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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to make delegations of authority to the Chief Information Officer (CIO) designated pursuant to the provisions of the Clinger-Cohen Act. This document also revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to reflect a reorganization in the offices reporting to the Assistant Secretary for Administration. This document also transfers some offices and functions which previously reported to the Assistant Secretary for Administration to the CIO.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Edwardene Pitcock, Office of Human Resources Management, Department of Agriculture, Room 309 W Jamie L. Whitten Federal Building, Washington, DC 20250, telephone 202–720–3635.

SUPPLEMENTARY INFORMATION: In order to centralize and standardize the Department's Information Technology (IT) systems, procurement and training, the Secretary has named a Department CIO pursuant to the provisions of the Clinger-Cohen Act, Pub. L. No. 104–106. The CIO is responsible for Departmentwide IT system architecture, standardization, guidance, and training. The Office of Information Systems Management, which previously reported to the Assistant Secretary for Administration (hereinafter referred to as the Assistant Secretary), now reports to the CIO.

The Assistant Secretary has reorganized the offices which report to him to better utilize the resources of those offices. This reorganization restructured the functions of these offices so they can carry out their missions in a more effective and efficient manner as they meet the needs of their customers both within the Department of Agriculture and in the private sector.

The Assistant Secretary has consolidated all Departmentwide civil rights functions in an Office of Civil Rights. This office is headed by a Director who reports to the Assistant Secretary and who has responsibility for leadership, coordination, and direction related to both civil rights programs and equal employment opportunity complaints.

The Assistant Secretary has consolidated all Departmentwide personnel functions in an Office of Human Resources Management. This Office, headed by a Director who reports to the Assistant Secretary and who is responsible for establishing personnel policy for the entire Department of Agriculture (USDA), also provides operational support to specified organizations within USDA.

Also, as part of this reorganization, the Assistant Secretary has been named the Director of Small and Disadvantaged Business Utilization. The Office of Small and Disadvantaged Business Utilization now reports to the Assistant Secretary. This Office previously reported to the Deputy Secretary of Agriculture.

Additionally, an Office of Procurement, Property, and Emergency Preparedness has been established. The Office is headed by a Director who reports to the Assistant Secretary. The Director is responsible for establishing policy related to procurement and property management, and for providing services relating to procurement operations for projects having a nationwide scope and for assigned Departmental offices. The Director is responsible for coordinating the Department's programs related to emergency preparedness, national security, and disaster emergency response. The Director also is responsible for designating a competition advocate to promote competition in Departmental acquisitions.

This document revises the delegations of authority to authorize the Assistant Secretary for Administration to obtain and furnish excess personal property to the 1890 Land Grant Institutions, 1994 Land Grant Institutions and the Hispanic-Serving Institutions, in support of research, educational, technical, and scientific activities or for related programs.

This document removes from the Assistant Secretary for Administration authority related to advisory committees. Responsibility for advisory committee management will remain within the Office of the Secretary.

Further, an Office of Planning and Coordination has been established. The Office is headed by a Director who reports to the Assistant Secretary. The Director is responsible for providing budget and financial management coordination, strategic planning support, and quality management to the Assistant Secretary for Administration, and the Director is also responsible for issuing policy and guidance related to conflict resolution programs.

Additionally, an Office of Ethics has been established. The Office is headed by a Director who reports for administrative purposes to the Assistant Secretary. The Director is responsible for the Department's worldwide ethics program which includes providing advice to all levels of management on ethics issues, and developing and disseminating policy and guidance on ethics and conflicts of interest.

Lastly, an Office of Outreach has been established. The Office is headed by a Director who reports to the Assistant Secretary. The Director is responsible for ensuring that opportunities are available for the provision of information, technical assistance, and training to USDA customers with emphasis on under-served populations. The Director is responsible for coordinating efforts to ensure that USDA customers have access to all the Department's programs and services.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to

internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by Pub. L. No. 96–354, the Regulatory Flexibility Act, and, thus, is exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 10–121, this rule may be made effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3201, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart A—General

§ 2.4 [Amended]

2. Section 2.4 is amended by adding ''Chief Information Officer;'' after ''Chief Financial Officer;''.

3. Section 2.24 is amended by revising paragraphs (a)(2) through (a)(13), adding paragraphs (a)(14) through (a)(17), and revising paragraph (b) to read as follows:

§ 2.24 Assistant Secretary for Administration.

(a) * * *

(2) *Related to small and disadvantaged business utilization.* (i) In compliance with Public Law 95–507, the Assistant Secretary for Administration is designated as the Department's Director for Small and Disadvantaged Business Utilization. The Director of Small and Disadvantaged Business Utilization has specific responsibilities under the Small Business Act, 15 U.S.C. 644(k). These duties include being responsible for the following:

(A) Administering the Department's small and disadvantaged business activities related to procurement contracts, minority bank deposits, and grants and loan activities affecting small and minority businesses including women-owned business, and the small business, small minority business and small women-owned business subcontracting programs;

(B) Providing Departmentwide liaison and coordination of activities related to small, small disadvantaged, and women-owned businesses with the Small Business Administration and others in public and private sector;

(C) Developing policies and procedures required by the applicable provision of the Small Business Act, as amended to include the establishment of goals; and

(D) Implementing and administering programs described under sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637 and 644).

(3) *Related to equal opportunity in programs and employment.* (i) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery, compliance, and equal employment opportunity, with emphasis on the following:

(A) Actions to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in Federally assisted programs;

(B) Actions to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(C) Actions to enforce Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department;

(D) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department;

(E) Actions to enforce Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA programs and activities funded by the Department;

(F) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA conducted programs.

(G) Actions to enforce Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12131, *et seq.*, prohibiting discrimination against individuals with disabilities in State and local government services.

(H) Actions to enforce related Executive Orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(I) Actions to develop and implement the Department's Federal Women's Program; and

(J) Actions to develop and implement the Department's Hispanic Employment Program.

(ii) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(iii) Provide leadership and coordinate Departmental agencies and systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(iv) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(v) Coordinate with the Department of Justice on matters relating to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(vi) Coordinate with the Department of Health and Human Services on matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(vii) Order proceedings and hearings in the Department pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department or with other Federal departments and agencies.

(viii) Order proceedings and hearings in the Department pursuant to § 15.8 of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(ix) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(x) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by ''other means authorized by law.''

(xi) Make determinations required by § 15.8(d) of this title that compliance

cannot be secured by voluntary means, and then take action, as appropriate.

(xii) Make determinations, after legal sufficiency reviews by the Office of the General Counsel, that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate;

(xiii) Perform investigations and make final determinations, after legal sufficiency reviews by the Office of the General Counsel, on both the merits and required corrective action, as to complaints filed under part 15d of this title.

(xiv) Conduct investigations and compliance reviews Departmentwide.

(xv) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(xvi) Coordinate the Department's affirmative employment program, special emphasis programs, Federal Equal Opportunity Recruitment Program, equal employment opportunity evaluations, and development of policy.

(xvii) Provide liaison on equal employment opportunity programs and activities with the Equal Employment Opportunity Commission and the Office of Personnel Management.

(xviii) Monitor, evaluate, and report on agency compliance with established policy and Executive Orders which further the participation of historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(xix) Is designated as the Department's Director of Equal Employment Opportunity with authority to perform the functions and responsibilities of that position under 29 CFR part 1614, including the authority to make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's program for Equal Employment Opportunity (EEO), to provide equal employment opportunity services for managers and employees, and to make final agency decisions, after legal sufficiency reviews by the Office of the General Counsel, on EEO complaints by Department employees or applicants for employment and order such corrective measures in such complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(xx) Maintain liaison with historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment, and assist Department agencies in strengthening such institutions by facilitating institutional participation in Department programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(xxi) Administer the Department's EEO Program.

(xxii) Oversee and manage the EEO counseling function for the Department.

(xxiii) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(xxiv) Process formal EEO discrimination complaints by employees or applicants for employment.

(xxv) Investigate Department EEO and program discrimination complaints.

(xxvi) Make final decisions, after legal sufficiency reviews by the Office of the General Counsel, on both EEO and program discrimination complaints, except in those cases where the Assistant Secretary has participated in the events that gave rise to the matter.

(xxvii) Order such corrective measures in EEO complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to engage in a discriminatory practice.

(xviii) Provide liaison on EEO matters concerning complaints and appeals with the Department agencies and Department employees.

(xxix) Make final determinations, or enter into settlement agreements, after legal sufficiency reviews by the Office of the General Counsel, on discrimination complaints in conducted programs subject to the Equal Credit Opportunity Act. This delegation includes the authority to make compensatory damage awards whether pursuant to a final determination or in a settlement agreement under the authority of the Equal Credit Opportunity Act and the authority to obligate agency funds, including CCC and FCIC funds to satisfy such an award.

(xxx) Require corrective action on findings of discrimination on program complaints and recommend to the Secretary that relief be granted under 7 U.S.C. 6998(d), notwithstanding the finality of National Appeals Divisions decisions.

(xxxi) Provide civil rights and equal employment opportunity support services, with authority to take actions required by law or regulation to perform such services for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

(C) The offices and agencies reporting to the Assistant Secretary for Administration; and

(D) Any other offices or agencies of the Department as may be agreed.

(4) *Related to outreach.* (i) Develop policy guidelines and implement a Departmental outreach program which delivers services to the traditionally under-served customers.

(ii) Administer and provide leadership, direction, coordination, and monitoring for the Small Farmer Outreach Training and Technical Assistance program, *i.e.* Outreach and Technical Assistance Grants to Socially Disadvantaged Farmers and Ranchers Program, including the authority to make grants and enter into contracts and other agreements pursuant to 7 U.S.C. 2279(a).

(iii) Develop a strategic outreach plan for the Department which coordinates the goals, objectives, and expectations of mission area outreach programs.

(iv) Coordinate the dissemination/communication of all outreach information from the Department and its mission areas ensuring its transmission to as wide a public spectrum as possible.

(v) Serve as the Department's official outreach spokesperson.

