format. Once the final software format is implemented, the Commission will remove, as redundant, those conforming service agreements from the Commission-maintained tariff. Removal of these agreements from the Commission-maintained version of the public utility's tariff is simply an administrative function. It does not terminate, cancel or in any way change the terms, conditions, rates or effectiveness of these agreements. Service agreements that remain in a public utility's tariff at the Commission will continue to be subject to the filing, format, and designation requirements of Part 35.

361. Regulatory Flexibility Act Certification

362. The Commission adheres to its certification in the NOPR that this rule will not have a significant economic impact on a substantial number of small entities. As we stated in the NOPR, the rule will be applicable to all public utilities. While we do not foresee that the rule will have a significant economic impact on a substantial number of small entities, as most entities subject to the rule would not be small entities within the meaning of the Regulatory Flexibility Act (''RFA''), we will consider granting waivers in appropriate circumstances. In fact, by

[182] NOPR, FERC Stats. & Regs. ¶ 32,554 at 34,073.

[183] *Id.*

eliminating the requirement to file most service agreements in paper format, this rule should reduce the economic impact on most entities. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of the RFA.

363. Environmental Statement

364. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[184] However, in 18 CFR 380.4(a)(5), we categorically excluded the type of information gathering required in this rule from the requirement to prepare an environmental impact statement. Thus, we affirm the finding we made in the NOPR that this final rule does not impose any requirements that might have a significant effect on the human environment and find that no environmental impact statement concerning this rule is required.

365. Public Reporting Burden and Information Collection Statement

366. In this final rule, we revise the filing requirements for public utilities to substitute the electronic filing of an Electric Quarterly Reports each calendar quarter for the current submittal of conforming individual service agreements, and quarterly reports summarizing the utilities' market-based rate transactions.[185]

367. This final rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995. The Commission identifies the information provided under Part 35 as FERC–516.

368. *Information Collection Statement:*

369. *Title:* FERC–516, Electric Rate Schedule Filings.

370. *Action:* Final Rule.

371. *OMB Control No:* 1902–0096.

372. *Respondents:* public utilities.

373. *Frequency of Responses:* Quarterly.

374. *Necessity of the information:* This final rule prescribes the information and procedures by which public utilities file with the Commission and present to the public the agreements and transactions under which power sales were made during the previous calendar quarter pursuant to the requirements of section 205(c) of the FPA. The revisions adopted in this rule will reduce the regulatory and administrative burden associated with processing public utilities' service agreement filings, improve public access to pertinent information on public utility rates and services and keep pace with changing market conditions.

375. *Burden Statement:* The burden issue can be divided into two categories: initial start-up and ongoing filing requirements thereafter.

376. The Commission recognizes that there will be a burden involved in the initial start-up associated with filing Electric Quarterly Reports. This burden includes: the set-up of software on the utilities' computers; the initial entry of the contract data (this may range from a single rate schedule for a power marketer to over one hundred agreements for some traditional utilities); and, for companies with numerous transactions, the mapping of the transaction data from their internal computer systems into the format required by the Commission. For this start-up filing burden we estimate that the average burden for companies with minimal contract data and less than fifty (50) transactions per quarter (presuming they will enter their transactions manually into the software rather than mapping their systems) will average eighteen hours per utility. For utilities with more contracts and a greater number of transactions, we estimate that the average set-up burden will be 230 hours.

377. For the ongoing effort involved in filing the Electric Quarterly Report each subsequent quarter, the burden should be minimal. Contract additions and updates will be entered manually with minimal burden (much less than the current burden) and filing of transaction data will be totally automated for companies which have mapped their systems to the required format, and similar to the current burden for the utilities which enter the data manually.

378. Public reporting burden for this collection is estimated as:

CURRENT REQUIREMENTS

Companies		Quarterly reports	Hours per filing	Service agreements	Hours per filing	Total hours
Utilities	216	840	6	1800	3	10440
Marketers	648	2592	6	200	3	16152
						26592

NEW REQUIREMENTS

[excluding initial set-up burden]

Companies		Electric quarterly reports	Hours per filing	Service agreements	Hours per filing	Total hours	Net difference
Utilities	216	840	1	0		840	–9600
Marketers	648	2592	2	0		5184	10968
						6024	20568

[184] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs., Regulations Preambles 1986–90 ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR part 380).

[185] A fuller description of the differences between the Commission's previous filing requirements and the filing requirements directed by this final rule, see Tables 1 and 2 and the accompanying text, *supra.*

CURRENT REQUIREMENTS

Companies	Quarterly Reports	Hours per Filing	Service Agreements	Hours per Filing	Total Hours	
Utilities	216	840	6	1800	3	10440
Marketers	648	2592	6	200	3	16152
						26592

NEW REQUIREMENTS

[excluding initial set-up burden]

Companies	Electric Quarterly Reports	Hours per Filing	Service Agreements	Hours per Filing	Total Hours	Net Difference	
Utilities	216	840	1	0		840	–9600
Marketers	648	2592	2	0		5184	10968
					6024	20568	

SET-UP BURDEN

Companies		Hours	Total hours
Utilities	216	230190	49,680
Marketers	648	18	11664
Totals	864	248	61,344

378a. Information Collection Costs: The Commission estimates the costs to comply with these requirements are as follows:

Annualized Capital/Startup Costs: $3,451,957 (61,344 hours 2,080 hours per year × $117,041)

Annualized Costs (Operations & Maintenance): $338,969 (6,024 hours ÷ 2080 hours × $117,041)

Current annualized costs: $1,496,324 (26,592 hours ÷ 2,080 hours × $117,041)

The estimated annual total savings to respondents is approximately $1,000,000 on a recurring basis. The collection of information as proposed in the NOPR was submitted to OMB under provisions of the Paperwork Reduction Act. OMB took no action on the NOPR pending a final determination with the issuance of the final rule. Several of the comments in response to the NOPR did raise the issue of the burden that would be imposed by this rule. The Commission is responding to these comments in modifications it has made to its earlier proposals in the NOPR and directly in the preamble of this rule.

379. Internal Review

380. The Commission has conducted an internal review of the public reporting burden associated with this collection of information and has assured itself, by means of its internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information required by this rule and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this order, for the collection, efficient management, and use of the required information.[186]

381. OMB regulations[187] require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in this final rule will be submitted to OMB for review. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, E-mail: *michael.miller@ferc.gov*.

382. Persons wishing to comment on the collections of information required by this rule should direct their comments to the Desk Officer for FERC, OMB, Room 10202 NEOB, Washington, DC 20503, phone 202–395–7318, facsimile 202–395–7285. Comments must be filed with OMB within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address: Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, NE., Washington, DC 20426. For further information on the reporting requirements, contact Michael Miller at (202) 208–1415.

[186] *See* 44 U.S.C. 3506(c).

[187] 5 CFR 1320.11.

383. Document Availability

384. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *http://www.ferc.gov* and in FERC's Public Reference Room during normal business hours (8:30 A.M. to 5:00 P.M. Eastern time) at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

385. From FERC's Home Page on the Internet, this information is available in both the Commission's Issuance Posting System (CIPS) and the Records and Information Management System (RIMS):

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon.

—The full text of this document will be available on IPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

386. RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

387. User assistance is available for RIMS, CIPS, and the Commission's web site during normal business hours from our Help line at (202) 208–2222 (e-mail

to *Webmaster@ferc.fed.us*) or the Public Reference Room at (202) 208–1371 (e-mail to *public.referenceroom@ferc.fed.us*).

388. During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Web site are available. User assistance is also available.

389. Effective Date and Congressional Notification

This final rule will take effect on July 8, 2002. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, of the Office of Management and Budget, that this rule is not a ''major rule'' within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[188] The Commission will submit the Final rule to both houses of Congress and the General Accounting Office.[189]

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends parts 2 and 35 in Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority. 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

§ 2.8 [Removed]

2. Section 2.8 is removed and reserved.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

3. The authority citation for part 35 continues to read as follows:

Authority. 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

4. The heading for part 35 is revised as set forth above.

5. In § 35.1, the heading is revised and paragraph (g) is added to read as follows:

§ 35.1 Application; obligation to file rate schedules and tariffs.

* * * * *

(g) For the purposes of paragraph (a) of this section, any agreement that conforms to the form of service agreement that is part of the public utility's approved tariff pursuant to § 35.10a of this chapter and any market-based rate agreement pursuant to a tariff shall not be filed with the Commission. All agreements must, however, be retained and be made available for public inspection and copying at the public utility's business office during regular business hours and provided to the Commission or members of the public upon request. Any individually executed service agreement for transmission, cost-based power sales, or other generally applicable services that deviates in any material respect from the applicable form of service agreement contained in the public utility's tariff and all unexecuted agreements under which service will commence at the request of the customer, are subject to the filing requirements of this part.

6. Add § 35.10a to read as follows:

§ 35.10a Forms of service agreements.

(a) To the extent a public utility adopts a standard form of service agreement for a service other than market-based power sales, the public utility shall include as part of its applicable tariff(s) an unexecuted standard service agreement approved by the Commission for each category of generally applicable service offered by the public utility under its tariff(s). The standard format for each generally applicable service must reference the service to be rendered and where it is located in its tariff(s). The standard format must provide spaces for insertion of the name of the customer, effective date, expiration date, and term. Spaces may be provided for the insertion of receipt and delivery points, contract quantity, and other specifics of each transaction, as appropriate.

(b) Forms of service agreement submitted under this section shall be in the same format prescribed in § 35.10(b) for the filing of rate schedules.

7. Add § 35.10b to read as follows:

§ 35.10b Electric Quarterly Reports.

Each public utility shall file an updated Electric Quarterly Report with the Commission covering all services it provides pursuant to this part, for each of the four calendar quarters of each year, in accordance with the following schedule: for the period from January 1 through March 31, file by April 30; for the period from April 1 through June 30, file by July 31; for the period July 1 through September 30, file by October 31; and for the period October 1 through December 31, file by January 31. Electric Quarterly Reports must be prepared in conformance with the Commission's software and guidance posted and available for downloading from the FERC Web site (*http://www.ferc.gov*).

Note: The following attachments will not be published in the Code of Federal Regulations.

ATTACHMENT A.—LIST OF COMMENTERS TO NOPR AND DATA SETS ORDERS (ALONG WITH ABBREVIATIONS USED TO IDENTIFY THEM)

Commenter/abbreviation	Filed comments on	
	NOPR	Data sets order
Alcoa Power Generating, Inc. (APGI)	X	
American Electric Power System (AEP)	X	X
American Public Power Association (APPA)	X	
American Transmission Company, LLC	X	
Avista Energy, Inc. (Avista)		X
Calpine Corporation (Calpine)	X	
Carolina Power & Light Company (Carolina)		X
CLECO Corporation (CLECO)	X	

[188] 5 U.S.C. 804(2).

[189] 5 U.S.C. 801(a)(1)(A).

ATTACHMENT A.—LIST OF COMMENTERS TO NOPR AND DATA SETS ORDERS (ALONG WITH ABBREVIATIONS USED TO IDENTIFY THEM)—Continued

Commenter/abbreviation	Filed comments on	
	NOPR	Data sets order
CMS Marketing, Services, and Trading Company and CMS Generation Co. (CMS)	X	
Constellation Power Source, Inc. (Constellation)	X	X
Consumers Energy Company (Consumers Energy)	X	X
Duke Energy (Duke)	X	X
Dynegy, Inc. (Dynegy)	X	X
Edison Electric Institute (EEI)	X	X
Edison Mission Energy (Edison Mission)		X
Electric Power Supply Association (EPSA)	X	X
Engage Energy America LLC (Engage)	X	
Enron Power Marketing, Inc. (Enron)	X	
Excelon Corporation, et al. (Excelon)	X	
FirstEnergy Corp. (FirstEnergy)	X	
Florida Power and Light Co. (FP&L)	X	
Illinois Power Company (Illinois Power)		X
Midwest Independent Transmission System Operator, Inc. (Midwest ISO)	X	
Minnesota Power	X	
Mirant	X	
Morgan Stanley Capital Group, Inc. (Morgan Stanley)	X	
National Association of Regulatory Utility Commissioners (NARUC)	X	
National Grid USA (National Grid)	X	
New York State Electric & Gas Corporation (NYSEG)		X
Oklahoma Gas and Electric Company (OK G&E)	X	
Otter Tail Power Company (Otter Tail)	X	
Pinnacle West Companies (Pinnacle)	X	
PJM Interconnection, L.L.C. (PJM)	X	X
PSEG Service Electric and Gas Co., et al. (PSEG)	X	X
Public Utilities Commission of California (California Commission)	X	
Puget Sound Energy, Inc. (Puget Sound)		X
Reliant Resources, Inc. (Reliant)	X	X
South Carolina Electric & Gas Company (SCE&G)	X	
Southern Company Services, Inc., et al. (Southern)	X	X
Tenaska, Inc., et al. (Tenaska)	X	
Tractebel North America, Inc. (Tractebel)		X
Transmission Dependent Utility Systems (TDUS)	X	
Virginia Electric and Power Company (VEPCO)		X
Western Systems Power Pool, LLC (WSPP)	X	
Williams Energy Marketing & Trading Company (Williams)	X	
Wisconsin Electric Power Company (WEPCO)		X
Wisconsin Public Service Company, et al. (Utility Coalition)	X	
Xcel Energy Services Inc. (Xcel)	X	

SUMMARY OF REQUIRED DATA SETS—ATTACHMENT B

Data collected (field names)*	Id's filer	Commission requirement	Contract data	Commission requirement	Trans-action data	Commission require-ment
1. company_name	X	385.203(a)(10)	X	Seller: 385.203(a)(2) and (b)(1) Customer: 35.10(a).	X	Seller and Customer: *Citizens* 48 FERC ¶ 61,210. (1989) (*Citizens*.)
2. company_duns	X		X	OATT Customer: 37.5(b)(2) and (b)(3) [OASIS data element].	X	
3. contact_name	X	385.203(a)(10) and (b)(3)				
4. contact_title	X	385.203(a)(10) and (b)(3)				
5. contact_address	X	385.203(a)(10) and (b)(3)				
6. contact_city	X	385.203(a)(10) and (b)(3)				
7. state_fk	X	385.203(a)(10) and (b)(3)				
8. contact_zip	X	385.203(a)(10) and (b)(3)				
9. country_name	X	385.203(a)(10) and (b)(3)				
10. contact_phone	X	385.203(a)(10) and (b)(3)				
11. contact_email	X	New requirement				
12. filing_quarter	X	385.203(a)(6) and *Citizens*				
13. contract_affiliate			X	OATT Customer: 35.28(c) [tariff req't] 37.5(b)(2) and (b)(3) [OASIS data element].		
14. ferc_tariff_reference			X	35.9(a); 385.203(a)(1)		Y [1].
15. contract_service_agreement_id.			X	35.9(a)		Y.
16. contract_execution_dt			X	35.1(a), 35.12(a), 35.13(b)(6)		
17. contract_commencement_dt			X	35.9(b)(4), 35.12(a), 35.13(b)(2)		

SUMMARY OF REQUIRED DATA SETS—ATTACHMENT B—Continued

Data collected (field names)*	Id's filer	Commission requirement	Contract data	Commission requirement	Transaction data	Commission requirement
18. contract_termination_dt			X	35.1(a) and (d) 35.12(a), 35.13(b)(6).		*Citizens.*
19. actual_termination_dt			X	35.15, 35.16		
20. class_name			X	35.1(a), 35.12(a) 35.13(b)(4) and (6).	X	*Citizens.*
21. quantity			X	35.1(a), 35.12, 35.13(a), (b)(6) and (c).		
22. rate			X	35.1(a), 35.12, 35.13(a), and (c)	X	*Citizens.*
23. rate_min			X	35.1(a), 35.12, 35.13(a) and (c).		
24. rate_max			X	35.1(a), 35.12, 35.13(a) and (c)		
25. rate_desc			X	35.1(a), 35.12(b), 35.13(a) and (c).		*Citizens.*
26. units			X	35.1(a), 35.12, 35.13(a), (b) and (c).	X	*Citizens.*
27. point_of_delivery_control_area.			X	35.1(a), 35.12, 35.13(a)(2)(6)(iii) and (b)(6).	X	*Citizens.*
28. point_of_delivery_specific_loc			X	35.1(a), 35.12, 35.13(a)(2)(6)(iii) and (b)(6).	X	*Citizens.*
29. point_of_receipt_control_area			X	35.1(a), 35.12, 35.13(a)(2)(6)(iii) and (b)(6).		
30. point_of_receipt_specific_loc			X	35.1(a), 35.12, 35.13(a)(2)(6)(iii) and (b)(6).		
31. begin_date			X	35.1(a), 35.12(a), 35.13(b)(6)		
32. end_date			X	35.1(a), 35.12(a), 35.13(b)(6)		
33. extensionprovisiondesc			X	35.1(a), 35.12(a), 35.13(b)(4) and (6).		*Citizens.*
34. incrementname			X	35.1(a), 35.12(a), 35.13(b)(4)	X	*Citizens.*
35. increment_peaking_name			X	35.1(a), 35.12(a), 35.13(b)(4)	X	*Citizens.*
36. product_name			X	35.1(a), 35.12(a), 35.13(b)(4)	X	*Citizens.*
37. product_type_name			X	35.1(a), 35.12(a), 35.13(b)(4)		
38. term_name			X	35.1(a), 35.12(a), 35.13(b)(4) and (6).	X	
39. transaction_end_dt					X	*Citizens.*
40. total_transmission_charge					X	*Citizens.*
41. total_transaction_ charge					X	Short-term: *Southern II*, 75 FERC ¶61,130 (1996).
42. transaction_begin_dt					X	*Citizens.*
43. transaction_quantity					X	*Citizens.*
44. transaction_id					X	New requirement.

*The data set field names are defined in Appendix A of the Data Sets Order and use the following abbreviations: id=identifier, dt=date, desc=description, loc=location, fk=foreign key.

[1] Data elements marked with a ''Y'' will be included as transaction data in interim filings. Thereafter, they will be reported as contract data.

HEADER INFORMATION

Information	Definition
filing agent company name	Name of company (for consistency sake, it must be represented the same as it is listed in the DUNS Report.)
respondent company name	
seller company name	
seller DUNS number	DUNS Number for Company Unique Identification.
contact name	Name of contact(s) for the filing (may be from the filer, respondent, and/or seller).
contact title	Title of contact.
contact address	Street address for contact.
contact city	Contact city.
state	Two character state or province abbreviation.
contact zip	Contact zip code.
country name	Country (USA, Canada, or Mexico) for contact address.
contact phone	Phone number of contact.
contact email	E-mail address of contact.
filing quarter	The period for which the Electric Quarterly Report is being submitted.