(vi) Provide coordination and oversight of agency outreach activities including the establishment of outreach councils.

(vii) Develop a system to monitor the delivery of outreach grants and funding.

(viii) Report agency outreach status and accomplishments, and make recommendations to the Secretary.

(5) *Related to operations.* (i) Provide services for the Department in the following areas:

(A) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real and personal property, including control of space assignments, in the Washington, D.C. metropolitan area;

(B) Acquiring, storing, distributing, and disposing of forms; and

(C) Mail management and all related functions.

(ii) Operating centralized Departmental services to provide printing, copy reproducing, offset composing, supplies, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuing of general employee identification cards, supplemental distributing of Department directives, space allocating and management, and related management support.

(iii) Providing property management, space management, messenger, and other related services with authority to take actions required by law or regulation to perform such services for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

(C) The offices reporting to the Assistant Secretary for Administration;

(D) Any other offices or agencies of the Department as may be agreed; and

(E) Other federal, state, or local government organizations on a cost recovery basis.

(iv) Represent the Department in contacts with other organizations or agencies on matters related to assigned responsibilities.

(v) Promulgate Departmental regulations, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services, in the Washington, D.C. metropolitan area.

(vi) Provide internal administrative management and support services for the defense program of the Department.

(6) *Related to human resources management.* (i) Formulate and issue Department policy, standards, rules, and regulations relating to human resources management.

(ii) Provide human resources management procedural guidance and operational instructions.

(iii) Set standards for human resources data systems.

(iv) Inspect and evaluate human resources management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive Orders, Office of Personnel Management rules and regulations, and other appropriate rules and regulations.

(v) Exercise final authority in all human resources matters, including individual cases, that involve the jurisdiction of more than one General Officer or agency head.

(vi) Receive, review, and recommend action on all requests for the Secretary's approval in human resources matters.

(vii) Make final decisions on adverse actions, except in those cases where the Assistant Secretary for Administration has participated.

(viii) Represent the Department in human resources matters in all contacts outside the Department.

(ix) Exercise specific authorities in the following operational matters:

(A) Waive repayment of training expenses where an employee fails to fulfill service agreement;

(B) Establish or change standards and plans for awards to private citizens; and

(C) Execute, change, extend, or renew:

(1) Labor-Management Agreements; and

(2) Associations of Management Officials' or Supervisors' Agreements.

(D) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations;

(E) Change a position (with no material change in duties) from one pay system to another;

(F) Grant restoration rights, and release employees with administrative reemployment rights;

(G) Authorize any mass dismissals of employees in the Washington, D.C., metropolitan area;

(H) Approve ''normal line of promotion'' cases in the excepted service where not in accordance with time-in-grade criteria;

(I) Make the final decision on all classification appeals filed with the Department of Agriculture;

(J) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(K) Authorize all employment actions (except LWOP) for the following positions:

(1) Schedule C;

(2) Non-career Senior Executive Service or equivalent; and

(3) Administrative Law Judge.

(L) Authorize adverse actions for positions in GS–14–15 and equivalent and, as appropriate, redelegate this authority to Heads of Department agencies;

(M) Authorize adverse action for positions in the career senior executive service or equivalent, and as appropriate, redelegate this authority on a case by case basis to the Heads of Departmental agencies;

(N) Approve the details of Department employees to the White House;

(O) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;

(P) Authorize long-term training in programs which require Departmentwide competition;

(Q) Initiate and take adverse action in cases involving a violation of the merit system.

(x) As used in this section, the term human resources includes:

(A) Position management;

(B) Position classification;

(C) Employment;

(D) Pay administration;

(E) Automation of human resources data and systems;

(F) Hours of duty;

(G) Performance management;

(H) Promotions;

(I) Employee development;

(J) Incentive Programs;

(K) Leave;

(L) Retirement;

(M) Human resource program management evaluations;

(N) Social security;

(O) Life insurance;

(P) Health benefits;

(Q) Unemployment compensation;

(R) Labor management relations;

(S) Intramanagement consultation;

(T) Security;

(U) Discipline; and

(V) Appeals.

(xi) Provide human resources services, as listed in paragraph (a)(6)(x) of this section, and organizational support services, with authority to take actions required by law or regulation to perform such services for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

(C) The offices and agencies reporting to the Assistant Secretary for Administration; and

(D) Any other offices or agencies of the Department as may be agreed.

(xii) Maintain, review, and update Departmental delegations of authority.

(xiii) Authorize organizational changes which occur in:

(A) Departmental organizations:

(1) Agency or office;

(2) Division (or comparable component); and

(3) Branch (or comparable component in Departmental centers, only).

(B) Field organizations:

(1) First organizational level; and

(2) Next lower organizational level-required only for those types of field installations where the establishment, change in location, or abolition of same, requires approval in accordance with Departmental internal direction.

(xiv) Formulate and promulgate departmental organizational objectives and policies.

(xv) Approve coverage of individual law enforcement and firefighter positions under the special retirement provisions of the Civil Service Retirement System and the Federal Employees Retirement System.

(xvi) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive Orders and other policy and procedural issuances related to occupational safety and health within the Department.

(xvii) Represent the Department in all rulemaking, advisory, or legislative capacities on any groups, committees, or Governmentwide activities that affect the Department's Occupational Safety and Health Management Program.

(xviii) Determine and provide Departmentwide technical services and regional staff support for the safety and health programs.

(xix) Administer the computerized management information systems for the collection, processing and dissemination of data related to the Department's occupational safety and health programs.

(xx) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the Department's Drug-Free Workplace Program and designate the final appeal officer for that Program.

(xxi) Administer the Department's Occupational Health and Preventive Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(xxii) Provide education and training on a Departmentwide basis for safety and health-related issues and develop resource and operational manuals.

(xxiii) Oversee and manage the Department's administrative grievance program.

(xxiv) Make final decisions in those cases where an agency head has appealed the recommended decision of a grievance examiner.

(7) *Related to procurement and property management.* (i) Promulgate policies, standards, techniques, and procedures, and represent the Department, in the following:

(A) Acquisition, including, but not limited to, the procurement of supplies, services, equipment, and construction;

(B) Socioeconomic programs relating to contracting;

(C) Selection, standardization, and simplification of program delivery processes utilizing contracts;

(D) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;

(E) Motor vehicle and aircraft fleet and other vehicular transportation;

(F) Transportation of things (traffic management);

(G) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

(H) Implementation of the Uniform Relocation Assistance and Real Property Policies Act of 1970 (42 U.S.C. 4601, *et seq.*); and

(I) Development and implementation of energy management and environmental actions related to acquisition and procurement, real and personal property management, waste prevention and resource recycling, and logistics. Maintain liaison with the Office of the Federal Environmental Executive, the Department of Energy, and other Government agencies in these matters.

(ii) Exercise the following special authorities:

(A) Designate the Departmental Debarring Officer to perform the functions of 48 CFR part 9, subpart 9.4 related to procurement activities, except for commodity acquisitions on behalf of the Commodity Credit Corporation (7 CFR part 1407); with authority to redelegate suspension and debarment authority for contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c);

(B) Conduct liaison with the Office of Federal Register (1 CFR part 16) including the making of required certifications pursuant to 1 CFR part 18;

(C) Maintain custody and permit appropriate use of the official seal of the Department;

(D) Establish policy for the use of the official flags of the Secretary and the Department;

(E) Coordinate collection and disposition of personal property of historical significance;

(F) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes making such verifications or certifications as may be required by 26 CFR 1.6050M–1 and making the election allowed by 26 CFR 1.6050M–1(d)(5)(1);

(G) Promulgate regulations for the management of contracting and procurement for information technology and telecommunication equipment, software, services, maintenance and related supplies; and

(H) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities.

(iii) Serve as the Acquisition Executive in the Department to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in Circular A–109, Major Systems Acquisitions, with the exception that major system acquisitions for information technology shall be under the cognizance of the Chief Information Officer. This includes the authority to:

(A) Insure that OMB Circular A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized;

(B) Review the program management of each major system acquisition, excluding information technology;

(C) Designate the program manager for each major systems acquisition, excluding information technology; and

(D) Designate any Departmental acquisition as a major system acquisition, excluding information technology, under OMB Circular A–109.

(iv) Pursuant to Executive Order 12931, 3 CFR, 1994 Comp., p. 925, and sections 16, 22, and 37 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b), and 433, designate the Senior Procurement Executive for the Department and delegate responsibility for the following:

(A) Prescribing and publishing Departmental acquisition policies, regulations, and procedures;

(B) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions;

(C) Designating contracting officers;

(D) Establishing clear lines of contracting authority;

(E) Evaluating and monitoring the performance of the Department's procurement system;

(F) Managing and enhancing career development of the Department's acquisition work force;

(G) Participating in the development of Governmentwide procurement policies, regulations, and standards, and determining specific areas where

Governmentwide performance standards should be established and applied;

(H) Developing unique Departmental standards as required;

(I) Overseeing the development of procurement goals, guidelines, and innovation;

(J) Measuring and evaluating procurement office performance against stated goals;

(K) Advising the Secretary whether goals are being achieved;

(L) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards not are met;

(M) Redelegating as appropriate, the authority in paragraph (a)(6)(iv)(A) of this section to agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(N) Redelegating the authorities in paragraphs (a)(6)(iv)(B), (C), (D), (F), and (G) of this section to agency Procurement executives or other qualified agency officials with the power of further redelegation.

(v) Represent the Department in establishing standards for acquisition transactions within the electronic data interchange environment.

(vi) Pursuant to the Alternative Agricultural Research and Commercialization Act of 1990 (7 U.S.C. 5901–5909), establish and maintain a Preference List for selected products developed with commercialization assistance under 7 U.S.C. 5905.

(vii) Designate the Departmental Task Order Ombudsman pursuant to 41 U.S.C. 253j.

(viii) Serve as Departmental Remedy Coordination Official pursuant to 41 U.S.C. 255 to determine whether payment to any contractor should be reduced or suspended based on substantial evidence that the request of the contractor for advance, partial, or progress payment is based on fraud.

(ix) Promulgate Departmental policies, standards, techniques, and procedures, and represent the Department in maintaining the security of physical facilities nationwide.

(x) Review and approve exemptions for USDA contracts and subcontracts from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in these acts and Executive Order and the regulations of the Environmental Protection Agency (40 CFR 32.2155(b)).

(xi) Promulgate policy concerning excess Federal personal property in accordance with section 923 of Public Law 104–127, to support research, educational, technical and scientific activities or for related programs, to:

(A) Any 1994 Institutions (as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (Public Law 103–382; 7 U.S.C. 301 note));

(B) Any Institutions eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321, *et seq.*) including Tuskegee University; and

(C) Any Hispanic-serving Institutions (as defined in sections 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c (b)).

(xii) Issue regulations and directives to implement or supplement the Federal Acquisition Regulations (48 CFR Chapters 1 and 4).

(xiii) Issue regulations and directives to implement or supplement the Federal Property Management Regulations (41 CFR chapters 101 and 102).

(xiv) Serve as a USDA Environmental Executive responsible for coordinating waste prevention, recycling, and the procurement, acquisition and use of recycled products and environmentally preferable products, including biobased products, and services pursuant to Executive Order 13101.

(xv) Provide administrative support to the USDA Hazardous Materials Management Group.

(xvi) In accordance with Public Law 95–91, section 656 and pursuant to Executive Order 13123, serve as the Department's principal Energy Conservation Officer.

(xvii) Exercise full Departmentwide contracting and procurement authority.

(xviii) Conduct acquisitions with authority to take actions required by law or regulation to procure supplies, services, and equipment for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

(C) The offices and agencies reporting to the Assistant Secretary for Administration;

(D) Any other offices or agencies of the Department as may be agreed; and

(E) For other federal, state, or local government organizations on a cost recovery basis.

(8) *Related to competition advocacy.* (i) Pursuant to the Office of Federal Procurement Policy Act (Act), as amended (41 U.S.C. 401, *et seq.*), designate the Department's Advocate for Competition with the responsibility for section 20 of the Act (41 U.S.C. 418), including:

(A) Reviewing the procurement activities of the Department;

(B) Developing new initiatives to increase full and open competition;

(C) Developing goals and plans and recommending actions to increase competition;

(D) Challenging conditions unnecessarily restricting competition in the acquisition of supplies and services;

(E) Promoting the acquisition of commercial items; and

(F) Designating an Advocate for Competition for each procuring activity within the Department.

(9) *Related to emergency preparedness:* (i) Administer the Department Emergency Preparedness Program. This includes the:

(A) Coordination of the assignments made to the Department by Executive Order 12656, November 18, 1988, ''Assignment of Emergency Preparedness Responsibilities,'' 3 CFR, 1988 Comp. p. 255, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any other emergency.

(B) Management of the Department Emergency Coordination Center and alternate facilities;

(C) Development and promulgation of policies for the Department regarding emergency preparedness and national security, including matters relating to anti-terrorism and agriculture-related emergency preparedness planning both national and international;

(D) Providing guidance and direction regarding issues of emergency preparedness, disaster assistance, and national security to the agencies, mission areas, and the State and County Emergency Boards;

(E) Representing and acting as liaison for the Department in contacts with other Federal entities and organizations, including the Federal Emergency Management Agency and the National Security Council, concerning matters of assigned responsibilities; and

(F) Oversight of the Department continuity of operations, planning, and emergency relocation facilities to ensure that resources are in a constant state of readiness.

(ii) Provide guidance and direction to the Department Emergency Coordinator, who, along with the Chief Economist, is responsible for coordinating the preparation of Department estimates of agricultural losses from natural disaster.

(iii) Coordinate Department responsibilities under disaster assistance authorities, including the Chemical Stockpile Emergency Preparedness Program, the Federal

Radiological Emergency Response Plan, the Federal Response Plan, the National Oil and Hazardous Substance Pollution Contingency Plan, and other Federal emergency response plans.

(10) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(11) *Related to management.* (i) Administer a productivity program in accordance with Executive Order 12089, 3 CFR, 1979 Comp., p. 246, and other policy and procedural directives and laws to:

(ii) Develop strategies to improve processes with respect to administrative and associated financial activities of the Department and make recommendations to the Secretary.

(iii) Improve Departmental management by: performing management studies and reviews in response to agency requests for assistance; enhancing management decision making by developing and applying analytic techniques to address particular administrative operational and management problems; searching for more economical or effective approaches to the conduct of business; developing and revising systems, processes, work methods and techniques; and undertaking other efforts to improve the management effectiveness and productivity of the Department.

(iv) Coordinate Departmental Administration strategic planning and budget coordination activities on behalf of the Assistant Secretary.

(12) *Related to conflict management.* (i) Designate the senior official to serve as the Department Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, and provide leadership, direction and coordination for the Department's conflict prevention and resolution activities;

(ii) Issue Departmental regulations, policies, and procedures relating to the use of Alternative Dispute Resolution (ADR) to resolve employment complaints and grievances, workplace disputes, Departmental program disputes, and contract and procurement disputes;

(iii) Provide ADR services for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

(C) The offices and agencies reporting to the Assistant Secretary for Administration; and

(D) Any other officer or agency of the Department as may be agreed.

(iv) Develop and issue standards for mediators and other ADR neutrals utilized by the Department;

(v) Coordinate ADR activities throughout the Department; and

(vi) Monitor Agency ADR programs and report at least annually to the Secretary on the Department's ADR activities; and

(13) *Related to ethics.* The Ethics function in the U.S. Department of Agriculture is under the authority of the Assistant Secretary for Administration for purposes of general supervision only. The Assistant Secretary does not have any authority over the functions exercised by the Director, Office of Ethics, pursuant to the Director's responsibilities as Designated Agency Ethics Official under the Office of Government Ethics regulations at 5 CFR part 2638.

(14) *Related to budget and finance.* Exercise general financial and budget authority over all organizations assigned to the Assistant Secretary for Administration.

(15) *Related to defense.* Provide internal administrative management and support services for the defense program of the Department.

(16) *Related to the Board of Contract Appeals.* Provide administrative supervision of the Board of Contract Appeals. No review by the Assistant Secretary for Administration of the merits of appeals or of decisions of the Board is authorized and the Board shall be the representative of the Secretary in such matters.

(17) *Related to hazardous materials management:* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA offices of assigned responsibility to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to matters of assigned responsibility.

(iv) Present, in coordination with the Chairman of the USDA Hazardous Materials Policy Council, the USDA Hazardous Waste Management Appropriation budget request to the Office of Management and Budget and to Congress.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to human resources management.* Make final determinations in the following areas:

(i) Separation of employees for security reasons;

(ii) Restoration to duty of employees following suspension from duty for security reasons;

(iii) Reinstatement or restoration to duty or the employment of any person separated for security reasons; and

(iv) Issuance of temporary certificates to occupy sensitive positions.

(2) [Reserved]

§ 2.28 [Amended]

4. Section 2.28 is amended by revising the reference in paragraph (b)(5)(ii) ''the Office of Information Resources Management'' to read ''the Office of the Chief Information Officer.''

5. In subpart E, § 2.37 is removed, and subpart E is reserved; and in subpart D, a new § 2.37 is added to read as follows:

§ 2.37 Chief Information Officer.

(a) *Delegation.* The Chief Information Officer, under the supervision of the Secretary, is responsible for executing the duties enumerated in Public Law

104–106 for agency Chief Information Officers, as follows:

(1) Reporting directly to the Secretary of Agriculture regarding information technology matters.

(2) Overseeing all information technology and information resource management activities relating to the programs and operations of the Department and component agencies. This oversight includes approving information technology investments, monitoring and evaluating the performance of those investments and information resource management activities, approval of all architectures and components thereto and determining whether to continue, modify, or terminate an information technology program or project.

(3) Providing advice and other assistance to the Secretary and other senior management personnel to ensure that information technology is acquired and managed for the Department consistent with chapter 35 of title 44, United States Code (Coordination of Federal Information Policy).

(4) Developing, implementing, and maintaining a sound and integrated Departmentwide information technology architecture.

(5) Promoting the effective and efficient design and operation of all major information resources management processes for the Department, including improvements to work processes of the Department.

(6) Approving the acquisition or procurement of information technology resources by, or on behalf of, any Department agency or office.

(7) Providing guidance and assistance to Department procurement personnel with respect to information technology acquisition strategy and policy.

(8) The Chief Information Officer is designated the Major Information Technology Systems Executive in USDA to integrate and unify the management process for the Department's major information technology system acquisitions and to monitor implementation of the policies and practices set forth in Circular A–109, Major Systems Acquisitions, for information technology. This includes the authority to:

(i) Ensure that OMB Circular A–109 is effectively implemented for information technology systems in the Department and that the management objectives of the Circular are realized;

(ii) Review the program management of each major information technology system acquisition;

(iii) Approve the appointment of the program manager for each major information technology systems acquisition; and

(iv) Designate any Departmental information technology acquisition as a major system acquisition under OMB Circular A–109.

(9) On an annual basis:

(i) Assessing Departmentwide personnel requirements regarding knowledge and skill in information resources management, and the adequacy of such requirements, to achieve the performance goals established for information resources management.

(ii) Developing strategies and specific plans for hiring, training, and professional development at the executive and management level to meet personnel information technology personnel requirements.

(iii) Reporting to the Secretary on progress made in improving information resources management capability.

(10) The Chief Information Officer is designated as the senior official to carry out the responsibilities of the Department under chapter 35 of title 44, United States Code (Coordination of Federal Information Policy), including:

(i) Ensuring that the information policies, principles, standards, guidelines, rules and regulations prescribed by the Office of Management and Budget are appropriately implemented within the Department;

(ii) Reviewing proposed Department reporting and record keeping requirements, including those contained in rules and regulations, to ensure that they impose the minimum burden upon the public and have practical utility for the Department;

(iii) Developing and implementing procedures for assessing the burden to the public and costs to the Department of information requirements contained in proposed legislation affecting Department programs; and

(iv) Assisting the Office of Management and Budget in the performance of its functions assigned under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), including review of Department information activities.