CONTRACT INFORMATION

seller company name	Name of company (For consistency sake, it must be represented the same as it is listed in the DUNS Report.)
customer company name	
customer DUNS number	DUNS Number for Company Unique Identification.
contract affiliate	This is a flag to determine if the customer is an affiliate. Set to Yes if the customer is an affiliate of the provider.
FERC tariff reference	Valid Entries: FERC's designation, e.g., ''FERC Electric Tariff, Second Revised Volume No. 5, Schedule 2;'' or ''FERC Electric Rate Schedule No. 126.''.
contract service agreement id	Unique identifier for the contract used by the seller.
contract execution date	Date contract was signed by contracting parties.

HEADER INFORMATION—Continued

Information	Definition
contract commencement date	Date service under the contract commenced.
contract termination date	Specified contract termination date.
actual termination date	If parties terminate the contract at a date different from that specified in the contract, then the date must be specified here.
class name	Transmission service class provided as defined in OASIS. Name of class. Valid entries are ''Firm, Non-Firm, ''TTC'', ''Secondary'', ''N/A'', or {registered}.
extension provision description	Description of extension provision. This field would contain Text—for example ''Automatically renewed until canceled.''.
product type name	The ''Product type name'' includes: T = Electric Transmission, MB = Market

ELECTRIC QUARTERLY REPORT DATA DESCRIPTION—ATTACHMENT C

Information	Definition
CONTRACT INFORMATION	
	Based Power, CB = Cost Based Power, S = Services—Other, or {registered}
term name	Name for term. LT = Long-Term (>= one year), ST= Short- Term (< one year).
increment name	Name of increment. The increment selected would be one of the following: H = Hourly, D = Daily, W = Weekly, M = Monthly, Y = Yearly (or Annually) or {Registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
increment peaking name	Name for increment peaking. For products, services or transaction that are identified as ''P'' = on Peak, ''OP'' = Off-Peak, ''FP'' = Full Period, ''NA'' = Not Applicable for this product, service or transaction; or {registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
product name	A product is something being bought and sold, a type of service or standard agreement.
	Examples: Point-To-Point; Network; Capacity; Installed Capacity; SC—Scheduled system control and dispatch; RV—Reactive supply and vol. control; RF—Regulation and freq. response; EI—Energy imbalance; SP—Spinning reserve; SU—Supplemental reserve; DT—Dynamic Transfer; TL—Real Power Transmission Loss; BS—System Black Start Capability; Must Run Unit; Market Based Power Sale; Cost Based Power Sale; Economy Power Sale; Emergency Power Sale; General Purpose Power Sale; Unit Power Sales; Border Sales; Specialized affiliate transactions; Interconnection Agreements; System Impact and/or Facilities Study Charge(s); Direct Assignment Facilities Charge {registered} (New products may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
quantity	Product quantity for the contract item identified.
rate	Rate charged for this product per unit. Used when a single rate is designated for a product.
rate minimum	Minimum rate to be charged per the contract, if a range is specified.
rate maximum	Maximum rate to be charged per the contract, if a range is specified.
rate description	Text description of rate. May reference FERC tariff, or, description if a discounted or negotiated rate, include algorithm.
units	The unit of measurement for the quantity and rates represented. Examples include KW, MW and MWH.
point of receipt control area	Point of receipt control area. Examples include ''AEP'', ''JACK'', ''FE''. (These values will match what is provided area for in the OASIS.)
point of delivery control area	Point of delivery control area. Examples include ''AEP'', ''JACK'', and ''FE''. (These values will match what is provided for in the OASIS).
point of receipt specific location	The specific location for the point of receipt (POR) as spelled out in the contract. Examples include a named sub-station or generation plant.
point of delivery specific location	The specific location for the point of delivery (POD) as spelled out in the contract. Examples include a named sub-station or generation plant.
begin date	Beginning date of for the product specified (this should be specified here as explicitly as it is specified in the contract, i.e., yyyy+mo+dd+hh+mm+ss+tz). TZ=time zone.
end date	Ending date for the product specified (this should be specified here as explicitly as it is specified in the contract, i.e., yyyy+mo+dd+hh+mm+ss+tz). TZ=time zone.
TRANSACTION INFORMATION	
seller company name	Name of company (for consistency sake, it must be represented the same as it is listed in the DUNS Report.)
customer company name	
customer DUNS number	DUNS Number for Company Unique Identification.
contract service agreement id	Unique identifier for the contract used by the seller.
transaction id	Unique reference number assigned by the seller for each transaction.
class name	Name of class. Valid entries are ''Firm'', ''Non-Firm'', ''Secondary'', ''N/A'', or {registered}.
product name	A product is something being bought and sold, a type of service or standard agreement.

ELECTRIC QUARTERLY REPORT DATA DESCRIPTION—ATTACHMENT C—Continued

Information	Definition
	Examples: Energy; Capacity; SC—Scheduled system control and dispatch; RV—Reactive supply and vol. control; RF—Regulation and freq. response; EI—Energy imbalance; SP—Spinning reserve; SU—Supplemental reserve; DT—Dynamic Transfer; TL—Real Power Transmission Loss; BS—System Black Start Capability; Must Run Unit; Cost Based Power Sale; Economy Power Sale; Emergency Power Sale; General Purpose Power Sale; Unit Power Sales; Border Sales; Specialized affiliate transactions; {registered} (New products may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
term name	Name for term. LT = Long-Term (>= one year), ST= Short- Term (< one year).
transaction begin date	Transaction begin date must be prior to the end of the reporting quarter. Date must contain hours, minutes, seconds, and time zone (MM.DD.YYYY.HH.MM.SS.TZ). Where minutes and seconds are not provided, default to zeros.
transaction end date	Transaction end date and time must be after the beginning of the reporting quarter. Date must contain hours, minutes, seconds, and time zone (MM.DD.YYYY.HH.MM.SS.TZ). Where minutes and seconds are not provided, default to zeros.
transaction quantity	The quantity of the product in this transaction. This quantity could be a whole number or it could include decimals.
rate	Rate charged for this item per unit. Used with contract data when a single rate is designated for a product. Used with transaction data to designate the transaction period's actual rate.
units	The unit of measurement for the quantity and rates represented. Examples include KW, MW and MWH.
point of Point of delivery control area.	Examples include ''AEP'', ''JACK'', and ''FE''. (These values will match what is provided for in the OASIS.)
point of delivery specific location	The specific location for the point of delivery (POD) as spelled out in the contract. Examples include named sub-station or generation plant.
increment name	Name of increment which would be one of the following: H = Hourly, D = Daily, W = Weekly, M = Monthly, Y = Yearly (or Annually) or {Registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
increment peaking name	Name for increment peaking. For products, services or transaction that are identified as ''P'' = on Peak, ''OP'' = Off-Peak, ''FP'' = Full Period, ''NA'' = Not Applicable for this product, service or transaction; or {registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
total transmission charge	State N/A if transmission is not provided by the selling entity, else this represents the total transmission charge associated with the identified power sale transaction.
total transaction charge	Total revenue for transaction, including for the commodity and all other services related to the commodity charge sale under the terms of the contract, including bundled ancillary and transmission services provided by the respondent or others. This is in dollars and cents.
FERC tariff reference	Valid Entries: FERC's designation, e.g., ''FERC Electric Tariff, Second Revised Volume No. 5, Schedule 2;'' or ''FERC Electric Rate Schedule No. 126.'' [1]

[1] This data element will be included as transaction data in interim filings. Thereafter, it will be reported as contract data.

[FR Doc. 02–10806 Filed 5–7–02; 8:45 am]

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Federal Register

Wednesday,
May 8, 2002

Part IV

Securities and Exchange Commission

17 CFR Parts 270 and 274

Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate and Transactions of Investment Companies With Portfolio and Subadvisory Affiliates; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release No. IC–25560; File No. S7–20–00]

RIN 3235–AH57

Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the rule under the Investment Company Act of 1940 that permits a registered investment company (''fund'') that has certain affiliations with an underwriting participant to purchase securities during an offering. The amendments expand the exemption provided by the rule to permit a fund to purchase U.S. government securities in a syndicated offering. These amendments are intended to respond to recent changes in the method of offering certain U.S. government securities.

EFFECTIVE DATE: May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Hester M. Peirce, Senior Counsel, or C. Hunter Jones, Assistant Director, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is adopting amendments to rule 10f–3 [17 CFR 270.10f–3] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'' or ''Act'').[1]

I. Discussion

Section 10(f) of the Investment Company Act prohibits a fund from purchasing any security during an underwriting or selling syndicate if the fund has certain affiliated relationships with a principal underwriter[2] for the security (''affiliated underwriter'').[3] Rule 10f–3 permits a fund to purchase securities in a transaction that section 10(f) would prohibit, if certain conditions are met.[4] The conditions of rule 10f–3 are designed to limit the purchases made under the rule to those that are not likely to raise the concerns that section 10(f) was enacted to address, and are thus consistent with the protection of investors.[5]

When the Commission first adopted rule 10f–3 in 1958, one of the conditions of the rule was that the securities be registered under the Securities Act as part of a public offering.[6] Since then, in response to changes in the methods of offering securities and other developments, we have revised the rule to permit the purchase of additional types of securities that are not registered under the Securities Act, such as municipal securities and securities offered privately to institutional buyers. We determined that the circumstances in which these securities generally are offered, including the availability of relevant information about the issuer and the establishment of a uniform offering price, would serve to protect funds.[7]

Government securities,[8] such as securities issued by agencies or instrumentalities of the U.S. government,[9] are not included in the types of securities that rule 10f–3 permits affiliated funds to purchase. In the past, there was little need to exempt the purchase of these securities because they generally were not offered through ''selling syndicates'' or underwritings that invoke the restrictions of the Act. In recent years, however, government-sponsored enterprises (''GSEs'') have begun to sell securities through underwriting or selling syndicates, and we received a request to broaden the scope of the rule to permit funds to purchase these securities when, due to

[1] Unless otherwise noted, all our references to ''rule 10f–3'' or any paragraph of the rule will be to 17 CFR 270.10f–3.

[2] *See* section 2(a)(29) of the Investment Company Act [15 U.S.C. 80a–2(a)(29)] (definition of principal underwriter).

[3] Section 10(f) [15 U.S.C. 80a–10(f)] prohibits the purchase of a security if a principal underwriter of the security is an officer, director, member of an advisory board, investment adviser, or employee of the fund, or is a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person. In this Release, we refer to a person that falls within one of these categories as an ''affiliated underwriter.'' Thus, as used in this release, the term includes a narrower set of relationships than ''affiliated person,'' which is defined in section 2(a)(3) of the Investment Company Act [15 U.S.C. 80a–2(a)(3)]. Similarly, in this Release, when we refer to a fund that is subject to section 10(f) as a result of its relationship with an ''affiliated underwriter,'' we use the term ''affiliated fund.''

[4] Rule 10f–3 currently permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things: (i) The securities either are registered under the Securities Act of 1933 (''Securities Act'') [15 USC 77a–aa], are municipal securities with certain credit ratings, or are offered in certain foreign or private institutional offerings; (ii) certain conditions with respect to timing and price are satisfied; (iii) the issuer has been in operation for at least three years prior to the offering; (iv) the offering involves a ''firm commitment'' underwriting; (v) the underwriters' commission is reasonable and fair; (vi) the fund (together with other funds advised by the same investment adviser) purchases no more than 25 percent of the offering; (vii) the fund purchases the securities from a member of the syndicate other than its affiliated underwriter; (viii) if the securities are municipal securities, the purchase is not a group sale; and (ix) the fund reports the transactions to the Commission and maintains a written record of each transaction; and (x) the fund's directors have approved procedures for purchases under the rule and regularly review the purchases to determine whether they have complied with the procedures. *See* rule 10f–3(b). The Commission last amended rule 10f–3 in January 2001 to require, as a condition of relief, that a majority of the directors not be interested persons of the fund, that those directors select and nominate other disinterested directors, and that any legal counsel to the disinterested directors be an independent legal counsel. *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)].

[5] *See, e.g.*, Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 22775, at text following nn. 6–7 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)] (''1997 Release'').

[6] *See* Adoption of Rule N–10f–3 Permitting Acquisition of Securities of Underwriting Syndicate Pursuant to Section 10(f) of the Investment Company Act of 1940, Investment Company Act Release No. 2797 (Dec. 2, 1958) (''1958 Adopting Release''). This condition served to assure that the fund did not purchase the securities through a private placement, and provided the basis for other conditions of the rule concerning the timing and conduct of the public offering.

[7] *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting Syndicate, Investment Company Act Release No. 21838, at nn. 31–51 and accompanying text (Mar. 21, 1996) [61 FR 13620 (Mar. 27, 1996)]. We reasoned that, even though these securities are not registered under the Securities Act, they ''would be widely distributed, a wide range of market participants would agree that the offering price of the securities was fair, and that a secondary market for the securities would likely develop.'' *Id.* at text following n. 33. In addition, the other protections of rule 10f–3 continued to apply to purchases of these types of securities.

[8] The term ''government security'' is defined by the Investment Company Act as ''any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing.'' 15 U.S.C. 80a–2(a)(16). Government securities are exempt from the registration requirements of the Securities Act and from the reporting and other requirements of the Securities Exchange Act of 1934 (''Exchange Act''). *See* 15 U.S.C. 77c(a)(2), 78c(a)(12)(A). Offers of or transactions in government securities are subject, however, to the anti-fraud provisions of the Securities Act and Exchange Act. *See* 15 U.S.C. 77q(c), 78j(b).

[9] Government securities may be issued by government-sponsored enterprises (''GSEs'') such as the Federal National Mortgage Association (''FNMA'') and by government corporations such as the Federal Deposit Insurance Corporation. *See* 31 U.S.C. 9101(1) (definition of ''government corporation''); Frank J. Fabozzi and Michael J. Fleming, *U.S. Treasury and Agency Securities in The Handbook of Fixed Income Securities* 175, 191–96 (Frank J. Fabozzi, ed., 2001) (discussing ''agency'' securities issuers, including GSEs and government corporation issuers).

the affiliations of underwriters, the Act would prohibit such a purchase.[10]

In November 2000 we proposed to amend rule 10f–3 to permit the purchase of government securities.[11] We observed in our release that government securities are offered under circumstances that appear to serve, in conjunction with the other conditions of rule 10f–3, to protect funds from the risks that section 10(f) addresses.[12] Commenters supported the proposed amendments.[13] Today we are adopting the amendments as proposed.[14]

When we proposed the amendment to rule 10f–3 concerning government securities, we also proposed to amend the condition of the rule that limits the percentage of securities that an affiliated fund, together with any other fund advised by the affiliated fund's adviser, may purchase in an offering (''percentage limit''). The amendments would have required that the purchases of an affiliated fund, for purposes of meeting the percentage limit, also be aggregated with purchases of any other account over which the fund's adviser had discretionary authority or control.

A number of commenters raised questions about our proposed amendment to the percentage limit of rule 10f–3. These comments raise larger issues of the Commission's regulation of affiliated transactions, which we discuss in a companion release we are issuing today.[15] Therefore we are not adopting the amendments to rule 10f–3 related to the percentage limit, but are proposing in the companion release to amend the rule to address a number of complex issues arising under that provision of the rule.

II. Effective Date

The amendments to rule 10f–3 and the instructions to Form N–SAR will be effective May 10, 2002. This effective date is less than 30 days after publication so that funds and advisers may benefit sooner from the rule amendments.[16]

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. In the Proposing Release, we requested comment and specific data regarding the costs and benefits of the proposed amendments. The comments we received are discussed below.

A. Benefits

The amendments to rule 10f–3 to permit the purchase of government securities will enable funds to purchase securities during the existence of a syndicate in which an affiliated underwriter participates, without having to seek an exemptive order from the Commission.[17] We believe that fund investors could benefit from enhanced fund performance as a result of funds' easier access to primary offerings of government securities.[18] A number of commenters confirmed that expanding rule 10f–3 to include government securities would benefit affiliated funds and their shareholders by enhancing the investment opportunities available to them.[19] Certain protective conditions in rule 10f–3 will serve to safeguard shareholders' interests.[20]

B. Costs

We received no comments or data on the cost of extending rule 10f–3 to the purchase of government securities. We anticipate that funds will incur and pass on to investors only minimal costs as a result of the amendments that we are adopting. Further, funds will avoid the cost of forgoing investments in government securities sold in syndicates in which an affiliated underwriter is participating or the cost of filing an application for exemptive relief in order to make those purchases.[21] Funds that currently rely on rule 10f–3 to purchase securities[22] will incur costs in adjusting their procedures to allow for the purchase of government securities.[23] Funds also will incur costs of checking each transaction for compliance with the rule's conditions and keeping records of each transaction.[24] The fund's board also will review

[10] *See* Memorandum from the law firm of Brown & Wood to the Division of Investment Management, Securities and Exchange Commission (1998) (available to the public in File No. S7–20–00).

[11] *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 24775 (Nov. 29, 2000) [65 FR 76189 (Dec. 6, 2000)] (''Proposing Release'').

[12] *See id.* at text accompanying nn. 17–20. The amendments we adopt today should not be interpreted to confer on securities issued by GSEs a greater level of federal government backing than is afforded to them by law. *See, e.g.,* The Federal Housing Enterprises Safety and Security Act of 1992, Pub. L. No. 102–550, § 1302, 106 Stat. 3941 (''neither [the Federal National Mortgage Association nor the Federal Home Loan Mortgage Corporation] * * *, nor any securities or obligations issued by the enterprises * * *, are backed by the full faith and credit of the United States.''). *See generally* Fabozzi and Fleming, *supra* note 9, at 188 (''Agency securities are not typically backed by the full faith and credit of the U.S. government, as is the case with Treasury Securities.'').

[13] The commenters included one individual, three trade associations, two investment advisers, and three law firms. The comment letters are available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington DC (File No. S7–20–00).

[14] We are also amending the instructions to Form N–SAR to correspond with the rule. Sub-Item 77O of the instructions, which governs the reporting of rule 10f–3 transactions on Form N–SAR, refers to ''the determination described in paragraph (h)(3) of rule 10f–3.'' A technical amendment to this Sub-Item will update the instruction to refer instead to ''the determination described in paragraph (b)(10)(iii) of rule 10f–3.''

[15] *See* Transactions of Investment Companies with Portfolio and Subadvisory Affiliates, Investment Company Act Release No. 25557 (April 30, 2002).

[16] *See* 5 U.S.C. 553(d)(1) (permitting a rule to become effective less than 30 days after publication if it ''grants or recognizes an exemption or relieves a restriction'').

[17] The staff estimates, based on conversations with representatives of funds, that the average cost of filing an exemptive application can range from $20,000 to $80,000, depending on the complexity of the issues addressed in the application.

[18] Although the staff is unable to determine what percentage of mutual fund assets are currently invested in government securities, in calendar year 2000, assets in long-term U.S. government bond funds totaled $309,446,000,000. *See* Investment Company Institute, Mutual Fund Fact Book at 71 (2001).