(11) The Chief Information Officer is responsible for:

(i) Providing Departmentwide guidance and direction in planning, developing, documenting, and managing applications software projects in accordance with Federal and Department information processing standards, procedures, and guidelines;

(ii) Providing Departmentwide guidance and direction in all aspects of information technology, including feasibility studies; economic analyses; systems design; acquisition of equipment, software, services, and timesharing arrangements; systems installation; systems performance and capacity evaluation; and security. Monitoring these activities for agencies' major systems development efforts to assure effective and economic use of resources and compatibility among systems of various agencies when required;

(iii) Managing the Department Computer Centers, with the exception of the National Finance Center, including setting rates to recover the cost of goods and services within approved policy and funding levels;

(iv) Reviewing and evaluating information technology activities related to delegated functions to assure that they conform to all applicable Federal and Department information technology management policies, plans, standards, procedures, and guidelines;

(v) Designing, developing, implementing, and revising systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources;

(vi) Administering the Departmental records, forms, reports and Directives Management Programs;

(vii) Managing all aspects of the USDA Telecommunications Program including planning, development, acquisition, and use of equipment and systems for voice and data communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies;

(viii) Managing Departmental telecommunications contracts;

(ix) Providing technical advice throughout the Department;

(x) Implementing a program for applying information resources management technology to improve productivity in the Department;

(xi) Planning, developing, installing, and operating computer-based systems for message exchange, scheduling, computer conferencing, and other applications of office automation technology which can be commonly used by multiple Department agencies and offices;

(xii) Representing the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, the National Institute for Science and Technology, and other organizations or agencies on matters related to delegated responsibilities; and

(xiii) Review, clear, and coordinate all statistical forms, survey plans, and

reporting and record keeping requirements originating in the Department and requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

(12) Implementing policies established pursuant to paragraphs (a)(1) through (11) of this section by:

(i) Disposing of information technology that is acquired by a Department agency in violation of procedures or standards for the Department Information Systems Technology Architecture;

(ii) Establishing information technology and information resources management performance standards for agency Chief Information Officers, information resources managers, and project managers to be used in the performance appraisal process;

(iii) Approving the selection of agency Chief Information Officers and agency major information technology system project managers in accordance with criteria to be promulgated by the Chief Information Officer;

(iv) Provide recommendations to Agency Heads for the removal or replacement of information technology project managers, when, in the opinion of the Chief Information Officer, applicable laws and policies are being violated, or, when the cost, schedule, or performance of an information technology project would indicate management deficiencies;

(v) Withdrawing agencies' authority to obligate funds on Information Technology programs or projects if the agency violates the Chief Information Officer policies, standards, or Department Information Systems Technology Architecture;

(vi) Requiring agencies to validate and verify major information technology systems through the use of an existing contract for such purpose designated by the Chief Information Officer; and

(vii) Requiring approval by the Chief Information Officer of any proposed acquisition of information technology (whether through the award or modification of a procurement contract, a cooperative or other agreement with a non-Federal party, or an interagency agreement) to ensure technical conformance to the Department technical architecture.

(13) Provide management and operational support to the Secretary of Agriculture; the general staff offices; the offices and agencies reporting to the Assistant Secretary for Administration and for any other offices or agencies of the Department as may be agreed. As used in this section, such support services shall include:

(i) Information technology services, as listed in paragraph (a)(11)(v) of this section with authority to take actions required by law or regulation to perform such services; and

(ii) Forms management, files management, and directives management with authority to take actions required by law or regulation to perform such services.

(b) [Reserved]

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

6.–7. A new § 2.88 is added to read as follows:

§ 2.88 Director, Office of Small and Disadvantaged Business Utilization.

(a) *Delegations.* Pursuant to § 2.24 (a)(3), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Small and Disadvantaged Business Utilization:

(1) The Director, Office of Small and Disadvantaged Business Utilization, under the supervision of the Assistant Secretary for Administration, has specific responsibilities under the Small Business Act, 15 U.S.C. 644(k). These duties include being responsible for the following:

(i) Administering the Department's small and disadvantaged business activities related to procurement contracts, minority bank deposits, and grants and loan activities affecting small and minority businesses including women-owned business, and the small business, small minority business, and small women-owned business subcontracting programs;

(ii) Providing Departmentwide liaison and coordination of activities related to small, small disadvantaged, and women-owned businesses with the Small Business Administration and others in public and private sector;

(iii) Developing policies and procedures required by the applicable provision of the Small Business Act, as amended, to include the establishment of goals; and

(iv) Implementing and administering programs described under sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637 and 644).

(b) [Reserved]

8. Section 2.89 is revised to read as follows:

§ 2.89 Director, Office of Civil Rights.

(a) *Delegations.* Pursuant to § 2.24 (a)(4), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Civil Rights:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery compliance and equal employment opportunity, with emphasis on the following:

(i) Actions to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in federally assisted programs;

(ii) Actions to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(iii) Actions to enforce Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department;

(iv) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department;

(v) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA programs and activities funded by the Department;

(vi) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA conducted programs;

(vii) Actions to enforce Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12131, *et seq.*, prohibiting discrimination against individuals with disabilities in State and local government services.

(viii) Actions to enforce related Executive Orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(ix) Actions to develop and monitor compliance in the Department's Federal Women's Program; and

(x) Actions to develop and monitor the Department's Hispanic Employment Program.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Provide leadership and coordinate Department agencies and systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(4) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(5) Coordinate with the Department of Justice on matters relating to Title VI of

the Civil Rights Act of 1964 (42 U.S.C. 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(6) Coordinate with the Department of Health and Human Services on matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(7) Order proceedings and hearings in the Department pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department pursuant to § 15.8 of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(10) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by ''other means authorized by law.''

(11) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(12) Make determinations, after legal sufficiency reviews by the Office of the General Counsel, that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate.

(13) Perform investigations and make final determinations, after legal sufficiency reviews by the Office of the General Counsel, on both the merits and required corrective action, as to complaints filed under part 15d of this title.

(14) Conduct investigations and compliance reviews Departmentwide.

(15) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(16) Coordinate the Department's affirmative employment program, special emphasis programs, Federal Equal Opportunity Recruitment Program, equal employment opportunity evaluations, and development of policy.

(17) Provide liaison on equal employment opportunity programs and activities with the Equal Employment Opportunity Commission and the Office of Personnel Management.

(18) Monitor, evaluate, and report on agency compliance with established policy and Executive Orders which further the participation of historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(19) Is designated as the Department's Director of Equal Employment Opportunity with authority to perform the functions and responsibilities of that position under 29 CFR part 1614, including the authority to make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's program for Equal Employment Opportunity, to provide equal employment opportunity services for managers and employees, and to make final agency decisions, after legal sufficiency reviews by the Office of the General Counsel, on EEO complaints by Department employees or applicants for employment and order such corrective measures in such complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(20) Maintain liaison with historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment, and assist Department agencies in strengthening such institutions by facilitating institutional participation in Department programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(21) Administer the Department's EEO Program.

(22) Oversee and manage the EEO counseling function for the Department.

(23) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(24) Process formal EEO discrimination complaints, up to the appellate stage, by employees or applicants for employment.

(25) Investigate Department EEO and program discrimination complaints.

(26) Issue Departmental regulations, policies and procedures relating to the use of Alternative Dispute Resolution to resolve employment and program discrimination complaints.

(27) Make final decisions, after legal sufficiency reviews by the Office of the General Counsel, on both EEO and program discrimination complaints, except in those cases where the Director, Office of Civil Rights, has participated in the events that gave rise to the matter.

(28) Order such corrective measures in EEO complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to engage in a discriminatory practice.

(29) Provide liaison on EEO matters concerning complaints and appeals with Department agencies and Department employees.

(30) Make final determinations, or enter into settlement agreements, after legal sufficiency reviews by the Office of the General Counsel, on discrimination complaints in conducted programs subject to the Equal Credit Opportunity Act.

(31) Require corrective action on findings of discrimination on program complaints and recommend to the Secretary that relief be granted under 7 U.S.C. 6998(d), notwithstanding the finality of National Appeals Divisions decisions.

(32) Provide civil rights and equal employment opportunity support services, except for the equal employment opportunity support services provided by the Office of Human Resources Management, with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration; and

(iv) Any other offices or agencies of the Department as may be agreed.

(b) [Reserved]

9. Section 2.90 is revised to read as follows:

§ 2.90 Director, Office of Outreach.

(a) *Delegations.* Pursuant to § 2.24 (a)(5), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Outreach.

(1) Develop policy guidelines and implement a Departmental outreach program which delivers services to the traditionally under-served customers.

(2) Administer and provide leadership, direction, coordination, and monitoring for the Small Farmer Outreach Training and Technical Assistance program, *i.e.* Outreach and Technical Assistance Grants to Socially Disadvantaged Farmers and Ranchers Program, including the authority to make grants and enter into contracts and other agreements pursuant to 7. U.S.C. 2279 (a).

(3) Develop a strategic outreach plan for the Department which coordinates the goals, objectives and expectations of mission area outreach programs.

(4) Coordinate the dissemination/communication of all outreach information from the Department and its mission areas ensuring its transmission to as wide a public spectrum as possible.

(5) Serve as the Department's official outreach spokesperson.

(6) Provide coordination and oversight of agency outreach activities including the establishment of outreach councils.

(7) Develop a system to monitor the delivery of outreach grants and funding.

(8) Report agency outreach status, accomplishments and make recommendations to the Assistant Secretary for Administration.

(b) [Reserved]

10. Section 2.91 is revised to read as follows:

§ 2.91 Director, Office of Operations.

(a) *Delegations.* Pursuant to § 2.24 (a)(6), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Operations:

(1) Provide services for the Department in the following areas:

(i) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real and personal property, including control of space assignments, in the Washington, D.C. metropolitan area.

(ii) Acquiring, storing, distributing, and disposing of forms; and

(iii) Mail management and all related functions.

(2) Operating centralized Departmental services to provide printing, copy reproducing, offset composing, supplies, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuing of general employee identification cards, supplemental distributing of Department directives, space allocating and management, and related management support.

(3) Providing property management, space management, messenger, communications, and other related services with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration;

(iv) Any other offices or agencies of the Department as may be agreed; and

(v) Other federal, state, or local government organizations on a cost recovery basis.

(4) Represent the Department in contacts with other organizations or agencies on matters related to assigned responsibilities.

(5) Promulgate Departmental regulations, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services, in the Washington, D.C. metropolitan area.

(6) Provide internal administrative management and support services for the defense program of the Department.

(b) [Reserved]

11. Section 2.92 is revised to read as follows:

§ 2.92 Director, Office of Human Resources Management.

(a) *Delegations.* Pursuant to § 2.24 (a)(7), subject to reservations in § 2.24(b)(1), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Human Resources Management:

(1) Formulate and issue Department policy, standards, rules and regulations relating to human resources management.

(2) Provide human resources management procedural guidance and operational instructions.

(3) Set standards for human resources data systems.

(4) Inspect and evaluate human resources management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive Orders, Office of Personnel Management rules and regulations, and other appropriate rules and regulations.

(5) Exercise final authority in all human resources matters, including individual cases, that involve the jurisdiction of more than one General Officer, or agency head.

(6) Receive, review, and recommend action on all requests for the Secretary's or Assistant Secretary for Administration's approval in human resources matters.

(7) Make final decisions on adverse actions except in those cases where the Assistant Secretary for Administration or the Director, Office of Human Resources Management, has participated.

(8) Represent the Department in human resources matters in all contacts outside the Department.

(9) Exercise specific authorities in the following operational matters:

(i) Waive repayment of training expenses where an employee fails to fulfill service agreement;

(ii) Establish or change standards and plans for awards to private citizens; and

(iii) Execute, change, extend, or renew:

(A) Labor-Management Agreements; and

(B) Associations of Management Officials' or Supervisors' Agreements.

(iv) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations.

(v) Change a position (with no material change in duties) from one pay system to another;

(vi) Grant restoration rights, and release employees with administrative reemployment rights;

(vii) Authorize any mass dismissals of employees in the Washington, DC metropolitan area;

(viii) Approve ''normal line of promotion'' cases in the excepted service where not in accordance with time-in grade criteria;

(ix) Make the final decision on all classification appeals filed with the Department of Agriculture;

(x) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(xi) Authorize all employment actions (except LWOP) for the following positions:

(A) Schedule C;

(B) Non-career Senior Executive Service or equivalent; and

(C) Administrative Law Judge.

(xii) Make final decisions on adverse actions for positions in GS–14 and 15 or equivalent and, as appropriate, redelegate this authority to the Heads of Departmental agencies;

(xiii) Authorize adverse action for positions in the career Senior Executive Service or equivalent and, as appropriate, redelegate this authority on a case by case basis to Heads of Departmental agencies;

(xiv) Approve the details of Department employees to the White House;

(xv) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;

(xvi) Authorize long-term training in programs which require Departmentwide competition; and

(xvii) Initiate and take adverse action in cases involving a violation of the merit system.

(10) As used in this section, the term human resources includes:

(i) Position management;

(ii) Position classification;

(iii) Employment;

(iv) Pay administration;

(v) Automated human resources data and systems;

(vi) Hours of duty;

(vii) Performance management;

(viii) Promotions;

(ix) Employee development;

(x) Incentive programs;

(xi) Leave;

(xii) Retirement;

(xiii) Human resource program management evaluation;

(xiv) Social security;

(xv) Life insurance;

(xvi) Health benefits;

(xvii) Unemployment compensation;

(xviii) Labor management relations;

(xix) Intramanagement consultation;

(xx) Security;

(xxi) Discipline; and

(xxii) Appeals.

(11) Provide human resource services, as listed in paragraph (a)(10) of this section; and organizational support services; with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department;

(iii) The offices reporting to the Assistant Secretary for Administration; and

(iv) Any other officer or agency of the Department as may be agreed.

(12) Maintain, review, and update Departmental delegations of authority.

(13) Recommend authorization of organizational changes which occur in:

(i) Departmental organizations:

(A) Agency or office;

(B) Division (or comparable component); and

(C) Branch (or comparable component in Departmental centers, only).

(ii) Field organizations;

(A) First organizational level; and

(B) Next lower organizational level-required only for those types of field installations where the establishment, change in location, or abolition of same requires approval in accordance with Departmental internal direction.

(14) Formulate and promulgate Departmental policies regarding reorganizations.

(15) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive Orders and other policy and procedural issuances and related to occupational safety and health within the Department.

(16) Represent the Department in all rulemaking, advisory, or legislative capacities on any groups, committees, or Government wide activities that affect the USDA Occupational Safety and Health Management Program.

(17) Determine and provide Departmentwide technical services and regional staff support for the safety and health programs.

(18) Administer the computerized management information systems for the collection, processing, and dissemination of data related to the Department's occupational safety and health programs.

(19) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the Department's Drug-Free Workplace Program and designate the final appeal officer for that Program.

(20) Administer the Department's Occupational Health and Prevention Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(21) Provide education and training on a Departmentwide basis for safety and health-related issues and develop resource and operational manuals.

(22) Oversee and manage the Department's administrative grievance program.

(23) Make final decisions in those cases where an agency head has appealed the recommended decision of a grievance examiner.

(b) *Reservation.* The following authority is reserved to the Assistant Secretary for Administration:

(1) Authorize organizational changes occurring in a Department agency or staff office which affect the overall structure of that service or office; *i.e.,* require a change to that service or office's overall organization chart.

(2) [Reserved]

12. A new § 2.93 is added to read as follows:

§ 2.93 Director, Office of Procurement, Property, and Emergency Preparedness.

(a) *Delegations.* Pursuant to §§ 2.24 (a)(8), (a)(9), (a)(10), and (a)(11), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Procurement, Property, and Emergency Preparedness:

(1) Promulgate policies, standards, techniques, and procedures, and represent the Department, in the following:

(i) Acquisition, including, but not limited to, the procurement of supplies, services, equipment, and construction;

(ii) Socioeconomic programs relating to contracting;

(iii) Selection, standardization, and simplification of program delivery processes utilizing contracts;

(iv) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;

(v) Motor vehicle and aircraft fleet and other vehicular transportation;

(vi) Transportation of things (traffic management);

(vii) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

(viii) Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*); and

(ix) Development and implementation of energy management and environmental actions related to acquisition and procurement, real and personal property management, waste prevention and resource recycling, and logistics. Maintain liaison with the Office of the Federal Environmental Executive, the Department of Energy, and other Government agencies in these matters.

(2) Exercise the following special authorities:

(i) The Director, Office of Procurement, Property, and Emergency

Preparedness is designated as the Departmental Debarring Officer and authorized to perform the functions of 48 CFR part 9, subpart 9.4 related to procurement activities, except for commodity acquisitions on behalf of the Commodity Credit Corporation (7 CFR part 1407), with authority to redelegate suspension and debarment authority for contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c);

(ii) Conduct liaison with the Office of Federal Register (1 CFR part 16) including the making of required certifications pursuant to 1 CFR part 18;

(iii) Maintain custody and permit appropriate use of the official seal of the Department;

(iv) Establish policy for the use of the official flags of the Secretary and the Department;

(v) Coordinate collection and disposition of personal property of historical significance;

(vi) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes making such verifications or certifications as may be required by 26 CFR 1.6050M–1 and making the election allowed by 26 CFR 1.6050M–1(d)(5)(1).

(vii) Promulgate regulations for the management of contracting and procurement for information technology and telecommunication equipment, software, services, maintenance and related supplies; and

(viii) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities; and

(ix) Redelegate, as appropriate, the authority in paragraph (a)(10) of this section to agency Property Officials or other qualified agency officials with no power of further redelegation.

(3) Exercise authority under the Department's Acquisition Executive (the Assistant Secretary for Administration) to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular A–109, Major Systems Acquisitions, with the exception that major system acquisitions for information technology shall be under the cognizance of the Chief Information Officer. This delegation includes the authority to:

(i) Insure that OMB Circular A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized;

(ii) Review the program management of each major system acquisition, excluding information technology;

(iii) Designate the program manager for each major system acquisition, excluding information technology; and

(iv) Designate any Departmental acquisition, excluding information technology, as a major system acquisition under OMB Circular A–109.

(4) Pursuant to Executive Order 12931, 3 CFR, 1994 Comp., p. 925, and sections 16, 22, and 37 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b), and 433, serve as the Senior Procurement Executive for the Department with responsibility for the following:

(i) Prescribing and publishing Departmental acquisition policies, regulations, and procedures;

(ii) Taking any necessary actions consistent with policies, regulations, and procedures, with respect to purchases, contracts, leases, and other transactions;

(iii) Designating contracting officers;

(iv) Establishing clear lines of contracting authority;

(v) Evaluating and monitoring the performance of the Department's procurement system;

(vi) Managing and enhancing career development of the Department's acquisition work force;

(vii) Participating in the development of Governmentwide procurement policies, regulations and standards, and determining specific areas where Governmentwide performance standards should be established and applied;

(viii) Developing unique Departmental standards as required,

(ix) Overseeing the development of procurement goals, guidelines, and innovation;

(x) Measuring and evaluating procurement office performance against stated goals;

(xi) Advising the Assistant Secretary whether procurement goals are being achieved;

(xii) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are not met;

(xiii) Redelegating, as appropriate, the authority in paragraph (a)(5)(i) of this section to agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(xiv) Redelegating the authorities in paragraphs (a)(5)(ii), (iv), (vi), and (vii) of this section to agency Procurement executives or other qualified agency officials with the power of further redelegation.