[19] The amendments may contribute to the competitiveness and efficiency of the government securities market by expanding the pool of potential buyers.

[20] These conditions govern, among other things, (i) the timing and price of the purchase; (ii) the length of time that the issuer has been in operation; (iii) the nature of the underwriting, *i.e.,* it must be a ''firm commitment'' underwriting; (iv) the underwriters'' commission; (v) the percentage of the underwriting that is purchased; (vi) the syndicate member from which the securities are purchased; (vii) board oversight of rule 10f–3 transactions; (viii) the composition of the fund's board; and (ix) reporting and recordkeeping. *See* rule 10f–3(b).

[21] *See supra* note 17.

[22] The staff anticipates that in almost all instances, the funds that will purchase government securities also purchase other securities under rule 10f–3 because the underwriters that participate in the sale of government securities also participate in the sale of other types of securities.

[23] The staff estimates, based on telephone interviews with fund representatives, that a compliance attorney would spend approximately eight hours revising the procedures, at a cost of approximately $496, and the board would spend approximately one hour considering and approving the changes, at a cost of $2000. Thus, assuming that half of the 410 funds that rely on rule 10f–3 now, purchase government securities under the amended rule, funds will spend a total of $511,680 revising their procedures. The staff also estimates that funds may spend time retraining fund personnel responsible for rule 10f–3 compliance after the amendment of the rule 10f–3 procedures, but expects that the time spent will be minimal. The hour estimates for various tasks and the cost of fund board meetings used in this Release are based on conversations between the staff and representatives of funds. The hourly rates for fund personnel used in this Release are derived from salaries reported for personnel outside New York City in these publications: Securities Industry Association, *Management and Professional Earnings in the Securities Industry* (2000) and Securities Industry Association, *Office Salaries in the Securities Industry* (2000).

[24] The staff estimates, based on telephone interviews with fund representatives, that fund personnel on average will spend approximately one hour per transaction, at a cost of $44.87, completing these tasks, and, assuming that there are 205 government securities transactions, funds will annually spend in the aggregate approximately $9,198.

government securities purchases as part of its quarterly review of rule 10f–3 transactions, and the fund will report these purchases along with other rule 10f–3 transactions to the Commission on Form N–SAR, but these tasks are unlikely to measurably increase costs.

IV. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. The Commission has considered these factors.

As discussed above, the Commission anticipates that the new rule will expand funds' opportunities to invest in government securities by permitting funds to purchase these securities from affiliated underwriters without obtaining an exemptive order. This change could enhance competition in the sale of government securities and have a positive effect on efficiency in the government securities markets. The amendments are unlikely to have a measurable effect on capital formation.

V. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of the amendments to rule 10f–3 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520] (''PRA''). We submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate.'' 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. The OMB control number for rule 10f–3 is 3235–0226.

As discussed above, today we are adopting only the proposed amendments to rule 10f–3 that will expand the rule's exemptive relief to permit a fund to purchase government securities under the conditions of the rule. [25] None of the commenters addressed the Paperwork Reduction Act burden associated with these amendments.

As part of a general review of the information collection burdens in rule 10f–3,[26] we have updated our burden estimate with respect to the amendments that we are adopting today. It is the staff's belief that half of the 410 funds that currently rely on the rule may rely on rule 10f–3 to purchase government securities.[27] We estimate, based on the relatively limited number of government securities issuances, that each of these funds will engage in an average of one purchase of government securities per year. We estimate that fund personnel will spend thirty minutes before and thirty minutes after each transaction compiling a record of the transaction.[28] Thus, we anticipate that funds annually will expend a total of approximately 205 hours on recordkeeping in connection with purchases of government securities under rule 10f–3.[29] The staff does not believe that there would be any additional information collection burden attributable to these amendments.[30] The staff further estimates that there will be no cost burden associated with these amendments, apart from the cost associated with the hourly burden identified above.

The collections of information in rule 10f–3 are necessary to facilitate review of transactions that proceed under the rule by fund boards and by the Commission. Information required to be filed with Form N–SAR is public and therefore will not be kept confidential. If any other records required to be kept under these rules are requested by and submitted to the Commission, they will be kept confidential to the extent permitted by relevant statutory and regulatory provisions.

VI. Final Regulatory Flexibility Analysis

The Commission has prepared this Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604. A summary of the Initial Regulatory Flexibility Analysis (''IRFA''), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. We did not receive any comments on the IRFA or on the effect on small entities of the amendments that we are adopting today.

A. Need for Rule 10f–3 and the Amendment

Section 10(f) prohibits affiliated funds from purchasing securities during the existence of an underwriting or selling syndicate for the securities, and authorizes the Commission to exempt transactions by rule or order from the prohibition. The Commission adopted rule 10f–3 to permit a fund to purchase securities from an unaffiliated member of an underwriting or selling syndicate when an affiliated underwriter is a member of the underwriting or selling syndicate. The amendments to rule 10f–3, in response to the decision by certain GSEs to sell their securities through syndicated underwritings, permit funds to rely on the rule to purchase government securities.[31]

B. Significant Issues Raised by Public Comment

Commenters did not raise any significant issues in response to the IRFA.

C. Small Entities Subject to the Rules

A small business or small organization (collectively, ''small entity'') for purposes of the Investment Company Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[32] Of approximately 3,650 active funds, approximately 200 are small entities. We believe that the amendments would increase flexibility for all funds, including small entities, and would not unduly burden small entities.[33]

[25] The revised burden estimates contained in this release, therefore, do not include any burden attributable to the proposed changes in the percentage limit.

[26] In compliance with the Paperwork Reduction Act and the OMB's implementing regulations, the staff conducts triennal reviews of the information collection burdens in its rules.

[27] This estimate is based, in part, on the fact that each of the GSEs that currently sells securities in syndicated offerings has identified a large group of dealers to serve as underwriters, many of which are affiliated underwriters of one or more fund families.

[28] These estimates are based on telephone interviews with fund representatives about rule 10f–3 transactions in other types of securities.

[29] When the Commission proposed the amendments, the staff estimated that the annual recordkeeping burden would increase for each of the estimated seventy funds that would purchase government securities under the rule by approximately 0.25 hours per fund per year and for all funds by approximately 17.5 hours (70 funds x 0.25 = 17.5 hours).

[30] Specifically, the staff does not believe that the addition of government securities would increase the time fund personnel and fund boards would spend compiling and reviewing quarterly reports or reporting rule 10f–3 transactions on Form N–SAR. Although funds would have to modify their rule 10f–3 procedures to accommodate government securities transactions, periodic modifications in response to rule and policy changes are already reflected in the staff's current PRA estimate for rule 10f–3.

[31] *See supra* Section I.

[32] Rule 0–10 [17 CFR 270.0–10].

[33] The number of small entities that will rely on the amended rule to purchase government securities depends on many factors, including the

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

A fund that relies on the exemption in rule 10f–3 to purchase securities (including government securities) must comply with the conditions in the rule, regardless of whether the fund is a small entity. The fund board must approve procedures under which rule 10f–3 transactions will be effected and amend those procedures as necessary. Compliance personnel and portfolio managers must determine whether a proposed purchase will comply with the rule's conditions, collect and retain for six years certain information about each rule 10f–3 transaction, and report each rule 10f–3 transaction on Form N–SAR. Quarterly, the fund's board must review all rule 10f–3 transactions, including purchases of government securities, that have taken place.

E. Agency Action To Minimize Effect on Small Entities

The Commission has considered alternatives to the amendments that would accomplish the objectives of the rule and minimize the impact on small entities. These include: (i) The establishment of differing compliance requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part of the rule, for small entities.

The amendments to rule 10f–3 are designed to enhance the ability of funds, including small entities, to purchase government securities during the existence of an underwriting or selling syndicate in which an affiliated underwriter participates without subjecting funds to requirements other than those already in the rule. Compliance with the rule's conditions is voluntary; small entities (like other funds) that do not rely on the rule may instead apply for an individual exemptive order from the Commission.

The establishment of different compliance or reporting requirements for small entities would conflict with the principles underlying section 10(f), which was intended primarily to prohibit the dumping of otherwise unmarketable securities on funds by their affiliated underwriters, and rule 10f–3, which was designed to permit securities transactions under conditions in which such dumping would not occur. Because a fund of any size could potentially be the object of dumping, small entities should be subject to the rule's protective conditions along with other funds.[34] Likewise, the Commission could not further clarify, consolidate, or simplify the compliance requirements of rule 10f–3 for the benefit of small entities without compromising the protection for the investors in these entities.[35] The amendments embody performance standards because they expand the availability of rule 10f–3 to a class of securities that are offered under circumstances that appear to serve, in conjunction with the other conditions of rule 10f–3, to protect funds from the risks that section 10(f) addresses. Further use of performance standards would be inconsistent with rule 10f–3, which employs carefully crafted safeguards to prevent abuses. Because rule 10f–3 permits transactions to take place that otherwise would be prohibited, small entities benefit from being able to take advantage of the rule, and the regulatory alternative of exempting small entities from the rule's coverage is not applicable.

VII. Statutory Authority

The Commission is amending rule 10f–3 under the authority set forth in sections 10(f), 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a), 80a–37(a)].

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.10f–3 is amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

* * * * *

(b) *Conditions.* Any purchase of securities by a registered investment company prohibited by section 10(f) of the Act (15 U.S.C. 80a–10(f)) will be exempt from the provisions of that section if the following conditions are met:

(1) *Type of Security.* The securities to be purchased are:

(i) Part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a—aa) that is being offered to the public;

(ii) Part of an issue of government securities, as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16));

(iii) Eligible Municipal Securities;

(iv) Securities sold in an Eligible Foreign Offering; or

(v) Securities sold in an Eligible Rule 144A Offering.

* * * * *

(4) *Continuous operation.* If the securities to be purchased are part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a–aa) that is being offered to the public, are government securities (as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16))), or are purchased pursuant to an Eligible Foreign Offering or an Eligible Rule 144A Offering, the issuer of the securities must have been in continuous operation for not less than three years, including the operations of any predecessors.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

4. Form N-SAR (referenced in § 274.101) is amended by revising the Instruction for Sub-Item 77O to read as follows:

Note: The text of Form N-SAR does not and these amendments will not appear in the Code of Federal Regulations.

Form N–SAR

* * * * *

Instructions to Specific Items

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investment objectives of the small entities, the availability of alternative investments, and the frequency with which government securities are offered through affiliated underwriting syndicates. We did not receive any comments in response to our request in the Proposing Release for comment on the number of small entities that would be affected by the proposed amendments.

[34] These protective conditions are set forth above. *See supra* note 4.

[35] The Commission intends, however, to issue a small business compliance guide, which should assist funds that are small entities in complying with the rule.

SUB-ITEM 77O: Transactions effected pursuant to Rule 10f–3

Rule 10f–3 (17 CFR 270.10f–3) provides a limited exemption from section 10(f) of the Act, provided, *inter alia*, that all transactions effected pursuant to the rule are reported on Form N-SAR. If any such transactions were effected during the reporting period, this item should be checked and an exhibit attached setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials upon which the determination described in paragraph (b)(10)(iii) of rule 10f–3 was made.

* * * * *

By the Commission.

Dated: April 30, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–11227 Filed 5–7–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25557, File No. S7–13–02]

RIN 3235–AI28

Transactions of Investment Companies With Portfolio and Subadvisory Affiliates

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing amendments to rules under the Investment Company Act of 1940 to expand the current exemptions for investment companies (''funds'') to engage in transactions with ''portfolio affiliates''—companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities. The Commission is also proposing one new rule and several rule amendments to permit funds to engage in transactions with subadvisers of affiliated funds. The proposals respond to the growth of investment companies and changes in the organization of funds; they are designed to permit transactions between funds and certain affiliated persons under circumstances where it is unlikely that the affiliate would be in a position to take advantage of the fund.

DATES: Comments must be received on or before July 19, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–13–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov.*) [1]

FOR FURTHER INFORMATION CONTACT: William C. Middlebrooks, Jr., Attorney, or Martha B. Peterson, Special Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is requesting public comment on proposed rule 17a–10 [17 CFR 270.17a–10] and proposed amendments to rules 10f–3 [17 CFR 270.10f–3], 12d3–1 [17 CFR 270.12d3–1], 17a–6 [17 CFR 270.17a–6], 17d–1 [17 CFR 270.17d–1], and 17e–1 [17 CFR 270.17e–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act'' or ''Act''). [2]

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I. Discussion

The Investment Company Act restricts a wide range of transactions and arrangements involving investment companies (''funds'') [3] and their affiliated persons. These restrictions lie at the heart of the Act, and are designed to prevent affiliated persons from managing the fund's assets for their own benefit, rather than for the benefit of the fund's shareholders.[4] Affiliated persons of a fund include (i) its investment adviser and any subadvisers, (ii) companies the fund controls or five percent (or more) of whose securities are held by the fund (''portfolio affiliates''), (iii) persons who control the fund, and (iv) persons who are under common control with the fund.[5] Many of the restrictions on transactions and arrangements with fund affiliates apply not only to affiliated persons of the fund (''first-tier'' affiliates), but also to affiliated persons of those persons (''second-tier'' affiliates).[6]

Provisions of the Act and our rules restricting transactions or arrangements with affiliated persons include:

• Section 17(a), which prohibits affiliated persons of a fund from borrowing money or other property from, or selling or buying securities or other property to or from the fund, or any company that the fund controls; [7]

[1] We do not edit personal, identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Unless otherwise noted, when we refer to rules 10f–3, 12d3–1, 17a–6, 17d–1, or 17e–1, or any paragraph of those rules, we are referring to the following sections of the Code of Federal Regulations in which each of these rules is published: 17 CFR 270.10f–3, 17 CFR 270.12d3–1, 17 CFR 270.17a–6, 17 CFR 270.17d–1, or 17 CFR 270.17e–1 respectively.

[3] We use the term ''fund'' throughout this release to refer to registered investment companies, series of registered investment companies that are series companies, and business development companies, which are unregistered investment companies.

[4] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency,* 76th Cong., 3d Sess. 37 (1940) (Statement of Commissioner Healy).

[5] The Act defines an ''affiliated person'' of another person as (A) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting securities of such other person; (B) any person five percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is a fund, any investment adviser of the fund or any member of its advisory board; and (F) if such other person is an unincorporated fund, not having a board of directors, the depositor of the fund. 15 U.S.C. 80a–2(a)(3). The term ''control'' means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company is presumed to control such company. 15 U.S.C. 80a–2(a)(9).

[6] A fund's investment adviser is, for example, a first-tier affiliate of the fund. A company that owns five percent of the voting securities of the fund's investment adviser is a second-tier affiliate of the fund. The prohibitions of the Act extend to second-tier affiliates to make those prohibitions more difficult to circumvent. *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency,* 76th Cong., 3d Sess. 261 (1940) (Statement of David Schenker).

[7] 15 U.S.C. 80a–17(a). The prohibition in section 17(a) also extends to promoters and principal underwriters for the fund and persons affiliated with the promoters and principal underwriters. Section 17(a) was recently amended to make it

Continued

• Section 17(d), and rule 17d–1 thereunder, which prohibit affiliated persons of a fund from participating with the fund in any joint enterprise or other joint arrangement or profit-sharing plan;[8]

• Section 10(f), which prohibits a fund from purchasing securities in a primary offering if certain affiliated persons of the fund are members of the underwriting or selling syndicate;[9]

• Section 17(e), which limits the remuneration that affiliated persons of a fund may receive in transactions involving the fund, and companies that the fund controls; and[10]

• Section 12(d)(3) and rule 12d3–1, which together prohibit a fund from acquiring securities issued by, among others, its own investment adviser.[11]

Since 1940, the number of persons who are either first-tier or second-tier affiliates of a fund has grown markedly for a number of reasons. First, as funds have grown larger, they are more likely to own positions in excess of five percent of the voting securities of an issuer, creating ''portfolio affiliates.'' [12] Second, many funds today use subadvisers to help manage fund assets, making each subadviser an affiliate of the fund and persons affiliated with each subadviser second-tier affiliates of the fund.[13] Third, most funds are today organized into complexes under the common control of an adviser (or other person), making each fund an affiliated person of all of the other funds in the complex.[14] When multiple funds with subadvisers and portfolio affiliates are under common control, the number of potential first- and second-tier affiliated persons can be quite large.[15]

The growth in the number of first-tier and second-tier affiliates of funds has resulted in an increasing number of persons with whom funds may not enter into transactions or arrangements under the Act. Many of these affiliated persons, however, have neither the ability nor the incentive to take advantage of the fund.[16] Accordingly, we have issued a number of exemptive orders permitting transactions when we have determined that the exemption is in the public interest, and consistent with the protection of investors and the purposes of the Act.[17]

We are today proposing one new rule and revisions to several current rules that would codify the terms of many of these orders.[18] The proposed rule and rule amendments are designed to permit funds to engage in transactions and arrangements with affiliated persons that are not likely to raise the concerns that the Act was intended to address.[19]

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unlawful for a first-or second-tier affiliate to lend money or other property to a fund, or a company controlled by a fund, in contravention of such rules, regulations, or orders as the Commission, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]), issues consistent with the protection of investors. 15 U.S.C. 80a–17(a)(4) (effective May 12, 2001). The Commission has not yet issued any rules or orders under this section. Section 17(a) applies to transactions between, among others, a fund and its portfolio affiliates. *SEC* v. *General Time*, 407 F.2d 65, 68 (2d Cir. 1968); Talley Industries, Inc., Investment Company Act Release No. 5953 (Jan. 9, 1970).

[8] Section 17(d) of the Act makes it unlawful for first- and second-tier affiliates of a fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant ''in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant.'' 15 U.S.C. 80a–17(d). Rule 17d–1(a) prohibits first- and second-tier affiliates of a fund, the fund's principal underwriter, and affiliated persons of the fund's principal underwriter, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which any such fund or company controlled by a fund is a participant ''unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted.'' Section 17(d) and rule 17d–1 apply to joint transactions of funds and, among others, their portfolio affiliates. *SEC* v. *Talley Industries*, 399 F2d 396, 402 (2d Cir. 1968).

[9] 15 U.S.C. 80a–10(f).

[10] Section 17(e)(1) of the Act prohibits an affiliated person acting as agent from accepting any compensation from any source (other than a regular salary or wage from a fund) for the purchase or sale of property to or for the fund, or companies controlled by the fund, except in the course of the person's business as an underwriter or broker. Section 17(e)(2) of the Act limits the remuneration that a person may receive when acting in reliance on section 17(e)(1)'s exemption for the brokerage business. 15 U.S.C. 80a–17(e).