(5) Represent the Department in establishing standards for acquisition transactions within the electronic data interchange environment.

(6) Pursuant to the Alternative Agricultural Research and Commercialization Act of 1990 (7 U.S.C. 5901–5909), establish and maintain a Preference List for selected products developed with commercialization assistance under 7 U.S.C. 5905.

(7) Designate the Departmental Task Order Ombudsman pursuant to 41 U.S.C. 253j.

(8) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities nationwide.

(9) Review and approve exemptions for USDA contracts and subcontracts from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in these acts and Executive Order and the regulations of the Environmental Protection Agency (40 CFR 32.215 (b)).

(10) Promulgate policy and obtain and furnish excess Federal personal property in accordance with section 923 of Public Law 104–127, in support research, educational, technical and scientific activities or for related programs, to:

(i) Any 1994 Institutions (as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994, (Public Law 103–382; 7 U.S.C. 301 note));

(ii) Any Institutions eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 *et seq.*) including Tuskegee University; and

(iii) Any Hispanic-serving Institutions (as defined in sections 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c (b)).

(11) Issuance of regulations and directives to implement or supplement the Federal Acquisition Regulations (48 CFR chapters 1 and 4).

(12) Issuance of regulations and directives to implement or supplement the Federal Property Management Regulations (41 CFR chapters 101 and 102).

(13) Exercise full Departmentwide contracting and procurement authority.

(14) Conduct acquisitions with authority to take actions required by law or regulation to procure supplies, services, and equipment for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration;

(iv) Any other offices or agencies of the Department as may be agreed; and

(v) For other federal, state, or local government organizations on a cost recovery basis.

(15) Pursuant to the Office of Federal Procurement Policy Act (Act), as amended (41 U.S.C. 401, *et seq.*), designate the Department's Advocate for Competition with the responsibility for section 20 of the Act (41 U.S.C. 418), including:

(i) Reviewing the procurement activities of the Department;

(ii) Developing new initiatives to increase full and open competition;

(iii) Developing goals and plans and recommending actions to increase competition;

(iv) Challenging conditions unnecessarily restricting competition in the acquisition of supplies and services;

(v) Promoting the acquisition of commercial items; and

(vi) Designating an Advocate for Competition for each procuring activity within the Department.

(16) *Related to emergency preparedness:*

(i) Administer the Department Emergency Preparedness Program. This includes the:

(A) Coordination of the assignments made to the Department by Executive Order 12656, November 18, 1988, ''Assignment of Emergency Preparedness Responsibilities,'' 3 CFR, 1988 Comp., p. 255, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any other emergency.

(B) Management of the Department Emergency Coordination Center and alternate facilities;

(C) Development and promulgation of policies for the Department regarding emergency preparedness and national security, including matters relating to anti-terrorism and agriculture-related emergency preparedness planning both national and international;

(D) Providing guidance and direction regarding issues of emergency preparedness, disaster assistance, and national security to the agencies, mission areas, and the State and County Emergency Boards;

(E) Representing and acting as liaison for the Department in contacts with other Federal entities and organizations, including the Federal Emergency Management Agency and the National Security Council, concerning matters of assigned responsibilities; and

(F) Overseeing Department continuity of operations, planning, and emergency relocation facilities to ensure that resources are in a constant state of readiness.

(ii) Provide guidance and direction to the Department Emergency Coordinator, who, along with the Chief Economist, is responsible for coordinating the preparation of Department estimates of agricultural losses from natural disaster.

(iii) Coordinate the Department responsibilities under disaster assistance authorities, including the Chemical Stockpile Emergency Preparedness Program, the Federal Radiological Emergency Response Plan, the Federal Response Plan, the National Oil and Hazardous Substance Pollution Contingency Plan, and other Federal emergency response plans.

(17) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300F, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(b) [Reserved]

13. A new § 2.94 is added to read as follows:

§ 2.94 Director, Office of Planning and Coordination

(a) *Delegations.* Pursuant to § 2.24 (a)(12) and (a)(13), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Planning and Coordination:

(1) Administer a productivity program in accordance with Executive Order 12089, 3 CFR, 1979 Comp., p. 246, and other policy and procedural directives and laws to:

(2) Develop strategies to improve processes with respect to administrative and financial activities of the Department and make recommendations to the Secretary.

(3) Improve Departmental management by: performing management studies and reviews in response to agency requests for assistance; enhancing management decision making by developing and applying analytic techniques to address particular administrative operational and management problems; searching for more economical or effective approaches to the conduct of business; developing and revising systems, processes, work methods and techniques; and undertaking other efforts to improve the management effectiveness and productivity of the Department.

(4) Coordinate Departmental Administration strategic planning and budget activities on behalf of the Assistant Secretary.

(5) Oversee the Conflict Prevention and Resolution Center, the Director of which:

(i) Serves as the Department's Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, and provides leadership, direction and coordination for the Department's conflict prevention and resolution activities;

(ii) Provides ADR services for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

(C) The offices and agencies reporting to the Assistant Secretary for Administration; and

(D) Any other officer or agency of the Department as may be agreed.

(iii) Develops and issues standards for mediators and other ADR neutrals utilized by the Department.

(iv) Coordinates ADR activities throughout the Department; and

(vi) Monitors Agency ADR programs and reports at least annually to the Secretary on the Department's ADR activities.

(b) [Reserved]

14. A new § 2.95 is added to read as follows:

§ 2.95 Director, Office of Ethics.

(a) *Delegations.* Pursuant to the Office of Government Ethics regulations at 5 CFR part 2638, and the Delegations of Authority from the Secretary dated April 28, 1998, the Director, Office of Ethics, shall be the USDA Designated Agency Ethics Official and shall exercise all authority pursuant to that designation.

(b) [Reserved]

15. A new Subpart Q is added to read as follows:

Subpart Q-Delegations of Authority by the Chief Information Officer

§ 2.200 Deputy Chief Information Officer.

Pursuant to § 2.37, the following delegation of authority is made by the Chief Information Officer to the Deputy Chief Information Officer, to be exercised only during the absence or unavailability of the Chief Information Officer: perform all duties and exercise all powers which are now or which may hereafter be delegated to the Chief Information Officer.

For Subpart C:
Dated: November 28, 2000.

Dan Glickman,

Secretary of Agriculture.

For Subpart E:
Dated: November 28, 2000.

Richard E. Rominger,

Deputy Secretary of Agriculture.

For Subpart P:
Dated: November 28, 2000.

Paul W. Fiddick,

Assistant Secretary for Administration.

For Subpart Q:
Dated: November 28, 2000.

Ira L. Hobbs,

Acting Chief Information Officer.

[FR Doc. 00–31513 Filed 12–12–00; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC93

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Final Rule—WIC Nondiscretionary Funding Modifications of P.L. 106–224

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the WIC Program regulations to incorporate two nondiscretionary funding provisions mandated by the Agricultural Risk Protection Act of 2000. The first change modifies the methodology used to calculate the national administrative grant per person, which is used to determine the amount of WIC funds to be used for food benefits and nutrition services and administration (NSA). The second change provides greater flexibility for State agencies in noncontiguous States containing a significant number of remote Indian or Native villages by permitting them to convert food funds to cover allowable NSA costs incurred in providing services and breastfeeding support to those areas.

EFFECTIVE DATE: This rule is effective October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia Daniels, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Background

Why Is This Rule Being Promulgated?

The Agriculture Risk Protection Act of 2000 (Pub. L. 106–224), was enacted on June 20, 2000, and, among other things, mandates two modifications to WIC funding procedures. The first change modifies the methodology used to calculate the national administrative grant per participant, which is used to determine the amount of WIC funds to be used for food benefits and NSA. This change calls for a revision of the inflation rate calculation methodology. The second change provides greater flexibility for State agencies in noncontiguous States containing a significant number of remote Indian or Native villages by permitting them to convert food funds to cover allowable NSA costs incurred in providing services and breastfeeding support to those areas. This provision recognizes the higher costs associated with service delivery to these remote sites.

Why Are no Comments Being Taken on This Rule and Why Is It Effective October 1, 2000?

The changes to the WIC regulations made by this rule are mandated by Congress and require no Agency discretion. Further, section 263 of Pub. L. 106–224 requires that FNS promulgate regulations to implement these provisions as soon as practicable after the date of enactment without regard to the Administrative Procedure Act's notice and comment provisions at 5 U.S.C. 553; the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804, July 24, 1971), relating to notices of proposed rulemaking and public participation in rulemaking; and the Paperwork Reduction Act at 44 U.S.C. chapter 35. In addition, section 172 of Pub. L. 106–224 requires us to promulgate rules to carry out the Act and its amendments not later than 120 days after the date of enactment. For these reasons, we are not taking public comment prior to promulgating this rule. Finally, section 244(f)(2) of Pub. L. 106–224 provides that the WIC funding changes take effect on October 1, 2000. Accordingly, this rule is effective October 1, 2000.

Why Is This Rule and Preamble in Question and Answer Format?

We have used this opportunity to rewrite the affected provisions in a question and answer format to improve readability. This approach also complies with the President's Executive Memorandum requiring all Federal regulations published after January 1, 1999 to be in Plain Language, as recommended by the National Partnership for Reinventing Government.

What Is the Change to the Calculation of the National Administrative Grant Per Participant?

The national administrative grant per person (AGP) is used in the WIC funding formula to determine the amount of funds allocated for: (1) Food benefits; and (2) NSA costs. The Child Nutrition and WIC Reauthorization Act of 1989 (Pub.L. 101–147), amended section 17(h)(1) of the Child Nutrition Act of 1966 (CNA) to require a specific methodology be used to calculate the AGP. (Section 17 of the CNA is codified at 42 U.S.C. 1786.) This legislation required the AGP for any fiscal year to be calculated by adjusting the actual national average per participant grant for fiscal year 1987 to reflect the percentage change between: (1) the value of the index for State and local government purchases (S&LP), using the

implicit price deflator, for the 12-month period ending June 30, 1986; and (2) the estimate of the value of the index for the 12-month period ending June 30 of the previous fiscal year. This index is published by the Department of Commerce, Bureau of Economic Analysis (BEA) in the National Income and Product Accounts as a component of the Gross Domestic Product (GDP).