[11] Section 12(d)(3) of the Act generally prohibits any fund, and any company or companies controlled by a fund, from purchasing or acquiring any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is either an investment adviser of an investment company or an investment adviser registered under the Investment Advisers Act of 1940. 15 U.S.C. 80a–12(d)(3), referring to 15 U.S.C. 80b. Rule 12d3–1 provides an exemption from this general prohibition, but the exemption does not extend to the acquisition of a general partnership interest or a security issued by the acquiring company's investment adviser, promoter, or principal underwriter, or any affiliated person of such investment adviser, promoter, or principal underwriter. *See* rule 12d3–1(c).

[12] Average assets per fund grew from $346 million in 1990 to $852 million in 2000. Investment Company Institute, Mutual Fund Fact Book 63 (2001) (''ICI Fact Book''). Schedule 13D and 13G Reports [17 CFR 240.13d–101 and 13d–102] (reporting ownership of more than five percent of the voting stock of a security traded on an exchange) by funds grew during the same period from 510 (reporting ownership by approximately 65 funds in 450 issuers) to 1,378 (reporting ownership by 190 funds in 875 issuers).

[13] Of the approximately 9,700 portfolios of open-end and closed-end investment companies reporting information on Form N-SAR [17 CFR 274.101] during the first six months of 2001, approximately 1,900 reported using at least one subadviser, and 520 reported using two or more subadvisers.

[14] In 2000 there were 431 fund complexes. ICI Fact Book, *supra* note 12, at 63. Funds in a fund complex are under the common control of an investment adviser or other person when the adviser or other person exercises a controlling influence over the management or policies of the funds. 15 U.S.C. 80a–2(a)(9). *See supra* note 5. Not all advisers control the funds they advise. The determination of whether a fund is under the control of its adviser, officers, or directors depends on the relevant facts and circumstances. *See* Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)] at n.11. Throughout this release we presume that the funds in a fund complex are under common control as funds that are *not* affiliated persons will not require and thus will not rely on most of the proposed exemptions. The exception is the exemption for transactions restricted by section 10(f) of the Act, which we describe in section I.B.3.

[15] For example, in a fund complex with five funds controlled by a single investment adviser, if each fund has one subadviser and one portfolio affiliate, then every fund would have seven first-tier affiliates (one adviser, one subadviser, one portfolio affiliate, and four affiliated funds) and eight second-tier affiliates (four subadvisers of affiliated funds and four portfolio affiliates of affiliated funds).

[16] For example, in a fund complex where multiple funds are under common control but are managed by different subadvisers, each subadviser is a first-tier affiliate of any fund that it advises, and a second-tier affiliate of all of the other funds. The restrictions on affiliate transactions apply to dealings between a fund and the subadvisers that are its second-tier affiliates even if the fund's own subadviser is a business competitor of the second-tier affiliate subadvisers.

[17] These orders have been issued pursuant to our authority under sections 6(c), 10(f), and 17(b) of the Act. 15 U.S.C. 80a–6(c), 80a–10(f), and 80a–17(b). *See, e.g.*, CDC IXIS Asset Management Advisers, L.P., Investment Company Act Release Nos. 25061 (July 12, 2001) [66 FR 37497 (July 18, 2001)] (notice) and 25103 (Aug. 8, 2001) (order); Frank Russell Investment Co., Investment Company Act Release Nos. 24820 (Jan. 3, 2001) [66 FR 2031 (Jan. 10, 2001)] (notice) and 24847 (Jan. 30, 2001) (order); SEI Investments Management Corporation, Investment Company Act Release Nos. 24430 (Apr. 28, 2000) [65 FR 26246 (May 5, 2000)] (notice) and 24463 (May 23, 2000) (order); North American Security Trust, Investment Company Act Release Nos. 18860 (Jul. 22, 1992) [57 FR 33540 (Jul. 29, 1992)] (notice) and 18899 (Aug. 18, 1992) (order); State Street Bank and Trust Co., Investment Company Act Release Nos. 19784 (Oct. 13, 1993) [58 FR 53983 (Oct. 19, 1993)] (notice) and 19844 (Nov. 9, 1993) (order).

[18] We are also taking this opportunity to redraft in plain English the rules that permit funds to enter into transactions and arrangements with their portfolio affiliates.

[19] Today's proposal responds, in part, to a rulemaking petition submitted by the Investment Company Institute to the Commission in December 1998 (''ICI Petition''). A copy of that petition is available in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC (File No. S7–13–02). In November 2000 we proposed to amend rule 10f–3 to expand the exemption provided by the rule to permit a fund to purchase government securities in a syndicated offering. *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No.

A. Portfolio Affiliates

Rules 17a–6 and 17d–1(d)(5) permit a fund and its portfolio affiliates to engage in principal transactions and enter into joint arrangements that would otherwise be prohibited by section 17(a), or by section 17(d) and rule 17d–1(a). Under the rules, a fund may enter into a principal transaction or a joint arrangement with a portfolio affiliate, or an affiliated person of a portfolio affiliate, as long as certain other affiliated persons of the fund (*e.g.*, the fund's adviser, persons controlling the fund, and persons under common control with the fund) (''Prohibited Participants'') are not parties to the transaction and do not have a financial interest in a party to the transaction.[20]

1. Second-Tier Affiliates

Rules 17a–6 and 17d–1(d)(5) give broad exemptions that permit transactions and arrangements involving a fund and its own portfolio affiliates, but do not extend to identical transactions or arrangements involving portfolio affiliates of funds under common control with the fund. As a result, a fund may be able to enter into a transaction or arrangement with its own portfolio affiliate (a first-tier affiliate), but not with a portfolio affiliate of another fund in the same complex (a second-tier affiliate).[21]

Fund complexes and series companies were relatively uncommon when we amended rules 17a–6 (in 1964)[22] and 17d–1(d)(5) (in 1974)[23] to permit funds to engage in principal transactions and joint arrangements with their portfolio affiliates.[24] Transactions and arrangements between a fund and its second-tier portfolio affiliates do not appear to raise concerns that are different from those raised by transactions and arrangements between a fund and its first-tier portfolio affiliates. Therefore, we are proposing to amend rules 17a–6 and 17d–1 to permit a fund to engage in principal transactions or enter into joint arrangements with its second-tier portfolio affiliates under the same conditions as with first-tier portfolio affiliates.[25]

We request comment on our proposal to expand the exemptive relief provided in rules 17a–6 and 17d–1(d)(5). Do arrangements and transactions with second-tier portfolio affiliates raise investor protection issues not present in arrangements and transactions with first-tier portfolio affiliates? If so, should exemptive relief for transactions and arrangements involving second-tier portfolio affiliates be subject to any additional conditions?

2. Financial Interests

As discussed above, our exemptions for transactions or arrangements with portfolio affiliates are unavailable if certain other affiliated persons have a ''financial interest'' in a party to the transaction (other than the fund).[26] Our rules do not explain what constitutes a ''financial interest'' in a party. Instead, the rules provide a list of interests that are deemed not to be ''financial interests.''[27]

We are concerned that the rules, as currently drafted, do not (and cannot) anticipate every remote or minor interest in a party to a transaction, and thus they may prohibit many transactions with portfolio affiliates even though the affiliated person's financial interest is unlikely to present an incentive for overreaching the fund. We are therefore proposing to amend rules 17a–6 and 17d–1(d)(5) to provide that, in addition to the interests currently deemed not to be ''financial interests,'' the term ''financial interest'' does not include any interest that the fund's board of directors, including a majority of the directors who are not interested persons of the fund, finds to be not material.[28]

We are also proposing to amend our rules to make them consistent with one another with regard to the time period for which a Prohibited Participant's financial interest will result in loss of the rules' exemption.[29] Under the proposed amendments, the exemptions under both rules 17a–6 and 17d–1(d)(5) will be available unless a Prohibited Participant (i) has a financial interest in a party at the time of the fund's participation in the transaction or arrangement, (ii) had a financial interest in a party within the six months preceding the fund's participation, or (iii) will obtain a financial interest in a party pursuant to an arrangement in existence at the time of the fund's participation.[30]

24775 (Nov. 29, 2000) [65 FR 76189 (Dec. 6, 2000)]. We are reproposing certain aspects of the rule 10f–3 proposal in this Release, and are adopting other aspects of that proposal in a companion release that we are issuing today. *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 25560 (April 30, 2002).

[20] The rules were designed to exempt transactions and arrangements from the prohibitions of section 17 when neither the parties to the transaction, nor any person with a financial interest in a party to the transaction, has the potential to overreach the investment company. *See* Investment Company Act Release No. 10698 (May 17, 1979) [44 FR 29908 (May 23, 1979)].

[21] Thus, for example, under current rule 17a–6 a fund whose first-tier portfolio affiliate merges with another company in which the fund invests may receive shares of the acquiring company (in exchange for its shares of the acquired company) in connection with the merger. However, the rule does not permit an identical transaction in which the acquiring company is an affiliated person of another fund in the fund complex. *See* Longleaf Partners Funds Trust, SEC Staff No-Action Letter (Apr. 9, 2001).

[22] We adopted rule 17a–6 in 1961 to provide small business investment companies licensed by the United States Small Business Administration with an exemption from section 17(a)(1) and section 17(a)(3) for certain transactions with their portfolio affiliates. Investment Company Act Release No. 3361 (Nov. 17, 1961) [26 FR 11238 (Nov. 29, 1961)]. We amended the rule in 1964 to exempt from section 17(a) additional persons and transactions, including transactions involving all other types of investment companies and their portfolio affiliates that were ''non-public'' companies, and again in 1979 to extend the rule to transactions with portfolio affiliates that are public companies. Investment Company Act Release Nos. 3968 (Apr. 29, 1964) [29 FR 6152 (May 9, 1964)] and 10828 (Aug. 13, 1979) [44 FR 48657 (Aug. 20, 1979)].

[23] We amended rule 17d–1 in 1974 to permit joint transactions under conditions similar to those imposed by rule 17a–6. Adoption of Amendment to Rule 17d–1 Under the Investment Company Act of 1940 Exempting Certain Joint Transactions Involving Registered Investment Companies, Including SBIC Stock Option Plans, From the Application Requirements of the Rule, Investment Company Act Release No. 8542 (Oct. 15, 1974) [39 FR 37971 (Oct. 25, 1974)].

[24] In 1958 there were only five ''multi-fund'' open-end investment companies (series companies) and 29 ''multi-company groups'' (fund complexes). Wharton School of Finance and Commerce, A Study of Mutual Funds, H.R. Rep. No. 2274, 87th Cong., 2d Sess. 6, 42 (1962). As recently as 1980 few management investment companies were organized as series companies and there were only 120 fund complexes. ICI Fund Fact Book, *supra* note 12, at 63; Securities and Exchange Commission Annual Report for 1980, 48th Annual Report. In 2000, approximately 1,400 management investment companies were organized as series companies (with 7,000 portfolios) and there were approximately 430 fund complexes. ICI Fund Fact Book, *supra* note 12, at 63; Reports on Form N–SAR [17 CFR 274.101].

[25] Proposed rules 17a–6(a) and 17d–1(d)(5).

[26] Rules 17a–6(a)(5)(ii) and 17d–1(d)(5)(i).

[27] Rules 17a–6(b)(1) and 17d–1(d)(5)(iii).

[28] Proposed rules 17a–6(b)(1)(i)(H) and 17d–1(d)(5)(ii)(A)(*8*). Our proposed amendments would also require that the directors record the basis for their finding in the minutes of the board's meeting. *Id.*

[29] Rule 17a–6 is not available if a Prohibited Participant ''has, or within six months prior to the transaction had * * * or pursuant to an arrangement will acquire'' a financial interest in a party to the transaction. Rule 17a–6(a)(ii). Rule 17d–1(d)(5) is not available if a Prohibited Participant ''is, was or proposes to be'' a participant in the joint enterprise through a financial interest in a person ''who is, was or will be'' a participant in the joint enterprise. Rule 17d–1(d)(5)(i).

[30] Proposed rules 17a–6(b)(1)(ii) and 17d–1(d)(5)(ii)(B). Rule 17d–1(d)(6) includes references to the Prohibited Participants identified in current

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We request comment on our proposed amendments regarding the financial interests of Prohibited Participants. Should Prohibited Participants be permitted to have an interest in parties to the transaction or arrangement if the interest is not material? Should the rules provide a standard against which directors should determine whether an interest is not material? [31] If so, what should the standard be?

3. Percentage Limits on Investment in Joint Enterprise

A fund, or a company that a fund controls, may commit no more than five percent of its assets to a joint enterprise with a portfolio affiliate.[32] When we amended rule 17d–1 to permit funds to engage in joint enterprises with portfolio affiliates, we were concerned that a fund that committed a significant percentage of its assets to a joint enterprise could be susceptible to disadvantage or unfair treatment.[33] As a result, we decided to continue to review those transactions by considering exemptive relief on a case-by-case basis. There is no comparable limitation for principal transactions with portfolio affiliates, however, and it is not clear that the limit continues to serve a useful purpose. We therefore are proposing to amend rule 17d–1(d)(5) to eliminate the rule's percentage limit.[34] We request comment on this amendment. Is there any specific harm that could result from elimination of the limit?

B. Subadviser Affiliates

As we discussed above, funds today are typically organized, operated, and controlled by an investment adviser that advises a number of other funds in a fund complex. That adviser may be assisted by one or more subadvisers, which may provide general advisory assistance or may manage a discrete portion of the fund's portfolio and have no responsibilities with respect to the rest of the fund.[35] Each subadviser is a first-tier affiliate of any fund it advises and a second-tier affiliate of each fund in the fund complex that it does not advise.[36] Section 17(a) of the Act prohibits the common adviser (a first-tier affiliate) and each fund's own subadviser (a first-tier affiliate), as well as *each* subadviser of the other funds (second-tier affiliates) from entering into principal transactions with the fund.[37] Section 17(e) restricts the remuneration the common adviser, each fund's own subadviser, and the subadvisers of the other funds may receive in transactions involving the fund and companies that the fund controls.[38] Section 10(f) prohibits each fund from purchasing securities in any primary offering in which the underwriting or selling syndicate includes the common adviser, the fund's own subadviser, or any person with which these advisers are affiliated.[39] Section 12(d)(3) and rule 12d3–1 prohibit each fund from acquiring securities issued by the common adviser or its own subadvisers.[40]

Ordinarily a subadviser has little power to overreach those funds, or portions of a fund, with which it is affiliated but which it does not advise. We have, therefore, issued a number of orders exempting subadvisers and funds from sections 17(a), 17(e), 10(f), and 12(d)(3) in order to permit subadvisers to engage in transactions with affiliated funds when they are not in a position to influence the fund's decision to participate in the transaction.[41] Today we are proposing to codify these orders in one new rule and three rule amendments. The new rule and amendments will permit these transactions and arrangements to go forward without the expense and delay of obtaining an exemptive order from the Commission.

1. Principal Transactions With Subadvisers: Section 17(a)

Section 17(a) of the Act prohibits a subadviser that is a first-or second-tier affiliate of a fund from borrowing money or other property from, or selling or buying securities or other property to or from the fund, or any company that the fund controls.[42] We are proposing a new rule 17a–10 that would permit a subadviser of a fund to enter into transactions with (i) funds the subadviser does not advise but which are affiliated persons of a fund it does advise (*e.g.,* other funds in the fund complex), and (ii) funds the subadviser does advise, but with respect to portions of the subadvised fund for which the subadviser does not provide investment advice.[43] The proposed exemption

rule 17d–1(d)(5)(i) and to the definition of ''financial interest'' in current rule 17d–1(d)(5)(iii). We are proposing to amend rule 17d–1(d)(6) to conform these references to rule 17d–1(d)(5) as proposed to be amended.

[31] *Compare* rule 15a–4(b)(2)(v) [17 CFR 270.15a–4(b)(2)(v)] (board of directors must find differences between interim advisory contract and previous contract to be immaterial) *with* rule 0–1(a)(6)(i)(A) [17 CFR 270.0–1(a)(6)(i)(A)] (majority of disinterested directors must reasonably determine in the exercise of their judgment that any representation of the fund's investment adviser, principal underwriter, administrator, or any of their control persons, since the beginning of the fund's last two completed fiscal years, is or was sufficiently limited that it is unlikely to adversely affect the professional judgment of person providing legal representation to the disinterested directors).

[32] Rule 17d–1(d)(5)(ii) (In a joint enterprise, other than a merger of portfolio affiliates, neither a fund nor a company that a fund controls may commit in excess of five percent of its assets, except that a fund which is licensed by the Small Business Administration (SBA) under the Small Business Investment Act of 1958 may not commit more than 20 percent of its paid-in capital and surplus.)

[33] *See* Notice of Proposal to Amend Rule 17d–1 Under the Investment Company Act of 1940 to Exempt Certain Joint Transactions Involving Registered Investment Companies, Including SBIC Stock Option Plans, From the Application Requirements of the Rule, Investment Company Act Release No. 8273 (Mar. 14, 1974) [39 FR 11312 (Oct. 25, 1974)].

[34] A fund licensed by the Small Business Administration under the Small Business Investment Act of 1958 would, however, still be subject to all SBA regulations regarding the percentage of its paid-in capital and surplus it could commit to a joint enterprise. *See* 13 CFR 107.740.

[35] *See* Benjamin J. Haskin, *Hiring and Oversight of Sub-Advisers,* 5 The Investment Lawyer 8, 11 (1998) (describing subadvisory arrangements generally).

[36] A subadviser is an ''investment adviser'' for purposes of the Act, which defines a fund's ''investment adviser'' as a person (other than a bona fide officer, director, trustee, member of an advisory board, or employee of the fund) who regularly furnishes advice to the fund with respect to the desirability of investing in, purchasing, or selling securities or other property, or is empowered to determine what securities or other property are to be purchased or sold by the fund. 15 U.S.C. 80a–2(a)(20). The investment adviser may act pursuant to a contract with a fund [15 U.S.C. 80a–2(a)(20)(A)] or pursuant to a contract with an investment adviser that has contracted with the fund. 15 U.S.C. 80a–2(a)(20)(B).

[37] The section also prohibits principal transactions between the fund and affiliates of the common adviser (second-tier affiliates) and affiliates of the fund's own subadviser (second-tier affiliates).

[38] The prohibition in section 17(e) also extends to affiliates of the common adviser and the fund's subadviser.

[39] A fund therefore is prohibited from purchasing securities in an offering in which a participant in the underwriting or selling syndicate is under common control with the fund's adviser.

[40] A fund is also prohibited from acquiring securities issued by an affiliated person of the common adviser or an affiliated person of the fund's subadviser if the affiliated person is a broker, dealer, investment adviser, or engaged in the business of underwriting.

[41] *See, e.g.,* CDC IXIS Management Advisers, L.P. *et al.,* Investment Company Act Release Nos. 25061 (July 12, 2001) [66 FR 37497 (July 18, 2001)] (notice) and 25103 (Aug. 8, 2001) (order); AMR Investment Services Trust, *et al.*, Investment Company Act Release Nos. 23773 (Apr. 7, 1999) [64 FR 18454 (Apr. 14, 1999)] (notice) and 23823 (May 4, 1999) (order); North American Security Trust, Investment Company Act Release Nos. 18860 (Jul. 22, 1992) [57 FR 33540 (July 29, 1992)] (notice) and 18899 (Aug. 18, 1992) (order); State Street Bank and Trust Co., Investment Company Act Release Nos. 19784 (Oct. 13, 1993) [58 FR 53983 (Oct. 19, 1993)] (notice) and 19844 (Nov. 9, 1993) (order).

[42] *See supra* note and accompanying text.

[43] This second category of relief would thus be available only when a fund has one or more subadvisers that are responsible for managing a discrete portion of the fund's assets. The rule would permit the adviser of one portion of the fund to direct that portion to engage in a principal transaction with the subadviser of another portion of the fund's assets. *See* discussion below.

would be subject to conditions, discussed below, designed to limit its availability to circumstances in which the subadviser is unable to influence the management of the fund, or portion of the fund, that participates in the transaction (''participating fund'' or ''participating portion'').

First, the rule would require that the subadvisory relationship be the sole reason why section 17(a) prohibits the transaction (*e.g.,* that the subadviser not be an affiliated person of the participating fund's investment advisers, officers, directors, promoters, or underwriters).[44] Second, the rule would require the participating subadviser and any subadviser of the participating fund or portion to be prohibited by their advisory contracts from consulting with each other concerning securities transactions of the participating fund or portion.[45] These conditions, which have been conditions of our exemptive orders permitting subadvisers to engage in principal transactions with funds with which they are affiliated, are designed to limit the rule's exemption to those transactions in which the subadviser has no incentive or ability to influence the investment decisions made on behalf of the fund or portion of the fund that participates in the transaction.

We are not proposing to prohibit subadvisers and principal advisers from consulting with each other, although subadvisers and their affiliated persons would be able to enter into affiliated transactions and arrangements with a fund (or a portion of a fund) that the principal adviser advises. Application of such a condition could interfere with the principal adviser's duty to supervise the performance of the subadviser.[46] Nevertheless, the principal adviser, as a fiduciary to the fund, could not lawfully collaborate with subadvisers for the purpose of overreaching the fund. We request comment whether, in light of our decision not to impose a communication barrier, we should not permit subadvisers and their affiliates from entering into transactions with funds or portions of funds advised by a principal adviser.

We request comment in general on our proposal to permit funds to engage in principal transactions with subadvisers (and their affiliated persons) that are affiliated with the fund, but which are not in a position to influence the fund's conduct. Are the proposed conditions sufficient to protect the fund from overreaching or self-dealing by subadvisers? Are any of the proposed conditions unnecessary? Should the proposed exemption be subject to additional conditions, such as conditions that would prevent a subadviser from influencing the principal adviser to coordinate the actions of the other subadvisers? Is this likely?

2. Transactions With Subadvisers as Brokers: Section 17(e)

Section 17(e)(2) of the Act generally limits the remuneration that a first- or second-tier affiliate of a fund may receive for effecting purchases and sales of securities on a securities exchange on behalf of the fund, or a company the fund controls, to the ''usual and customary broker's commission.''[47] The limits of section 17(e)(2) apply to purchases and sales made on behalf of a fund by the fund's subadviser (a first-tier affiliate), affiliates of the subadviser (second-tier affiliates), and subadvisers of funds under common control with the fund (second-tier affiliates).

Rule 17e–1 describes the circumstances in which remuneration received by an affiliated person of a fund qualifies as the ''usual and customary broker's commission.'' The rule, among other things, requires that the fund's board of directors review transactions to determine that they comply with procedures adopted by the board to ensure that the remuneration received by the affiliated person does not exceed the usual and customary broker's commission (''review requirement'').[48] In addition, the fund must maintain a record of the transactions (''recordkeeping requirement'').[49] The review and recordkeeping requirements of rule 17e–1 were designed to permit fund directors and our examinations staff to monitor the reasonableness and fairness of remuneration received by affiliated persons of the fund.[50] We are proposing to amend rule 17e–1 to permit an affiliated subadviser of a fund to receive remuneration for service as a broker without complying with these conditions, in circumstances in which the subadviser has very limited ability to influence decisions regarding the purchase and sale of fund securities.[51] Under our proposal, funds would not have to comply with rule 17e–1's review and recordkeeping requirements in circumstances, and subject to conditions, identical to those in which a subadviser could engage in a principal transaction with an affiliated fund under proposed rule 17a–10.[52]

The proposed amendments would relieve funds and subadvisers from the review and recordkeeping requirements when the relationship between the subadviser and fund is sufficiently remote to make it unlikely that the subadviser could directly or indirectly cause the fund to pay an unreasonable or unfair commission.[53] We request commenters to address our proposal to exempt brokerage transactions between funds and certain affiliated subadvisers from rule 17e–1's review and recordkeeping requirements.

3. Purchases During Primary Offering Underwritten by Subadvisers: Section 10(f)

Section 10(f) of the Act prohibits a fund from purchasing any security during an underwriting or selling syndicate if the fund has certain affiliated relationships with a principal underwriter for the security.[54] The

[44] Proposed rule 17a–10(a)(1).

[45] Proposed rule 17a–10(a)(2). We are not proposing to extend this condition to the fund's principal adviser, although subadvisers and their affiliated persons would be permitted to rely on the rule to enter into transactions and arrangements with a fund or portion of a fund with respect to which the principal adviser alone provides investment advice. We are concerned that in the context of the relationship between a principal adviser and a subadviser the condition could be interpreted in a manner inconsistent with the principal adviser's duty to oversee the conduct of subadvisers. Nonetheless, the principal adviser remains a fiduciary of the fund and may not collaborate with fund subadvisers for the purpose of overreaching the fund.

[46] *See* Western Asset Management Co. and Legg Mason Fund Adviser, Inc., Investment Advisers Act Release No. 1980 (Sept. 28, 2001).

[47] Section 17(e)(2) limits the remuneration that any affiliated broker of a fund may receive in connection with a securities transaction to (A) the usual and customary broker's commission for transactions effected on an exchange, (B) two percent of the sales price for secondary distribution, and (C) one percent of the purchase or sale price for other purchases or sales.

[48] Rule 17e–1(a) and (b). The rule also requires that a majority of the directors of the fund not be ''interested persons'' of the fund, that those directors select and nominate any other disinterested directors, and any person who acts as legal counsel for the disinterested directors be an independent legal counsel. Rule 17e–1(c). Section 2(a)(19) identifies persons who are ''interested persons'' of a fund. 15 U.S.C. 80a–2(a)(19).

[49] Rule 17e–1(d).

[50] Agency Transactions by Affiliated Persons on a Securities Exchange, Investment Company Act Release No. 10605 (Feb. 27, 1979) [44 FR 12202 (Mar. 6, 1979)] at n.10 and accompanying text.

[51] Funds are required to retain certain records of brokerage orders by or on behalf of the fund. *See* rule 31a–1(b)(5) [17 CFR 270.31a–1(b)(5)]. Our proposal is not intended to affect these or other recordkeeping requirements not included within rule 17e–1.

[52] Proposed rules 17e–1(b)(3) and (d)(2). *See supra* Section I.B.1 (discussing conditions in proposed rule 17a–10).

[53] Fund directors may, however, wish to continue to review these transactions as a matter of good business practice.

[54] Section 10(f), in relevant part, prohibits a registered investment company from knowingly

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section protects fund shareholders by preventing an affiliated underwriter from placing or ''dumping'' unmarketable securities with the fund.[55] Rule 10f–3 provides an exemption from the prohibition in section 10(f) if certain conditions are satisfied.[56] One of the key conditions is that a fund relying on the rule, together with any other fund advised by the fund's adviser, purchase no more than 25 percent of the offering (''percentage limit'').[57] The purpose of the percentage limit is to provide an indication that a significant portion of the offering is being purchased by persons acting independently of the adviser. The existence of these purchasers suggests that the price of the securities is based on market forces and demonstrates that the securities are not being ''dumped.''[58]

When a fund has multiple subadvisers, section 10(f) can limit significantly the fund's ability to purchase securities in a primary offering.[59] A fund is subject to the prohibition in section 10(f) if *any* of its subadvisers participate in the underwriting or selling syndicate (or are affiliated persons of participants), whether or not the subadviser that *recommends* the purchase is participating. Moreover, in order for a fund to rely on the exemption in rule 10f–3, the aggregate purchases by *all* of the funds advised by *each* of the fund's subadvisers (as well as *all* of the funds advised by the fund's principal adviser) must comply with the rule's percentage limit.

We have issued a number of exemptive orders to permit funds to purchase securities during an underwriting or selling syndicate in which one of its subadvisers is a participant,[60] when the adviser recommending the purchase is not a participant in the syndicate.[61] These orders also permit a fund to purchase securities in reliance on rule 10f–3 without aggregating purchases by portions of the fund advised by advisers that are not participants in the syndicate. We concluded that, in these circumstances, an exemption from section 10(f) is consistent with the protection of investors because a subadviser that participates in an underwriting or selling syndicate has little opportunity to ''dump'' securities into funds or portions of a fund's portfolio that the subadviser does not advise. Moreover, we concluded that purchases recommended by an adviser that is not a participant in the underwriting (and not influenced by participants in the underwriting) should be considered purchases independent of the adviser participating in the underwriting. Today we are proposing amendments to rule 10f–3 to codify many of the terms of these orders.

The proposed amendments to rule 10f–3 would deem each of the series of a series company and the ''managed portions''[62] of a fund portfolio (''series'' or ''portion'') to be separate registered investment companies for purposes of section 10(f) and rule 10f–3.[63] The amendments would exempt a purchase of securities by an investment company from the prohibition in section 10(f), if the purchase would not be prohibited if each series or portion were separately registered.[64] The proposed amendments are designed to exempt funds from the prohibition in section 10(f) when that prohibition is triggered by the participation in an underwriting or selling syndicate of a person who is not in a position to influence the fund's investment decisions.[65]

We are proposing additional amendments to rule 10f–3 that would revise the way funds are required to aggregate purchases to determine compliance with the percentage limits of rule 10f–3. Currently, a fund is required to aggregate all of its purchases with those of any other fund advised by its investment adviser.[66] As a result, a fund that is a series must aggregate purchases by all of the other series if the fund's subadviser participates in the underwriting, but the fund need not aggregate purchases made by, for example, a hedge fund advised by the participating subadviser.

The rule appears to be both too broad (in that in requires aggregation of purchases that are not influenced by participants in the underwriting) and too narrow (in that it does not require aggregation of purchases by accounts controlled by the adviser participating in the underwriting). Therefore, we are proposing to amend rule 10f–3 to require the aggregation of purchases by funds that are advised, and accounts

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purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or any person of which any of the foregoing are affiliated persons.

[55] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency*, 76th Cong., 3d Sess. 35 (1940) (Statement of Commissioner Healy); Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 24775, *supra* note 19, at n.4 and accompanying text; Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)] at n.1 and accompanying text.

[56] Rule 10f–3 permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things: (i) The securities either are registered under the Securities Act of 1933 [15 U.S.C. 77a–aa], are part of an issue of government securities, are municipal securities with certain credit ratings, or are offered in certain foreign or private institutional offerings; (ii) the offering involves a ''firm commitment'' underwriting; (iii) the fund (together with other funds advised by the same investment adviser) purchases no more than 25 percent of the offering; (iv) the fund purchases the securities from a member of the syndicate other than its affiliated underwriter; (v) the fund's directors have approved procedures for purchases under the rule and regularly review the purchases to determine whether they have complied with the procedures. *See* rule 10f–3(b).

[57] Rule 10f–3(b)(7).

[58] *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 24775, *supra* note 19, at n.22 and accompanying text.

[59] A fund may have multiple subadvisers because more than one subadviser has been retained to provide investment advice with respect to various portions of the fund. A fund may also have multiple subadvisers because the fund is one of several portfolios of a series company, and different subadvisers provide investment advice with respect to the assets of the different portfolios.

[60] Unless otherwise noted, we will refer to a subadviser that is a principal underwriter, or an affiliated person of a principal underwriter of a security, as a ''participant'' in the underwriting or selling syndicate.

[61] See, *e.g.*, CDC IXIS Asset Management Advisers, L.P., Investment Company Act Release Nos. 25061(July 12, 2001) [66 FR 37497 (July 18, 2001)] (notice) and 25103 (Aug. 8, 2001) (order); AB Funds Trust, et al., Investment Company Act Release Nos. 24999 (June 7, 2001) [66 FR 31953 (June 13, 2001)] (notice) and 25054 (June 29, 2001) (order).

[62] A portion of a fund's portfolio would be a ''managed portion'' if it is a discrete portion of the portfolio for which a subadviser is responsible for providing investment advice, and the subadviser (i) does not provide investment advice with respect to any other portion of the fund's portfolio, (ii) is prohibited by its advisory contract from consulting with any other investment adviser of the investment company that is a principal underwriter or affiliated person of a principal underwriter concerning securities transactions of the fund, and (iii) is not an affiliated person of any other investment adviser, or any promoter, underwriter, officer, director, member of an advisory board, or employee of the investment company. Proposed rule 10f–3(a)(6).

[63] Proposed rule 10f–3(b).

[64] *Id.*

[65] The proposed amendments to rule 10f–3 would effectively permit a fund that is a series in a series company to purchase securities during an underwriting or selling syndicate in which an officer, director, member of an advisory board, investment adviser, or employee of a series other than the purchasing series is (or is an affiliated person of) a participant. The proposed amendments would also permit a fund to purchase securities during a syndicate in which an investment adviser of the fund is (or is an affiliated person of) a participant, if the investment adviser does not provide investment advice (or have the opportunity to influence investment decisions) for the portion of the fund's assets for which the securities are purchased.

[66] Rule 10f–3(b)(7).

that are controlled, by an investment adviser that is a participant in the underwriting or selling syndicate.[67] If multiple investment advisers provide investment advice to a fund (e.g., a principal adviser and one or more subadvisers) but only one of those advisers is a participant in the underwriting or selling syndicate, rule 10f–3's percentage limit would apply only to purchases by the funds and accounts of the participating investment adviser.[68] We request comment on our proposal to amend rule 10f–3.

As discussed above, the proposed percentage limit would encompass purchases by the *accounts* controlled by a fund's investment adviser, as well as the funds advised by the adviser. We initially proposed this amendment in 2000 because we were concerned that rule 10f–3's percentage limit may not provide reliable evidence of a market for the security if most or all of the offering is purchased by fund and non-fund clients of an adviser participating in the underwriting or selling syndicate.[69] While several commenters objected to the proposal, none addressed the policy concerns behind the proposal.[70] We are re-proposing the amendment today in light of the other changes we are proposing to the rule. We request comment on rule 10f–3's percentage limit under these circumstances. Do the other changes we are proposing to rule 10f–3 warrant further changes in the rule?

4. Ownership of Securities Issued by Subadvisers: Section 12(d)(3)

Section 12(d)(3) of the Act generally prohibits funds, and companies controlled by funds, from purchasing securities issued by a registered investment adviser, broker, dealer, or underwriter (''securities-related businesses'').[71] Rule 12d3–1 permits a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related businesses,[72] but a fund may not rely on rule 12d3–1 to acquire securities of its own investment adviser or any affiliated person of its own investment adviser.[73] Thus, a fund may not acquire securities issued by any of its subadvisers, or their affiliated persons.[74]

We have issued several orders exempting funds from the prohibition in section 12(d)(3) to permit them to use rule 12d3–1 to purchase securities issued by fund subadvisers when the subadviser was not in a position to influence the decision by the fund to purchase the securities.[75] We are today proposing to amend rule 12d3–1 to codify these orders and permit a fund to acquire securities issued by one of its subadvisers (or an affiliated person of one of its subadvisers) subject to the same conditions as the other rules we are proposing that would permit transactions with subadvisers and which we discuss above.[76] The rule would be available only to a subadviser that provides investment advice with respect to a discrete portion of the fund's portfolio, and that is not an affiliated person of the adviser causing the fund to purchase the securities.[77] We request comment on our proposal to amend rule 12d3–1.

II. General Request for Comment

We request comment on the proposed rules and proposed rule amendments that are the subject of this Release, suggestions for additional provisions or changes to the rules, and comments on other matters that might have an effect on the proposals contained in this Release. We encourage commenters to provide data to support their views.

III. Cost-Benefit Analysis

We are sensitive to the costs and benefits that result from our rules. The Act and our rules restrict the ability of a first-or second-tier affiliate of a fund to engage in various types of transactions involving the fund, and companies that the fund controls, without first obtaining an exemptive order from the Commission. The proposed rule and amendments would expand the circumstances under which portfolio companies and subadvisers that are affiliated persons of funds may engage in otherwise prohibited transactions with those funds without first obtaining an exemptive order. We have identified certain costs and benefits, which are discussed below, which may result from the proposed rule and rule amendments. As the proposed rule and rule amendments are exemptive, rather than prescriptive, funds and their affiliated persons are not required to rely on them. Therefore, we assume that funds will only rely on the provisions of the proposed rule and rule amendments if the anticipated benefits from such actions would exceed the anticipated costs. We request comment on the costs and benefits of the proposed rule and amendments. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits.

[67] Proposed rule 10f–3(c)(7).

[68] *Id.* If more than one investment adviser of a fund is a participant in the underwriting or selling syndicate then the percentage limit would apply independently with respect to each such investment adviser. Proposed rule 10f–3(c)(7)(iii). The percentage limit would not apply at all if a fund is prohibited from purchasing a security because a person other than the fund's investment adviser (e.g., an officer, director, or employee of the fund) is a participant in the underwriting or selling syndicate. Proposed rule 10f–3(c)(7)(ii).

[69] *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, *supra* note.

[70] Several commenters opposed the proposed amendment on the grounds that it could limit funds' access to primary offerings.

[71] With minor exceptions, section 12(d)(3) prohibits a fund from purchasing or otherwise acquiring ''any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is [an] investment adviser.''

[72] Paragraph (a) of rule 12d3–1 permits a fund to acquire any security issued by any person that, in its most recent fiscal year, derived 15 percent or less of its gross revenues from securities-related activities unless the fund would control such person after the acquisition. Paragraph (b)(3) of rule 12d3–1 permits a fund to invest up to five percent of the value of its total assets in the securities of an issuer that derives more than 15 percent of its gross revenues from securities-related activities. Rule 12d3–1(d)(1) defines ''securities related activities'' as a person's activities as a broker, a dealer, an underwriter, an investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b], or an investment adviser to a registered investment company.