A potential concern is that the implicit price deflator, although appropriate at the time, is no longer the best index to calculate the AGP for the WIC Program. The BEA recommends the use of the chain-type price index rather than the implicit price deflator for measuring inflation. The Office of Management and Budget (OMB) also requires the use of the State and Local chain-type price index rather than the implicit price deflator in projection of State and local costs in budget estimates. The continued use of the implicit price deflator in the WIC AGP calculations, rather than conversion to the now standard chain-type price index, is undesirable.

In addition, the primary problem of using current rules is that they require the AGP to be based upon the 1987 S&LP data, including annual and benchmark revisions. Occasionally, as in 1992, 1995 and 1999, the National Income and Product Accounts undergo benchmark or comprehensive revisions. These revisions typically involve revision of the entire S&LP series. The revisions over the last few years have led to a downward shift in the AGP from the level it would have been if the index had not been revised. Index revisions cause instability in the AGP because, although the S&LP continues to rise from year to year, the AGP has the potential to go down or up disproportionately when the historical series is adjusted. In turn, WIC NSA grants to State agencies are unstable.

In recognition of these concerns, section 244(d) of Pub. L. 106–224 amended section 17(h)(1)(B)(ii)(I) of the CNA by removing the requirement to use the implicit price deflator. In addition, section 244(d) amended section 17(h)(1)(B)(ii) to remove the reference to fiscal year 1987 as the base year and requires instead that the adjustment be made to the AGP for the ''preceding fiscal year'' with conforming changes to the adjustment methodology. This rule amends § 246.16(c)(2) of the WIC regulations to reflect these changes.

What Is the Additional Flexibility for State Agencies in Noncontiguous States Containing a Significant Number of Indian or Native Villages?

In recognition of higher costs associated with delivery of WIC services to remote Indian and Native villages, section 244(e) of Pub. L. 106–224 added a new section 17(h)(5)(D) to the CNA to allow for State agencies to convert food funds to NSA funds to cover allowable NSA expenditures necessary to provide WIC services and breastfeeding support in those areas. This new conversion authority is limited to State agencies in noncontiguous States containing a significant number of Indian or Native villages.

Current conversion authority, described in section 17(h)(5)(A) of the CNA and § 246.16(f) in Program regulations, allows for the conversion of food funds to NSA funds under two conditions: (1) An approved plan outlining food cost reduction strategies and increases in participation levels above the FNS-projected participation levels; and (2) actual participation increases achieved in excess of participation projected by FNS. Conversion of food funds to NSA funds are allowed to the extent that the funds are used to cover current year allowable NSA expenditures and the current fiscal year's per participant NSA grant for each State agency is maintained.

Under this new authority, food funds may be converted to NSA funds to the extent the conversion is necessary to cover expenditures incurred in providing services (including the full cost of air transportation and other transportation) to remote Indian or Native villages and to provide breastfeeding support in those areas. This rule amends § 246.16(g) of the WIC regulations to add this new conversion authority. New paragraph (g)(2) makes clear that funds may only be converted as necessary to cover costs in providing service and breastfeeding support in remote Indian or Native villages to the extent that they exceed the State agency's NSA funds, including any spent forward funds, for the fiscal year. This rule also revises § 246.16(i) to clarify how the converted funds will be treated in calculating a State agency's prior year food grant and base NSA grant. Finally, this rule also makes a conforming change to § 246.16(f)(2)(i) to incorporate the limitation in current § 246.16(g).

Section 244 (a) of Pub. L. 106–224 amended section 17(b) of the CNA to add a new definition of ''remote Indian or Native village.'' This definition is used both in connection with the new conversion authority and with a new provision concerning proof of residency by residents of remote Indian or Native villages. The new proof of residency provision and the definition of ''remote Indian or Native village'' were added to the WIC regulations by the WIC Certification Integrity final rule (published on December 11, 2000).

Procedural Matters

Executive Order 12866—Regulatory Planning and Review

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

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Samuel Chambers, Jr., Administrator of the Food and Nutrition Service (FNS), has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will only affect State and local WIC agencies. Although some of these agencies may fall within the definition of ''small entities,'' the number of affected entities will not be substantial. Further, the impact of the changes on small entities is not significant. Finally, because this rule contains only nondiscretionary provisions required by statute, we could not consider any alternatives.

Paperwork Reduction Act

This final rule does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20).

Executive Order 12372—Intergovernmental Review of Federal Programs

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557, and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V, and final rule-related Notice published June 24, 1983 (48 FR 29114)).

Executive Order 12988—Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil

Justice Reform. It is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4—Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of that rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132—Federalism

Executive Order 13132 does not require consultation with State and local officials and a federalism impact statement for rules that are required by statute. This rule is required by Pub. L. 106–244. Therefore, we determined that this rule does not meet the threshold criteria for further review under Executive Order 13132.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble, 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.16:

a. Revise paragraph (c)(2) introductory text;

b. Revise the heading of paragraph (f);

c. Revise the introductory text of paragraph (f)(1);

d. Revise paragraph (f)(2)(i);

e. Revise paragraph (g);

f. Amend paragraph (h) by revising the paragraph heading, removing the reference to ''paragraph (f)'', and adding in its place a reference to ''paragraphs (f) and (g)''; and

g. Revise paragraph (i).

The revisions read as follows:

§ 246.16 Distribution of funds.

* * * * *

(c) * * *

(2) *How is the amount of NSA funds determined?* The funds available for allocation to State agencies for NSA for each fiscal year must be sufficient to guarantee a national average per participant NSA grant, adjusted for inflation. The amount of the national average per participant grant for NSA for any fiscal year will be an amount equal to the national average per participant grant for NSA issued for the preceding fiscal year, adjusted for inflation. The inflation adjustment will be equal to the percentage change between two values. The first is the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year. The second is the best estimate that is available at the start of the fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year. Funds for NSA costs will be allocated according to the following procedure:

* * * * *

(f) *How do I qualify to convert food funds to NSA funds based on increased participation?* (1) *Requirements.* The State agency qualifies to convert food funds to NSA funds based on increased participation in any fiscal year in two ways:

* * * * *

(2) * * *

(i) To cover NSA expenditures in the current fiscal year that exceed the State agency's NSA grant for the current fiscal year and any NSA funds which the State agency has spent forward into the current fiscal year; and

* * * * *

(g) *How do I qualify to convert food funds to NSA funds for service to remote Indian or Native villages?* (1) *Eligible State agencies.* Only State agencies located in noncontiguous States containing a significant number of remote Indian or Native villages qualify to convert food funds to NSA funds under this paragraph (g) in any fiscal year.

(2) *Limitation.* In the current fiscal year, food funds may be converted only to the extent necessary to cover expenditures incurred:

(i) In providing services (including the full cost of air transportation and other transportation) to remote Indian or Native villages; and

(ii) To provide breastfeeding support in those areas that exceed the State agency's NSA grant for the current fiscal year and any NSA funds which the State agency has spent forward into the current fiscal year.

(h) *What happens at the end of the fiscal year in which food funds are converted?* * * *

(i) *How do converted funds affect the calculation of my prior year food grant and base NSA grant?* For purposes of establishing a State agency's prior year food grant and base NSA grant under paragraphs (c)(2)(i) and (c)(3)(i) of this section, respectively, amounts converted from food funds to NSA funds under paragraphs (f) and (g) of this section and § 246.14(e) during the preceding fiscal year will be treated as though no conversion had taken place.

Dated: December 7, 2000.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 00–31731 Filed 12–12–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 00–111–1]

Change in Disease Status of Artigas, Uruguay, Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by removing Artigas, a department in Uruguay, from the list of regions considered to be free of rinderpest and foot-and-mouth disease. We are taking this action because the existence of foot-and-mouth disease has been confirmed there. The effect of this action is to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Artigas.

DATES: This interim rule was effective October 1, 2000. We invite you to comment on this docket. We will consider all comments that we receive by February 12, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–111–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–111–1.

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.*

Furthermore, an evaluation in support of this action is available for review in our reading room and on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html*, or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Glen Garris, Supervisory Staff Officer, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD exists in all other regions of the world not listed. Section 94.11 of the regulations lists regions of the world that have been declared to be free of rinderpest and FMD, but are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

Prior to the effective date of this interim rule, Uruguay was among the listed regions in §§ 94.1 and 94.11 considered to be free of rinderpest and FMD. However, on October 23, 2000, a suspected outbreak of FMD was detected in the Uruguayan department of Artigas, a region in northern Uruguay. On October 26, 2000, Uruguay's Ministry of Agriculture, Livestock and Fisheries notified us with clinical confirmation of the FMD diagnosis. On November 20, 2000, Uruguay sent a team of veterinary officials to the United States to provide us with detailed information on the outbreak history, measures taken to eradicate the disease, movement controls, monitoring and surveillance, and other relevant activities. Based on our discussions with Uruguay's team of veterinary officials and our own evaluation)[1] we have determined that: (1) FMD is not known to exist outside the department of Artigas; (2) Uruguay maintains strict control over the importation and movement of animals and animal products from regions of higher risk and has established barriers to the spread of FMD from the department of Artigas; (3) Uruguay maintains a surveillance system capable of detecting FMD should the disease be introduced into other regions of the country; and (4) Uruguay has the laws, policies, and infrastructure to detect, respond to, and eliminate any occurrence of FMD. Consequently, we have decided to remove the portion of Uruguay encompassing the department of Artigas from the list of regions recognized as free of FMD.