[73] Rule 12d3–1(c) provides that the rule does not exempt the acquisition of a security issued by the acquiring company's investment adviser, promoter, or principal underwriter, or any affiliated person of such investment adviser, promoter, or principal underwriter. Rule 12d3–1(d)(8) provides that any class or series of an investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series, shall be treated as if it is a registered investment company. Accordingly, a fund that is a series of a series company may rely on rule 12d3–1 to purchase securities issued by subadvisers (and persons affiliated with those subadvisers) of the other series of the series company.

[74] Congress adopted section 12(d)(3) for two purposes: (i) To limit the exposure of funds to the entrepreneurial risks peculiar to investing in securities-related businesses and (ii) to prevent potential conflicts of interest and certain reciprocal practices. *See Investment Trusts and Investment Companies, Hearings on S. 3580 before a Subcomm. Of the Comm. On Banking and Currency,* 76th Cong., 3d Sess. 243 (1940). In 1940 most securities-related businesses were organized as privately held general partnerships. If a securities-related business failed, the fund, as a general partner, could have been held accountable for the partnership's liabilities. Rule 12d3–1 preserves these purposes: rule 12d3–1(c) effectively precludes a fund from acquiring, regardless of the source of its revenues, a general partnership interest in a broker, dealer, investment adviser, or underwriter. Today, however, virtually all securities firms are organized as corporations and not as general partnerships.

[75] *See, e.g.*, CDC IXIS Asset Management Advisers, L.P., Investment Company Act Release Nos. 25061 (July 12, 2001) [66 FR 37497 (July 18, 2001)] (notice) and 25103 (Aug. 8, 2001) (order).

[76] Proposed rule 12d3–1(c)(3). *See* sections I.B.1. and I.B.3. of this Release (discussing proposed new rule 17a–10 and proposed amendments to rule 10f–3).

[77] Proposed rule 12d3–1(c)(3)(i) and (ii). The ownership limits in rule 12d3–1(a) and (b) would continue to apply to the fund as a whole.

A. Benefits

1. In General

We anticipate that funds, their shareholders, and their advisers and other affiliated persons would benefit from the proposed rule and amendments. As discussed earlier, the number of persons that are affiliated persons of funds has increased markedly since 1940.[78] As a result, there is an increasing number of persons with which funds may not enter into transactions under the Act, but which have neither the ability nor an incentive to take advantage of the funds. The Act authorizes us to issue orders providing exemptive relief from the restrictions on affiliate transactions, but the process for obtaining such an exemption imposes direct and indirect costs on funds. The proposed rules and amendments each will benefit funds, their shareholders, and their affiliated persons by eliminating these direct and indirect costs.

The most direct cost of the application process is the cost of filing the application itself. From 1996 to 2001, we received twenty-one applications for exemptions from sections 17(a), 17(d), 17(e), 10(f), and 12(d)(3) that involved transactions of funds with portfolio and subadvisory affiliates. Based on discussions with industry representatives, our staff estimates the average cost of filing an application to be approximately $20,000 when the application involves relatively simple issues, and up to $80,000 for applications involving complex, novel issues. Thus, we estimate the cost of filing applications for these exemptions since 1996 to be between $420,000 to $1,680,000. Funds also commonly incur the cost of filing one or more amendments after the initial application. One benefit of our proposal would be elimination of these direct costs.

The application process also produces indirect costs, as funds forego beneficial transactions rather than undertake to obtain an exemptive order. Funds may forgo transactions either because the anticipated benefit of the transaction does not exceed the cost of obtaining an exemptive order, or because the transaction is time-sensitive, and it is not feasible for a fund to obtain an exemptive order quickly enough to be able to enter into the transaction. For applications since 1996, the time between the filing of an application and the granting of an exemptive order has ranged from four months for a relatively straightforward application that added parties to an earlier exemptive order,[79] to 17 months for a more complicated application requiring several amendments.[80] Encouraging beneficial transactions by eliminating these potentially significant costs and delays would be a further benefit of our proposal.

Furthermore, eliminating direct and indirect costs of the application process may reduce factors that discriminate against smaller funds and smaller transactions. The direct cost and delay imposed by the application process may discourage smaller funds from applying for exemptions to a greater extent than larger funds, since a larger fund may be more willing to pay direct costs and wait for approval of exemptions. Funds of any size may have a disincentive to enter into smaller transactions if the cost of obtaining an exemptive order represents a greater proportion of the expected benefits of a smaller transaction than a larger one. Elimination of these factors would reduce ways in which currently there may be a disproportionate adverse effect on smaller funds and a distortion of investment decisions of funds away from smaller transactions.

2. Portfolio Affiliates

The proposed amendments to rules 17a–6 and 17d–1(d)(5) regarding transactions and joint arrangements with second-tier portfolio affiliates may expand the range of possible partners with which funds may enter into transactions and joint arrangements. Funds, second-tier portfolio affiliates, and their shareholders each may benefit from the transactions and arrangements made possible by the proposed amendments. It may not be possible to quantify this benefit, since it varies on a case-by-case basis depending on the characteristics of individual transactions and joint arrangements and on the extent to which funds involved in such transactions have second-tier portfolio affiliates. Moreover, any benefits would have to be measured against the benefits of alternative transactions or joint arrangements that may have been entered into. We request comment on the nature and potential magnitude of this benefit.

Amending rules 17a–6 and 17d–1(d)(5), to provide that the term ''financial interest'' does not include interests that the fund's board of directors finds to be not material, may expand the range of possible partners for transactions and joint arrangements with funds by making the rules' exemptions more widely available.[81] So too may the proposed removal of rule 17d–1(d)(5)'s condition limiting a fund to committing no more than five percent of its assets in any given joint enterprise.[82] These amendments may, thus, expand the scope of the exemptions for transactions or joint arrangements with both first- and second-tier portfolio affiliates, to the additional benefit of funds, their portfolio affiliates, and their shareholders. We request comment on the nature and potential magnitude of this benefit.

3. Subadvisory Affiliates

Principal Transactions

Proposed rule 17a–10 may benefit subadvisers, affiliated funds of a subadvised fund, and portions of the subadvised fund for which the subadviser does not provide investment advice by broadening investments options available to those persons. The restrictions that the Act currently places on transactions with affiliated persons limit the potential trading partners available to buyers and sellers. By allowing a subadviser of a fund to enter into principal transactions with (i) affiliated funds of the subadvised fund and (ii) those portions of the subadvised fund for which the subadviser does not provide investment advice, proposed rule 17a–10 would allow each party to enter into transactions with a wider range of funds. By broadening the markets available to both buyers and sellers, proposed rule 17a–10 may permit sellers to obtain more favorable pricing, and make a wider range of investment options available to buyers. It may not be possible to quantify this benefit, as it depends on the characteristics of individual transactions and on the extent to which funds involved in such transactions have subadvisory affiliates. We request comment on the nature and potential magnitude of this benefit.

Brokerage Transactions

Proposed rule 17e–1 would, under certain circumstances, permit subadvisers and their affiliated persons

[78] *Supra* notes 12–14.

[79] *See* Mercury Asset Management International Ltd., Investment Company Act Release Nos. 23867 (June 9, 1999) [64 FR 32073 (June 15, 1999)] (notice) (application was originally filed Mar. 3, 1999) and 23887 (July 1, 1999) (order).

[80] *See* Frank Russell Investment Company et al., Investment Company Act Release Nos. 24820 (January 3, 2001) [66 FR 2031 (Jan. 10, 2001)] (notice) (application was originally filed Aug. 21, 1999) and 24847 (Jan. 30, 2001) (order).

[81] Expansion of the exemption in this manner may also impose costs by eliminating what has been a ''bright line'' prohibition and expanding the opportunities for harmful transactions. Commenters addressing the benefits of the rule's expansion should also address the potential costs.

[82] Rule 17d–1(d)(5)(ii).

to receive remuneration when acting as broker for an affiliated fund, without complying with all of the rule's conditions. The rule requires, among other things, that fund directors review the transaction, and that funds maintain records of the transaction. Proposed rule 17e–1 would exempt funds from these requirements in circumstances identical to those in which proposed rule 17a–10 would permit a subadviser or its affiliates to engage in a principal transaction with an affiliated fund.[83] Our staff estimates that boards of directors of funds that employ affiliated brokers currently spend approximately 12.5 meeting hours per year per fund conducting the required review. Our staff further estimates that a fund that uses in-house counsel to assist fund directors in reviewing these transactions incurs a cost of $775 per year for counsel, based on an hourly cost for in-house counsel of $62 per hour. Funds incur the additional incremental cost of maintaining records of the transaction. The proposed amendments to rule 17e–1 may benefit funds and their shareholders by allowing funds to avoid these tasks and expenses.

Purchases During Primary Offerings Underwritten by Affiliated Subadvisers

The proposed amendments to rule 10f–3 may benefit funds by broadening their investment options. The Act prohibits a series of a series company from purchasing securities during an underwriting or selling syndicate of which an adviser to any of the series is a member. By providing that, for purposes of section 10(f) and rule 10f–3, a series of a series company is a separate investment company, the proposed amendments to rule 10f–3 could broaden (i) the investment opportunities available to such funds and (ii) the range of possible purchasers when a subadviser participates in an underwriting syndicate. Funds, fund shareholders, and subadvisers all may benefit from the proposed rule. As with proposed rule 17a–10, it may not be possible to quantify this benefit. We request comment on the nature and potential magnitude of this benefit.

The Act also does not distinguish between a fund with multiple subadvisers that manage discrete portions of its portfolio, and a fund whose subadvisers manage the portfolio in its entirety. The proposed amendments to rule 10f–3 that would deem separately managed portions of a fund's portfolio to be separate investment companies for purposes of section 10(f) and rule 10f–3 may increase the investment opportunities of a fund with multiple subadvisers that manage discrete portions of its portfolio. Quantifying the potential magnitude of this benefit may not be possible. We request comment on the nature and potential magnitude of this benefit.

The proposed amendments to rule 10f–3 regarding the rule's percentage limits also may broaden the investment options available to funds. The Act currently does not distinguish between purchases by funds or portions of funds that are recommended by a subadviser that is (or is an affiliated person of) a participant in the underwriting or selling syndicate and purchases by funds or portions of funds for which other subadvisers provide investment advice. By providing that the percentage limit of rule 10f–3 applies only to purchases by funds, portions of funds, and accounts for which participants provide investment advice, the proposed amendments to rule 10f–3 may increase the investment opportunities of a fund with multiple subadvisers that manage discrete portions of its portfolio. It may not be possible to quantify the potential magnitude of this benefit. We request comment on the nature and potential magnitude of this benefit.

4. Ownership of Securities Issued by Subadvisers

The proposed amendments to rule 12d3–1 may also benefit funds by broadening their investment options. The restrictions that the Act and rule 12d3–1 currently place on purchases by a fund of securities of its own investment adviser or any affiliated person of its own investment adviser may significantly limit the options available to a fund among securities issued by securities-related businesses, if the fund is advised by multiple investment advisers. Amending rule 12d3–1 to permit a fund to acquire securities issued by one of its subadvisers, or an affiliated person of one of its subadvisers, when the subadviser is not in a position to influence the decision by the fund to purchase the securities, may increase the investment opportunities of these funds. Quantifying the potential magnitude of this benefit also may not be possible. We request comment on the nature and potential magnitude of this benefit.

B. Costs

The Commission anticipates that funds, their shareholders, and their advisers and other affiliated persons may incur certain costs from the proposed new rule and amendments. These persons may incur certain direct costs of complying with the proposed new rule and amendments. The exemptions in the proposed new rule and amendments also may encourage shifts in market behavior that would create direct and indirect costs for certain entities. Furthermore, the exemptions may allow funds to proceed with disadvantageous transactions that existing restrictions would have prevented.

1. Portfolio Affiliates

The proposed amendments to rules 17a–6 and 17d–1(d)(5) would exempt currently prohibited transactions from the restrictions of sections 17(a) and 17(d) and rule 17d–1. We do not anticipate that there will be any costs associated with the rule amendments, other than a cost associated with the proposed provision that a fund's board of directors may find that an interest is not material and hence not a ''financial interest.'' As a fund may only avail itself of the benefit of this aspect of the proposal if the fund directors make certain findings, and record the basis for those findings in their minutes, the benefit of the proposal is offset to some extent by the cost to the fund of the board fulfilling its obligations. Based on discussions with industry representatives, our staff estimates that reviewing the materiality of a Prohibited Participant's interest in a party to the transaction and recording the basis for those findings would require approximately 11.2 hours and $1,140 per meeting, in addition to the discussions that occur during the board meeting. This cost may partially offset the benefits of the exemption, including the direct benefit of allowing a fund to forego the cost of applying for exemptive relief from the restrictions of section 17(a) and rule 17d–1. We assume that if the cost of holding such a meeting exceeds the benefit to the fund, the fund will either forgo the opportunity to engage in the transaction or require the Prohibited Participant to divest itself of its interest.

2. Subadvisory Affiliates

In complying with the requirements of proposed rule 17a–10 and the proposed amendments to rules 10f–3, 12d3–1, and 17e–1 and availing themselves of their benefits, a fund and its advisers and subadvisers may incur

[83] Despite the proposed removal of some aspects of board review required by rule 17e–1, it may be prudent for fund directors to continue to oversee and review the proposed exempted transactions as a matter of course. We would not, however, view any such additional oversight as a cost attributable to the proposed amendments to rule 17e–1.

direct costs that would partially offset those benefits. In order for a fund to rely on the exemptions in the proposed rule and amendments, the fund's advisory contracts must include certain provisions, which they may not currently include. Since such contracts generally are subject to renewal at regular intervals, additional administrative cost may not be required to add such provisions. If adopted, we would not view the required changes to subadviser contracts to be material and, as a result, funds would not have to obtain shareholder approval of the change. Based on discussions with industry representatives, the staff estimates that drafting and executing revised subadvisory contracts would require approximately 6 hours. Assuming that all funds that are advised by subadvisers modify their advisory contracts in order that they and their affiliated funds may rely on the proposed exemptions, the proposed rule and rule amendments would create an estimated initial one-time cost of approximately $836,000.

Proposed rule 17e–1 may result in increased costs to funds as a result of higher brokerage commissions. By exempting the commissions paid to certain affiliated subadvisers from the requirement for scrutiny by the board of directors, proposed rule 17e–1 may allow a rise in brokerage commissions, at the expense of the fund and its shareholders. Whether this increased cost would occur depends on the extent to which the scrutiny currently required of boards of directors has resulted in findings that commissions to be paid by funds are excessive. We request comment on the frequency of boards of directors making such findings, and the magnitude of the effect of such findings on brokerage commissions.

The proposed amendments to rule 10f–3 may encourage division of funds into discrete parts managed by multiple subadvisers. A fund that is advised by subadvisers that participate, or are affiliated with persons that participate, in underwriting syndicates may have an incentive to reorganize in order to take advantage of the opportunity to have a part of the fund purchase securities during the syndicate. Likewise, a fund that is advised by a subadviser that participates in underwriting syndicates may have an incentive to reorganize in order to comply with the percentage limit of rule 10f–3 and take advantage of the opportunity to purchase securities in reliance on that rule's exemption. Such a development would benefit subadvisers, but the use of additional subadvisers could also result in increased costs to funds and their shareholders.

C. Request for Comment

We request comment on the potential costs and benefits identified in the proposal and any other costs or benefits that may result from the proposed rules and amendments. We request comments on the anticipated costs and benefits of the proposed new rule 17a–10 and the proposed amendments to rules 10f–3, 17a–6, 17d–1(d)(5), 17e–1, and 12d3–1 as compared with the costs and benefits of the Act without proposed rule 17a–10 and of rules 10f–3, 17a–6, 17d–1, 17e–1, and 12d3–1 in their current forms. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, [84] the Commission also requests information regarding the proposed impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide data to support their views.

IV. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[85]

Portfolio Affiliates

The proposed amendments to rules 17a–6 and 17d–1(d)(5) would expand the circumstances under which funds, and companies they control, could enter into principal transactions and joint arrangements with portfolio affiliates without first obtaining an exemptive order from the Commission. The proposed amendments would permit funds and their controlled companies to engage in otherwise prohibited transactions with: (i) A wider array of first-tier portfolio affiliates than the rules currently permit; and (ii) certain second-tier portfolio affiliates. [86] We anticipate that the proposed amendments will promote efficiency and competition. The Act's restrictions on transactions involving funds and their affiliated persons respond to market failures that can occur when an affiliated person, in a position to influence the management of a fund, causes the fund to behave in a manner that benefits the affiliated person, rather than the shareholders of the fund. The proposed amendments to rules 17a–6 and 17d–1(d)(5) would permit market forces to operate to allocate resources in circumstances where market failure is unlikely because the affiliated person is not in a position to influence fund management. The proposed amendments to rules 17a–6 and 17d–1(d)(5) are unrelated to, and we believe will have no effect on, capital formation.

Subadvisory Affiliates

The proposed amendments to rules 17e–1, 10f–3, and 12d3–1 and proposed new rule 17a–10 would permit funds, and companies controlled by funds, to engage in transactions with subadvisers that are affiliated persons of the fund, but which are not in a position to influence the fund's decision to participate in the transaction. The proposed rule and amendments would permit, in limited circumstances, funds, and companies controlled by funds, to: (i) Engage in principal transactions with such subadvisers, (ii) purchase securities during a primary offering in which such subadvisers participate (or are affiliated with persons that participate) in the underwriting or selling syndicate, and (iii) purchase securities issued by such subadvisers. The proposed amendments to rule 17e–1 would permit, in limited circumstances, an affiliated subadviser acting as broker to receive remuneration without complying with certain conditions of the rule. As in the case of the proposed amendments to rules 17a–6 and 17d–1(d)(5), we anticipate that the proposed rules and rule amendments will promote efficiency and competition by permitting market forces to operate in circumstances where there is limited chance of market failure. We also believe that the proposed amendments to rule 10f–3 may enhance capital formation by enabling funds to purchase securities during primary offerings, when they would otherwise be prohibited from doing so without a Commission exemptive order.

The proposed rule and amendments may, however, adversely affect competition by promoting increased concentration of the market for subadvisory services. Proposed rule 17a–10 may reduce or eliminate any incentive to select subadvisers specifically because they are not affiliated with a large number of funds, which may encourage funds to shift subadvisory business toward certain

[84] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[85] 15 U.S.C. 80a–2(c).

[86] An additional proposed change to rule 17d–1(d)(5) would remove existing limitations regarding the percentage of a fund's assets that the fund could commit to a joint enterprise. If adopted, this amendment would bring rule 17d–1(d)(5) into line with rule 17a–6, which has no such limitations. Rule 17d–1(d)(5)(ii).

particularly successful subadvisers. The proposed amendments to rule 10f–3 may remove an incentive to select subadvisers that are not either major participants or affiliated with major participants in the underwriting business. By removing disincentives against market concentration, these proposed rules may have the effect of encouraging the market for subadvisory services to concentrate in a smaller set of subadvisers.

The Commission requests comments on whether the proposed rule amendments, if adopted, would promote efficiency, competition, and capital formation. Will the proposed amendments materially affect the number of transactions involving funds, their controlled companies, and affiliated persons of funds? Will any costs that result from the proposed amendments affect efficiency, competition, or capital formation? We will consider any comments in satisfying our responsibilities under section 2(c) of the Investment Company Act. We request commenters to provide empirical data and other factual support for their views to the extent possible.

V. Paperwork Reduction Act

Certain provisions of proposed rule 17a–10 and the proposed amendments to rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520] (''PRA''). The Commission is submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (i) ''Rule 10f–3 under the Investment Company Act of 1940, Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate'; (ii) ''Rule 12d3–1 under the Investment Company Act of 1940, Exemption of acquisitions of securities issued by persons engaged in securities related businesses'; (iii) ''Rule 17a–6 under the Investment Company Act of 1940, Exemption for transactions with portfolio affiliates'; (iv) ''Rule 17a–10 under the Investment Company Act of 1940, Exemption for transactions with certain subadvisory affiliates'; (v) ''Rule 17d–1 under the Investment Company Act of 1940, Applications regarding joint enterprises or arrangements and certain profit-sharing plans'; and (vi) ''Rule 17e–1 under the Investment Company Act of 1940, Brokerage transactions on a securities exchange''. 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.[87]

A. Portfolio Affiliates

Rules 17a–6 and 17d–1

Under rules 17a–6 and 17d–1, a fund or company controlled by a fund may enter into principal and joint transactions with a portfolio affiliate, or an affiliated person of a portfolio affiliate, as long as certain other Prohibited Participants are not parties to the transaction and do not have a financial interest in a party to the transaction. Rules 17a–6 and 17d–1 include a list of interests that are not ''financial interests'' for purposes of the rule.[88] We are proposing to amend that list to provide that ''financial interest'' does not include an interest that the fund's board of directors finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.[89] This aspect of the proposed amendments would create a paperwork burden.

Based on public filings with the Commission, the Commission's staff estimates that 200 registered investment companies are affiliated persons of 900 issuers as a result of the investment company's ownership or control of the issuer's voting securities, and that there are approximately 1,400 such affiliate relationships.[90] The staff estimates that annually there will be a total of 1,400 principal transactions under rule 17a–6[91] and 1,400 joint arrangements under rule 17d–1(d)(5),[92] and that for each rule approximately 420 transactions or arrangements will result in a paperwork burden.[93]

The Commission staff estimates that compliance with the proposed amendments would impose a burden of .2 hours for each transaction for which there is a paperwork burden.[94] Therefore we estimate 84 burden hours to be associated with the proposed amendments to rule 17a–6 annually and 84 burden hours to be associated with the proposed amendments to rule 17d–1 annually.

B. Subadviser Affiliates

The Commission staff estimates that 1,900 portfolios of approximately 800 investment companies use the services of one or more subadvisers.[95] Based on discussions with industry representatives, the Commission staff estimates that it will require approximately 6 hours to draft and execute revised subadvisory contracts (5 staff attorney hours, 1 supervisory attorney), in order for funds and subadvisers to be able to rely on the exemptions in proposed rule 17a–10 and the proposed amendments to rule 10f–3, 17e–1, and 12d3–1.[96] Assuming that all funds that are advised by subadvisers modify their advisory contracts in order that they and their affiliated funds may rely on the proposed exemptions, the proposed rule and rule amendments would create an estimated initial one-time burden of approximately 11,400 burden hours.

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[87] Rule 10f–3 (OMB Control No. 3235–0226) was adopted pursuant to authority set forth in sections 10(f), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a), and 80a–37(a)]. Rule 12d3–1 was adopted pursuant to authority set forth in sections 6(c) and 38(a) of the Act. [15 U.S.C. 80a–6(c)]. Rule 17a–6 was adopted pursuant to authority set forth in sections 6(c), 17(b), 31(a), and 38(a) of the Act [15 U.S.C. 80a–17(b)]. Rule 17d–1 was adopted pursuant to authority set forth in sections 6(c), 17(d), and 38(a). Rule 17e–1 (OMB Control No. 3235–0217) was adopted pursuant to authority set forth in sections 6(c), 31(a), and 38(a) of the Act.

[88] *See supra* note 26.

[89] Proposed rules 17a–6(b)(1)(H) and 17d–1(d)(8). Collection of this information is necessary to obtain the benefit of the exemption in the proposed rule amendments.

[90] *See supra* note 12. For purposes of this analysis, the staff estimates that investment companies will enter into one principal transaction and one joint arrangement each year with each of their portfolio affiliates, and that in thirty percent of those transactions and arrangements a Prohibited Participant will have a financial interest in a party to the transaction that the board of directors of the affected investment company will consider for purposes of determining whether that financial interest is material.

[91] 1,400 affiliate relationships × 1 principal transaction per year = 1,400 transactions under rule 17a–6.

[92] 1,400 affiliate relationships × 1 joint arrangement per year = 1,400 joint arrangements under rule 17d–1(d)(5). In addition to expanding fund business opportunities by allowing funds to transact with a wider range of portfolio affiliates, we are also proposing to eliminate the limit imposed by rule 17d–1(d)(5) on the percentage of assets a fund can commit to any given joint enterprise. Rule 17d–1(d)(5)(ii). The staff does not anticipate that allowing funds to increase the size of their commitment to a joint transaction will result in an increase in the expected number of such transactions.

[93] 1,400 transactions or arrangements × .30 (percentage of transactions or arrangements in which a Prohibited Participant is assumed to have a financial interest) = 420.

[94] The staff estimates the hourly burden to comply with the board of director's obligation to make a finding as to the materiality of a prohibited person's financial interest in a transaction to be 11 hours. The staff estimates that funds will spend .2 hours complying with the requirement that the basis for the board's findings be recorded in the minutes of its meeting.

[95] *See supra* note 13.

[96] The fund's advisory contracts must include these conditions in order for the fund to obtain the benefit of the exemptions in the proposed rule and rule amendments.

The total estimated first year cost of these burden hours is $836,000.[97]

ESTIMATED ONE TIME BURDEN HOURS AND COST OF SUBADVISORY RULE AND AMENDMENTS

Number of funds modifying contracts	Staff attorney hours	Supervisory attorney hours	Total burden hours	Cost per staff attorney hour	Cost per supervisory attorney hour	Total cost of burden hours
1,900	5	1	11,400	$62	$130	$836,000

Proposed rule 17a–10 and the proposed amendments to rules 10f–3, 12d3–1, and 17e–1 would require virtually identical modifications to fund advisory contracts. The Commission staff assumes that funds will rely equally on the exemptions in all of these rules, and therefore the burden hours associated with the required contract modifications should be apportioned equally among the four rules. Therefore the estimated one-time burden hours associated with rules 17a–10, 10f–3, 12d3–1, and 17e–1 are 2,850 hours for each rule (11,400 total burden hours for all of the rules/four rules), and the estimated one-time cost of these burden hours is $209,000 for each rule ($836,000/four rules).[98]

The staff estimates that a total of 60 funds will enter into subadvisory agreements each year after the first year in which the proposed rule and rule amendments are adopted.[99] Assuming that each of these funds enters into a contract that permits it and its affiliated funds to rely on the exemptions in proposed rule 17a–10, and the proposed amendments to rules 10f–3, 12d3–1, and 17e–1, an estimated 360 burden hours (90 hours per rule) will be associated with these rules annually, with an associated cost of $26,400 ($6,600 per rule).[100]

Rule 17e–1

Based on an analysis of investment company filings, the staff estimates that approximately 293 investment companies use at least one affiliated broker and that each of these investment companies spends an estimated 12.5 hours per year (at a cost of $775 per year) complying with rule 17e–1's requirements that (i) the fund retain records of transactions entered into pursuant to the rule (''recordkeeping requirement''), and (ii) the fund's directors review those transactions quarterly (''review requirement'').[101] Based on conversations with representatives of investment companies, the staff estimates that the proposed amendments to rule 17e–1 would exempt approximately 40 percent of transactions that occur under rule 17e–1 from the rule's recordkeeping and review requirements. The Commission staff estimates, therefore, that the proposed amendments to rule 17e–1 would, in this respect, *decrease* the rule's information collection burden to 2,200 hours [102] and $136,422 per year.[103]

ESTIMATED REDUCTION IN BURDEN HOURS AND COST OF RULE 17E–1 (EFFECT OF EXEMPTION FROM REVIEW AND RECORDKEEPING REQUIREMENTS)

	Number of funds relying on rule 17e–1	Number of funds subject to record-keeping and review requirements	Burden hours of record-keeping and review requirements	Total burden hours of recordkeeping and review requirements	Cost per hour of record-keeping and review requirements	Total cost of burden hours
Current Rule	293	293	12.5	3,663	$62	$227,106
As proposed to be amended	293	176	12.5	2,200	62	136,422

This reduction will be offset to some extent by the increase in estimated burden hours described above with respect to the required modifications of the funds' investment advisory contract. Therefore rule 17e–1, as proposed to be amended, would impose an estimated burden of 5,050 hours ($345,400) in the first year after the amendments are adopted, and an estimated burden of 2,290 hours ($143,000) in subsequent years.

C. Request for Comments

We request comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate 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; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collections of information on those who are to

[97] (5 hours ×$62 = $310) + (1 hour ×$130 = $130) = $440. (5 attorney hours, 1 deputy general counsel hour). $440 ×1,900 funds=$ 836,000.

[98] The proposed amendments to rule 17e–1 will also, as discussed below, decrease the burden hours associated with that rule.

[99] Based on an analysis of investment company filings, the staff estimates that approximately 250 funds are created annually. Assuming that the number of these funds that will use the services of subadvisers is proportionate to the number of funds that currently use the services of subadvisers, then approximately 50 new funds will enter into subadvisory agreements each year. The Commission staff estimates, based on an analysis of investment company filings, that an additional 10 funds, currently in existence, will employ the services of subadvisers for the first time each year.

[100] 6 hours × 60 funds=360 total hours. $440 × 60 funds= $26,400.

[101] In calculating the total annual cost of complying with amended rule 17e–1, the Commission staff assumes that the entire burden would be attributable to professionals with an average hourly wage rate of $62 per hour.

[102] 293 transactions × 12.5 hours = 3,663 hours if adopted; 60% of the 293 transactions (or 176 transactions) would proceed under rule 17e–1. 176 transactions (60% of the 293 transactions anticipated to be impacted by rule) × 12.5 hours = 2,200 hours.

[103] 3,663 hours × $62 = $227,106; 2,200 hours × $62 = $136,422.

respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed rules and rule amendments should direct them to the Office of Management and Budget, Attention Desk Officer of the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10202, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–13–02. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–13–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

VI. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding the proposed rule 17a-10 and the proposed amendments to rules 10f-3, 12d3–1, 17a-6, 17d-1, and 17e-1 under the Investment Company Act. The following summarizes the IRFA.

The IRFA summarizes the background of the proposed amendments. The IRFA also discusses the reasons for the proposed amendments and the objectives of, and legal basis for, the amendments. Those items are discussed above in the Release.

The IRFA discusses the effect of the proposed amendments on small entities. For purposes of the Regulatory Flexibility Act, a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[104] An investment adviser is a small entity if it (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year.[105] A portfolio company (i.e., a company in which a fund invests) is a small entity if its total assets on the last day of its most recent fiscal year were $5 million or less.[106] The staff estimates, based upon Commission filings, that there are approximately 3,650 active registered management investment companies, of which approximately 200 are small entities, and may rely on the rule if they satisfy its conditions. The staff further estimates that there are approximately 7,560 registered investment advisers, of which approximately 430 are small entities.[107]

The IRFA states that proposed amendments to rules 17a–6 and 17d–1 would impose recordkeeping requirements on funds that engage in principal transactions or joint arrangements in reliance on the rule, when a Prohibited Participant has an interest in a party to the transaction or arrangement that is not material, in that the board of directors of the fund would be required to record in the minutes of its meetings the basis for the board's finding that the Prohibited Participant's interest is not material. The IRFA further explains that the exemptions in proposed rule 17a-10 and the proposed amendments to rules 10f-3, 12d3–1, and 17e–1 would be conditioned on the funds' advisory contracts including certain provisions.

The IRFA explains that we have not identified any federal rules that duplicate or conflict with the proposed rule and rule amendments. The IRFA states that the Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant economic impact on small entities. The overall impact of the amendments would be to decrease the burdens on all entities, including small entities, because the burdens under the proposed amendments should be more than offset by the elimination of existing requirements. Therefore, the potential impact of the amendments on small entities should not be significant. For these reasons, alternatives to the proposed amendments and proposed new rule are unlikely to minimize any impact that the proposed amendments may have on small entities.[108]

We encourage comment with respect to any aspect of the IRFA. We specifically request comment on the number of small entities that would be affected by the proposed rule amendments, and the likely impact of the proposal on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in connection with the adoption of the rule amendments, and will be placed in the same public file as comments on the proposed amendments themselves. A copy of the IRFA may be obtained by contacting William C. Middlebrooks, Jr., Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

VII. Statutory Authority

The Commission is proposing amendments to rules 10f-3, 12d3–1, 17a-6, 17d-1, and 17e-1 and new rule 17a-10 under the Investment Company Act pursuant to authority set forth in sections 6(c), 10(f), 17(b), 17(d), 31(a), and 38(a) of the Investment Company Act.

List of Subjects

17 CFR Part 270

Investment companies; reporting and recordkeeping requirements; securities.

Text of Proposed Rules

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.10f–3 is amended by:

a. Redesignating paragraph (b) as paragraph (c);

b. Adding paragraphs (a)(6), (a)(7), (a)(8), and new paragraph (b);

c. Revising the paragraph heading in newly redesignated paragraph (c); and

[104] 17 CFR 270.0–10.

[105] 17 CFR 275.0–7.

[106] 17 CFR 240.0–10.

[107] We estimate that 875 issuers are portfolio affiliates of funds. *See supra* note 12. We are unable to estimate the number of these issuers that are small entities.

[108] Alternatives in this category would include: (i) Establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating or simplifying the compliance requirements for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of all or part of the rule.

d. Revising newly redesignated paragraph (c)(7) to read as follows:

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

(a) * * *

(6) *Managed Portion* of a portfolio of a registered investment company means a discrete portion of a portfolio of a registered investment company for which a Subadviser is responsible for providing investment advice, provided that:

(i) The Subadviser is not an affiliated person of any investment adviser, promoter, underwriter, officer, director, member of an advisory board, or employee of the registered investment company; and

(ii) The Subadviser's advisory contract:

(A) Prohibits it from consulting with any subadviser of the investment company that is a principal underwriter or an affiliated person of a principal underwriter concerning securities transactions of the investment company; and

(B) Limits its responsibility in providing advice to providing advice with respect to such portion.

(7) *Series of a Series Company* means any class or series of a registered investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series.

(8) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

(b) *Exemption for purchases by Series Companies and Investment Companies with Managed Portions.* For purposes of this section and section 10(f) of the Act (15 U.S.C. 80a–10(f)), each Series of a Series Company, and each Managed Portion of a portfolio of a registered investment company, is deemed to be a separate investment company. Therefore, a purchase or acquisition of a security by a registered investment company is exempt from the prohibitions of section 10(f) of the Act if section 10(f) of the Act would not prohibit such purchase if each Series and each Managed Portion of the company were a separately registered investment company.

(c) *Exemption for other purchases.*

* * *

(7) *Percentage limit.* (i) *Generally.* The amount of securities of any class of such issue to be purchased by the investment company, aggregated with purchases by any other investment company advised by the investment company's investment adviser, and purchases by any other account over which such adviser has discretionary authority or otherwise exercises control, does not exceed the following limits:

(A) If purchased in an offering other than an Eligible Rule 144A Offering, 25 percent of the principal amount of the offering of such class; or

(B) If purchased in an Eligible Rule 144A Offering, 25 percent of the total of:

(*1*) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; plus

(*2*) The principal amount of the offering of such class in any concurrent public offering.

(ii) *Exemption from percentage limit.* The requirement in paragraph (c)(7)(i) of this section applies only if the investment adviser of the investment company is, or is an affiliated person of, a principal underwriter of the security; and

(iii) *Separate aggregation.* The requirement in paragraph (c)(7)(i) of this section applies independently with respect to each investment adviser of the investment company that is, or is an affiliated person of, a principal underwriter of the security.

* * * * *

3. Section 270.12d3–1 is amended by revising paragraph (c) and adding paragraph (d)(9) before the Note:

§ 270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, this section does not exempt the acquisition of:

(1) A general partnership interest; or

(2) A security issued by the acquiring company's promoter, principal underwriter, or any affiliated person of such promoter, or principal underwriter; or

(3) A security issued by the acquiring company's investment adviser, or an affiliated person of the acquiring company's investment adviser, other than a security issued by a Subadviser or an affiliated person of a Subadviser of the acquiring company provided that:

(i) *Prohibited relationships.* The Subadviser that is (or whose affiliated person is) the issuer is not, and is not an affiliated person of, an investment adviser responsible for providing advice with respect to the portion of the acquiring company that is acquiring the securities, or of any promoter, underwriter, officer, director, member of an advisory board, or employee of the acquiring company;

(ii) *Advisory contract.* The advisory contracts of the Subadviser that is (or whose affiliated person is) the issuer, and any Subadviser that is advising the portion of the acquiring company that is purchasing the securities:

(A) Prohibit them from consulting with each other concerning securities transactions for the acquiring company, other than for purposes of complying with the conditions of paragraphs (a) and (b) of this section; and

(B) Limit their responsibility in providing advice to providing advice with respect to a discrete portion of the acquiring company's portfolio.

(d) * * *

(9) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

* * * * *

4. Section 270.17a–6 is revised to read as follows:

§ 270.17a–6 Exemption for transactions with portfolio affiliates.

(a) *Exemption for transactions with portfolio affiliates.* A transaction to which a Fund, or a company controlled by a Fund, and a Portfolio Affiliate of the Fund are parties is exempt from the provisions of section 17(a) of the Act (15 U.S.C. 80a–17(a)), provided that none of the following persons is a party to the transaction, or has a direct or indirect Financial Interest in a party to the transaction other than the Fund:

(1) An officer, director, employee, investment adviser, member of an advisory board, depositor, promoter of or principal underwriter for the Fund;

(2) A person directly or indirectly controlling the Fund;

(3) A person directly or indirectly owning, controlling or holding with power to vote five percent or more of the outstanding voting securities of the Fund;

(4) A person directly or indirectly under common control with the Fund, other than:

(i) A Portfolio Affiliate of the Fund; or

(ii) A Fund whose sole interest in the transaction is an interest in a Portfolio Affiliate of the Fund; or

(5) An affiliated person of any of the persons mentioned in paragraphs (a)(1)–(4) of this section, other than the Fund or a Portfolio Affiliate of the Fund.

(b) *Definitions.*

(1) *Financial Interest.*

(i) The term *Financial Interest* as used in this section does not include:

(A) Any interest through ownership of securities issued by the Fund;

(B) Any interest of a wholly-owned subsidiary of a Fund;

(C) Usual and ordinary fees for services as a director;

(D) An interest of a non-executive employee;

(E) An interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person;

(F) An interest of a bank arising from a loan or account made or maintained by it in the ordinary course of business to or with a natural person, unless it arises from a loan to a person who is an officer, director or executive of a company which is a party to the transaction, or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting securities of a company which is a party to the transaction;

(G) An interest acquired in a transaction described in paragraph (d)(3) of § 270.17d–1; or

(H) Any other interest that the board of directors of the Fund, including a majority of the directors who are not interested persons of the Fund, finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.

(ii) A person has a Financial Interest in any party in which it has a Financial Interest, in which it had a Financial Interest within six months prior to the transaction, or in which it will acquire a Financial Interest pursuant to an arrangement in existence at the time of the transaction.

(2) *Fund* means a registered investment company or separate series of a registered investment company.

(3) *Portfolio Affiliate of a Fund* means a person that is an affiliated person (or an affiliated person of an affiliated person) of a Fund solely because the Fund, a Fund under common control with the Fund, or both:

(i) Controls such person (or an affiliated person of such person); or

(ii) Owns, controls, or holds with power to vote five percent or more of the outstanding voting securities of such person (or an affiliated person of such person).

5. Section 270.17a–10 is added to read as follows:

§ 270.17a–10 Exemption for transactions with certain subadvisory affiliates.

(a) *Generally.* A person that is prohibited by section 17(a) of the Act (15 U.S.C. 80a–17(a)) from entering into a transaction with a Fund solely because such person is, or is an affiliated person of, a Subadviser of the Fund, or a Subadviser of a Fund that is under common control with the Fund, may nonetheless enter into such transaction, if:

(1) *Prohibited relationship.* The person is not, and is not an affiliated person of, an investment adviser responsible for providing advice with respect to the portion of the Fund for which the transaction is entered into, or of any promoter, underwriter, officer, director, member of an advisory board, or employee of the Fund.

(2) *Advisory contract.* The advisory contracts of the Subadviser that is (or whose affiliated person is) entering into the transaction, and any Subadviser that is advising the fund (or portion of the fund) entering into the transaction:

(i) Prohibit them from consulting with each other concerning securities transactions for the Fund; and

(ii) If both such Subadvisers are responsible for providing investment advice to the Fund, limit their responsibility in providing advice with respect to a discrete portion of the Fund's portfolio.

(b) *Definitions.*

(1) *Fund* means a registered investment company and includes a separate series of a registered investment company.

(2) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

6. Section 270.17d–1 is amended by revising paragraphs (d)(5) and (d)(6) to read as follows:

§ 270.17d–1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

* * * * *

(d) * * *

(5) Any joint enterprise or other joint arrangement or profit-sharing plan (''joint enterprise'') in which a registered investment company or a company controlled by such a company, is a participant, and in which a Portfolio Affiliate (as defined in § 270.17a–6(b)(3)) of such registered investment company is also a participant, provided that:

(i) None of the persons identified in § 270.17a–6(a) is a participant in the joint enterprise, or has a direct or indirect Financial Interest in a participant in the joint enterprise (other than the registered investment company);

(ii) *Financial Interest.*

(A) The term *Financial Interest* as used in this section does not include:

(*1*) Any interest through ownership of securities issued by the registered investment company;

(*2*) Any interest of a wholly-owned subsidiary of the registered investment company;

(*3*) Usual and ordinary fees for services as a director;

(*4*) An interest of a non-executive employee;

(*5*) An interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person;

(*6*) An interest of a bank arising from a loan to a person who is an officer, director, or executive of a company which is a participant in the joint transaction or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting securities of a company which is a participant in the joint transaction;

(*7*) An interest acquired in a transaction described in paragraph (d)(3) of this section; or

(*8*) Any other interest that the board of directors of the investment company, including a majority of the directors who are not interested persons of the investment company, finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.

(B) A person has a Financial Interest in any party in which it has a Financial Interest, in which it had a Financial Interest within six months prior to the investment company's participation in the enterprise, or in which it will acquire a Financial Interest pursuant to an arrangement in existence at the time of the investment company's participation in the enterprise.

(6) The receipt of securities and/or cash by an investment company or a controlled company thereof and an affiliated person of such investment company or an affiliated person of such person pursuant to a plan of reorganization: *Provided*, That no person identified in § 270.17a–6(a)(1) or any company in which such a person has a direct or indirect Financial Interest (as defined in paragraph (d)(5)(iii) of this section):

* * * * *

7. Section 270.17e–1 is amended by revising paragraphs (b)(3) and (d) to read as follows:

§ 270.17e–1 Brokerage transactions on a securities exchange.

* * * * *

(b) * * *

(3) Determines no less frequently than quarterly that all transactions effected pursuant to this section during the preceding quarter (other than transactions in which the person acting as broker is a person permitted to enter into a transaction with the investment company by § 270.17a–10) were effected in compliance with such procedures;

* * * * *

(d) The investment company:

(1) Shall maintain and preserve permanently in an easily accessible place a copy of the procedures (and any modification thereto) described in paragraph (b)(1) of this section; and

(2) Shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a record of each such transaction (other than any transaction in which the person acting as broker is a person permitted to enter into a transaction with the investment company by § 270.17a–10) setting forth the amount and source of the commission, fee or other remuneration received or to be received, the identity of the person acting as broker, the terms of the transaction, and the information or materials upon which the findings described in paragraph (b)(3) of this section were made.

Dated: April 30, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–11228 Filed 5–7–02; 8:45 am]

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Federal Register

Wednesday,
May 8, 2002

Part V

Department of Education

34 CFR Part 106

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 106

RIN 1870–AA11

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of intent to regulate.

SUMMARY: The Secretary provides notice that the Secretary intends to propose amendments to the regulations implementing Title IX of the Education Amendments of 1972 to provide more flexibility for educators to establish single-sex classes and schools at the elementary and secondary levels. The purpose of the amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination. We want to permit appropriate latitude for innovative efforts to help children learn and to expand the choices parents have for their children's education consistent with the purposes of the Title IX statute and the Constitution. We are issuing a notice of intent to regulate (NOIR) to ensure adequate public input regarding these important and sensitive issues.

DATES: We must receive your comments on or before July 8, 2002.

ADDRESSES: Address all comments about our intent to regulate to Gerald A. Reynolds, Assistant Secretary for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 5000, Mary E. Switzer Building, Washington, DC 20202–1100. For all comments submitted by letter, you should include the term ''Single-sex Notice of Intent Comments.''

If you prefer to send your comments through the Internet, use the following address: ocr@ed.gov.

You should include the term ''Single-sex Notice of Intent Comments'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Jeanette J. Lim, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 5036, Mary E. Switzer Building, Washington, DC 20202–1100. Telephone: (202) 205–8635 or 1–800–421–3481.

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SUPPLEMENTARY INFORMATION:

Background

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance. 20 U.S.C. 1681(a). Title IX is implemented through regulations by agencies providing Federal assistance to education programs and activities. 20 U.S.C. 1682. Our current Title IX regulations were issued by our predecessor agency, the Department of Health, Education, and Welfare (HEW), and became effective July 21, 1975.[1] The statute and implementing regulations contain specific provisions regarding single-sex classes, programs, and activities (classes) and single-sex schools. These existing requirements are discussed in detail in a separate document published elsewhere in this issue of the **Federal Register**, entitled ''Guidelines on current title IX requirements related to single-sex classes and schools.'' The No Child Left Behind Act of 2001, which reauthorized the Elementary and Secondary Education Act of 1965, requires the Secretary to issue these guidelines not less than 120 days from the date of enactment.

The legal and educational issues surrounding single-sex classes and schools are complex and sensitive and require consultations with other Federal agencies, including the Department of Justice, as well as input from parents, community leaders, school districts, and interested individuals and organizations. This NOIR is intended to begin the process of public input on these important issues.

The use of single-sex classes and schools can reflect important and legitimate efforts to improve educational outcomes for all students. Rather than being motivated by outdated notions regarding the limitations or limited goals of members of one sex, some of these efforts aim to provide new and better ways to help all students learn and meet high standards. We expect that any proposal to amend or clarify the Title IX regulations would apply only to nonvocational elementary and secondary schools and classes. This is where the need for flexibility to respond to students' diverse educational needs is most prevalent.

Invitation To Comment

Single-sex classes: We want to permit appropriate latitude for schools to implement innovative efforts to help children learn and to expand the choices parents have for their children's education consistent with the Title IX statute and the Constitution.[2] We recognize that to promote excellence and innovation, consistent with the purposes of the No Child Left Behind Act of 2001, it is important that parents have an opportunity to choose an educational program that best fits the needs of their children and that educators have an array of educational options to meet the diverse needs of this nation's students. We are also mindful of congressional concerns—at the time of Title IX's enactment—that some coeducational institutions used sex-based policies and practices that reflected outdated and stereotyped notions of the differences between the sexes and of the limited abilities of girls and women. *See e.g.,* 118 Cong. Rec. 5804–08. In developing a regulatory proposal, we will ensure that educational opportunities are not limited to students based on sex and that single-sex classes are not based on sex-role stereotypes.

We invite comments on whether, and under what circumstances, schools should be permitted to offer single-sex classes under the Title IX regulations. The Secretary specifically invites advice and recommendations from States and local administrators, parents, teachers, community leaders, paraprofessionals,

[1] The HEW regulations were the result of an extensive public comment process and congressional review. HEW received and considered more than 9700 comments before issuing the final regulations. After the final regulations were issued, but before they became effective, Congress held 6 days of hearings to examine whether the regulations were consistent with the statute. *See* Sex Discrimination Regulations: Hearings before the Subcomm. on Postsecondary Education of the House Comm. on Education and Labor, 94th Cong., 1st Sess. (1975) (''Regulations Review Hearings'').

[2] The Supreme Court has decided two significant constitutional cases specifically regarding single-sex education. *United States* v. *Virginia,* 518 U.S. 515 (1996) (State-sponsored, male-only military college violated Equal Protection Clause); *Mississippi University for Women* v. *Hogan,* 458 U.S. 718 (1982) (State-sponsored, female-only nursing school violated the Equal Protection Clause.)

members of local boards of education, charter school operators and public chartering agencies, civil rights groups, and education organizations. We are particularly interested in comments on the criteria that should be used by schools and the Department in determining the sufficiency of educational justifications for single-sex classes and in examples of educational justifications that would meet the proposed criteria. The following are some questions intended to guide your comments:

(1) Should a school district have to explain the benefits of single-sex classes for its students? If so, what kinds of explanations would be adequate? To what extent should these explanations be supported by scientifically based research, assessments of the needs of local students, or other reliable evidence?

(2) Assuming that a school district provides a single-sex class to students of one sex, would it be possible for a coeducational class to provide equal opportunity for students of the other sex? If so, under what circumstances?

(3) If it is not possible for a coeducational class to provide equal opportunity for students of the other sex, and a single sex class would be required, what happens if there is little interest in a single-sex class among students of one sex?

(4) Must student assignments to single-sex classes always be voluntary? If not, when are mandatory assignments permissible?

(5) Are there any classes that should not be permitted to be single-sex? For example, at the time that Title IX was enacted, Congress was particularly concerned about discrimination in single-sex vocational education classes and sex-segregated physical education classes (although students could be separated by sex in physical education classes involving contact sports.)

Single-sex schools: Because of the statutory exemption for single-sex admissions policies of single-sex elementary and secondary schools, which is reflected in the Title IX regulations, a school district does not need to provide the Department with a justification for offering a single-sex school. There is already flexibility in the regulations for allowing school districts to offer single-sex nonvocational schools as long as certain conditions are met. (See the ''Guidelines on current title IX requirements related to single-sex classes and schools'' for a more complete discussion regarding the need for certain regulations in this area.) However, we are interested in receiving comments on the following issues:

(1) If a school district provides a single-sex school to students of one sex, would it be possible for a coeducational school to provide equal opportunity for students of the other sex? If so, under what circumstances?

(2) Are there special considerations with regard to single-sex charter schools or magnet schools? Should a school district, State, or chartering agency be required to offer a school for students of the other sex? If so, under what circumstances?

(3) Given the Supreme Court's decision in *United States* v. *Virginia,* 518 U.S. 515 (1996), should a school district that establishes single-sex schools or classes for one sex be required to establish schools or classes for the other sex that are ''comparable'' or that meet some other standard?

(Note: With this question, we seek input regarding classes as well as schools.)

During and after the comment period, you may inspect all public comments received in response to this notice in room 5036, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this NOIR. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

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After we review comments on this notice, we will publish a proposed amendment to the Title IX regulations for public comment.

Authority: 20 U.S.C. 1681, 1682.

Dated: May 3, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02–11476 Filed 5–7–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
May 8, 2002

Part VI

Department of Education

Office for Civil Rights; Single-Sex Classes and Schools: Guidelines on Title IX Requirements; Notice

DEPARTMENT OF EDUCATION

Office for Civil Rights; Single-Sex Classes and Schools: Guidelines on Title IX Requirements

AGENCY: Department of Education.

ACTION: Guidelines on current title IX requirements related to single-sex classes and schools.

SUMMARY: On January 8, 2002, the President signed into law the No Child Left Behind Act of 2001, which reauthorized the Elementary and Secondary Act of 1965. Section 5131(a)(23) of the Elementary and Secondary Education Act allows local educational agencies (LEAs) to use Innovative Programs funds to support same-gender schools and classrooms consistent with applicable law. It also requires the Department, within 120 days of enactment, to issue guidelines for LEAs regarding the applicable law on single-sex classes and schools. This notice fully implements Congress's mandate by describing and explaining the current statutory and regulatory requirements relating to single-sex classes and schools.

FOR FURTHER INFORMATION CONTACT: Jeanette J. Lim, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 5036, Mary E. Switzer Building, Washington, DC 20202–2899. Telephone: (202) 205–8635 or 1–800–421–3481.

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SUPPLEMENTARY INFORMATION: This notice implements Congress's mandate in the No Child Left Behind Act of 2001 (NCLB Act) to provide guidelines to LEAs regarding the applicable law on single-sex classes and schools. *See* Pub. L. 107–110, Sec. 5131(a)(23), 5131(c).

Elsewhere in this issue of the **Federal Register** is a notice of intent to regulate (NOIR), which invites comment on our intention to amend the current regulations implementing Title IX of the Education Amendments of 1972 (Title IX) related to elementary and secondary single-sex classes and schools to provide more flexibility to educators. The purpose of these amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination. The NOIR is intended to begin this process and ensure adequate public input on these important and sensitive issues.

Guidelines on Current Title IX Requirements

Single-sex classes: The Title IX statute generally prohibits sex-based discrimination in education programs or activities receiving Federal financial assistance. Specifically, it states that no person in the United States, on the basis of sex, can be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. 1681.

Section 1681(a) of Title IX contains two limited exceptions relating to classes or activities within primary and secondary schools that otherwise are coeducational. Subsection 1681(a)(7)(B) of Title IX exempts any program or activity of any secondary school or educational institution specifically intended for the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference or for the selection of students to attend such a conference. Subsection 1681(a)(8) of Title IX states that the law does not preclude father-son or mother-daughter activities at an educational institution. However, if those activities are provided for students of one sex, opportunities for reasonably comparable activities must be provided for students of the other sex. Accordingly, these activities are permitted on a single-sex basis if the requirements of the statute are met.[1]

Our current Title IX regulations generally prohibit single-sex classes or activities. The regulations in 34 CFR 106.34 state—

> A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

Our regulations contain two categorical exceptions for specific types of classes or portions of classes that may be segregated by sex. Those exceptions are: (1) Physical education classes during participation in sports ''the purpose or major activity of which involves bodily contact'' (34 CFR 106.34(c)); and (2) ''[p]ortions of classes in elementary and secondary schools which deal exclusively with human sexuality.'' (34 CFR 106.34(e)). In addition separation of students by sex is permitted if it constitutes remedial or affirmative action. 34 CFR 106.3.[2]

Single-sex schools: The Title IX statute exempts from its coverage the admissions practices of non-vocational elementary and secondary schools.[3]

Accordingly, the regulations do not prohibit recipients from adopting single-sex admissions policies in non-vocational elementary and secondary schools. *See* 34 CFR 106.15(d). However, the regulations specifically provide that an LEA may ''exclude any person from admission'' to a non-vocational elementary or secondary school ''on the basis of sex'' only if ''such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.'' (34 CFR 106.35(b))[4] In other words, under the current regulations, an LEA cannot use a single-sex admissions policy—which is not itself subject to Title IX's prohibition—as the predicate for otherwise causing students, on the basis of sex, to be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. For example, school districts may not establish a single-sex school for one sex that provides the district's only performing arts curriculum. Students of

[1] The statue also exempts activities of educational institutions controlled by religious organizations to the extent that the application of Title IX would be inconsistent with the religious tenets of the organizations 20 U.S.C. 1681(a)(3).

[2] The current regulations also permit recipients to group students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex (34 CFR 106.34(b)) and to ''make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.'' (34 CFR 106.34(f)).

[3] Section 1681(a)(1) of Title IX states that in regard to admissions to educational institutions, the law applies only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education. As such, non-vocational elementary and secondary schools are exempt.

[4] These provisions on single-sex schools do not apply to private elementary and secondary schools.

the other sex also must have access to a comparable school with that curriculum. It has been our longstanding interpretation, policy, and practice to require that the ''comparable school'' must also be single-sex.

An LEA may offer a single single-sex school if such an action constitutes remedial or affirmative action. (34 CFR 106.3) In addition, while the statutory exemption precludes the Department from examining an LEA's justification for a single-sex school, LEAs also should be aware of constitutional requirements in this area.[5] LEAs may be challenged in court litigation on constitutional grounds.

[5] The Supreme Court has decided two significant constitutional cases specifically regarding single-sex education. *United States* v. *Virginia,* 518 U.S. 515 (1996) (State-sponsored, male-only military college violated Equal Protection Clause); *Mississippi University for Women* v. *Hogan,* 458 US 718 (1982) (State-sponsored, female-only nursing school violated the Equal Protection Clause.)

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Authority: 20 U.S.C. 1681, 1682.

Dated: May 3, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02–11477 Filed 5–7–02; 8:45 am]

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