Therefore, to protect the livestock of the United States from FMD, we are amending the regulations in § 94.1 by removing the department of Artigas from the list of regions considered to be free of rinderpest and FMD. We are also removing Artigas from the list of regions in § 94.11 that are considered to be free of these diseases, but are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. Other regions of Uruguay will remain on the list of regions considered to be free of rinderpest and FMD. As a result of this action, the importation into the United States of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine that left Artigas on or after October 1, 2000, is prohibited or restricted. Because the disease may have been present in Artigas for some time prior to its detection on October 23, 2000, we are making these amendments effective on October 1, 2000. The date of October 1, 2000, takes into account the approximate incubation period for FMD of 14 days, and includes an additional margin of safety based on uncertainty as to how long the affected animals experienced clinical signs of the disease prior to discovery.

Although we are removing the department of Artigas from the list of regions considered to be free of rinderpest and FMD, we recognize that Uruguay's Ministry of Agriculture, Livestock and Fisheries responded immediately to the detection of the disease by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products into and from the affected area and initiating measures to eradicate the disease. At the time of publication of this interim rule, it appears that the outbreak is well controlled. Because of the efforts of the Ministry of Agriculture, Livestock and Fisheries to ensure that FMD does not spread beyond the department of Artigas, we intend to reassess the situation in accordance with the standards of the Office International des Epizooties. Additionally, as part of our reassessment process, over the next 12 months we will conduct periodic inspections of Uruguayan slaughtering establishments and their operations and records, as well as review relevant documentation maintained by the Ministry of Agriculture, Livestock and Fisheries. We will also consider all comments received on this interim rule. This reassessment will determine whether it is necessary to continue to prohibit or restrict the importation of

[1] An evaluation has been prepared for this action and is available from the sources listed under **ADDRESSES**.

ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Artigas, or whether we can restore the department of Artigas to the list of regions considered free of rinderpest and FMD.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of FMD into the United States. 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 rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. 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.

This interim rule amends the regulations by removing the Uruguayan department of Artigas from the list of regions considered free of rinderpest and FMD. We are taking this action because Uruguay's Ministry of Agriculture has reported cases of FMD in that region. This action prohibits or restricts the importation into the United States of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine that left the department of Artigas on or after October 1, 2000. This action is necessary to protect the livestock of the United States from FMD.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

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 retroactive effect to October 1, 2000; 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 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding the words ''except the department of Artigas'' immediately after the word ''Uruguay''.

§ 94.11 [Amended]

3. In § 94.11, paragraph (a), the first sentence is amended by adding the words ''except the department of Artigas'' immediately after the word ''Uruguay''.

Done in Washington, DC, this 11th day of December 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–31868 Filed 12–12–00; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF94

Changes, Tests, and Experiments: Confirmation of Effective Date and Availability of Guidance

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule: Confirmation of effective date and availability of guidance.

SUMMARY: The Nuclear Regulatory Commission amended its regulation concerning changes, tests, and experiments for nuclear reactors on October 4, 1999 (64 FR 53582). The effective date of this amendment was deferred until guidance on implementation of the revised provisions of the rule was issued to reactor licensees. This document announces the availability of that guidance (Regulatory Guide 1.187, ''Guidance for Implementation of 10 CFR 50.59, Changes, Tests, and Experiments'') and specifies the effective date for the October 4, 1999, amendment to § 50.59.

DATES: The effective date of the October 9, 1999 amendment to 10 CFR 50.59 (64 FR 53613) is March 13, 2001.

ADDRESSES: Regulations, certain regulatory guides, and certain endorsed NEI documents are available for inspection or downloading at the NRC's web site, *http://WWW.NRC.GOV.* Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by email to *DISTRIBUTION@NRC.GOV.* Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Copies of regulations, regulatory guides, and endorsed NEI documents are available for inspection or copying for a fee from the NRC's Public Document Room at 11555 Rockville Pike, Rockville, MD, 20852; the PDR's mailing address is Public Document Room, Washington DC 20555; telephone (301) 415–4737 or (800) 397–4209; fax (301) 415–3548; email *PDR@NRC.GOV.*

Comments and suggestions in connection with items for inclusion in regulations or regulatory guides are encouraged at any time. Written

comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

FOR FURTHER INFORMATION CONTACT: E. M. McKenna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555; telephone (301) 415–2189; email *EMM@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission amended its rule, 10 CFR 50.59, ''Changes, Tests, and Experiments'' on October 4, 1999 (64 FR 53582). This amendment clarified the rule requirements, and also provided licensees greater flexibility to make certain changes without NRC approval that involve only minimal increases in likelihood or consequences of events. The implementation date of this amendment was made dependent upon guidance being issued to nuclear reactor licensees on implementing the revised requirements.

Regulatory Guide 1.187 endorses a document prepared by the Nuclear Energy Institute (NEI), NEI 96–07, Revision 1, dated November 2000. Regulatory Guide 1.187 was published for public comment (65 FR 24231) as DG–1095, ''Guidance for Implementation of 10 CFR 50.59, Changes, Tests, and Experiments''. The comments submitted by licensees and other commenters were addressed by revisions made by NEI to NEI 96–07, Revision 1, as submitted in November 2000; the NRC staff concurs in these revisions.

Therefore, the effective date of the October 4, 1999, amendment to 10 CFR 50.59 is March 13, 2001.

Dated at Rockville, Maryland, this 6th day of December 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–31735 Filed 12–12–00; 8:45 am]

BILLING CODE 7590–01–P 1

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–48–AD; Amendment 39–12029; AD 2000–24–22]

RIN 2120–AA64

Airworthiness Directives; S.N. CENTRAIR Model 201B Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all S.N. CENTRAIR Model 201B gliders. This AD requires you to modify the rear canopy emergency release system. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to prevent the rear canopy retaining strap from not releasing properly during the emergency egress procedure because of the current design of the rear canopy emergency release system. This condition, if not corrected, will not allow the rear canopy to completely separate from the glider and could result in potential injury to the pilot during an emergency egress.

DATES: This AD becomes effective on January 27, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 27, 2001.

ADDRESSES: You may get the service information referenced in this AD from S.N. CENTRAIR, Aerodome—36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–48–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all S.N. CENTRAIR Model 201B gliders. The DGAC reports an incident where a Model 201B rear canopy strap did not properly release during an actual emergency egress.

The DGAC advises that the problem is related to the unreliability of the rear canopy in completely separating from the glider during an emergency egress procedure.

What are the consequences if the condition is not corrected? If the rear canopy retaining strap does not release properly during the emergency egress procedure, the rear canopy will not completely separate from the glider. This could result in potential injury to the pilot during an emergency egress.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all S.N. CENTRAIR Model 201B gliders. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 29, 2000 (65 FR 58495). The NPRM proposed to require you to install a mechanism that automatically releases the rear canopy strap when the emergency canopy lever is actuated.

Was the public invited to comment? Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

What is FAA's Final Determination on this Issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

—will not change the meaning of the AD; and

—will not add any additional burden upon the public than was already proposed.

Compliance Time of this AD

What is the compliance time of this AD? The compliance time of this AD is ''within the next 3 months after the effective date of this AD.''

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? Although the rear canopy retaining strap not releasing properly during the emergency egress

procedure occurs during flight, the condition is not a direct result of glider operation. The chance of this situation occurring is the same for a glider with 10 hours TIS as it would be for a glider with 500 hours TIS. A calendar time for compliance will assure that the unsafe condition is addressed on all gliders in a reasonable time period.

What are the differences between the French AD and this AD?

The French AD requires installation of a mechanism that automatically releases the rear canopy strap when the emergency canopy lever is actuated. The French AD also requires a visual inspection to ensure that the modification is incorporated correctly.

The FAA does not require this inspection because we believe that the procedures are adequate to allow the maintenance personnel to accomplish the action correctly.

Cost Impact

How many gliders does this AD impact? We estimate that this AD affects 41 gliders in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected gliders? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per glider	Total cost on U.S. Operators
4 workhours × $60 per hour = $240	$150 per glider	$390 per glider	$15,990

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? 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 DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action 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, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under 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. FAA amends § 39.13 by adding a new AD to read as follows:

2000–24–22 S.N. Centrair: Amendment 39–12029; Docket No. 2000–CE–48–AD.

(a) *What gliders are affected by this AD?* This AD affects Model 201B gliders, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above gliders must comply with this AD.

(c) *What problem does this AD address?* The actions specified in this AD are intended to prevent the rear canopy retaining strap from not releasing properly during the emergency egress procedure because of the current design of the rear canopy emergency release system. This condition, if not corrected, will not allow the rear canopy to completely separate from the glider and could result in potential injury to the pilot during an emergency egress.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance times	Procedures
(1) Install a mechanism that automatically releases the rear canopy strap when the emergency canopy lever is actuated.	Within the next 3 months after January 27, 2001 (the effective date of AD).	Follow the procedures in S.N Centrair Process Sheet for Fitment of the Release Unit for the Rear Canopy Strap on Glider Centrair 201 ''Marianne'', dated March 17, 1999 (or the instructions provided with the modification kit). The document specified above is referenced in S.N. CENTRAIR Service Bulletin No. 201–16, Revision 1, dated December 12, 1999. The inspection referenced in the service bulletin is not required by this AD.
(2) Do not install a rear canopy emergency release system without incorporating the modification referenced in paragraph (d)(1) of this AD.	As of January 27, 2001 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each glider identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the glider to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your glider to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with S.N. CENTRAIR Service Bulletin No. 201–16, Revision 1, dated December 12, 1999, and S.N Centrair Process Sheet for Fitment of the Release Unit for the Rear Canopy Strap on Glider Centrair 201 ''Marianne'', dated March 17, 1999 (including photo 1A added to page 3 or November 8, 1999). The instructions provided with the modification kit also include these procedures. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from S.N. CENTRAIR, Aerodome 36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 27, 2001.

Note 2: The subject of this AD is addressed in French AD 1999–055(A)R1, dated February 5, 2000.

Issued in Kansas City, Missouri, on November 28, 2000.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–30903 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–37–AD; Amendment 39–12031; AD 2000–24–24]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce plc RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 series turbofan engines having common nozzle assembly part number (P/N) FK16544 or FK16558. This action requires initial and repetitive visual inspections of the inner and outer skins of the common nozzle assembly and specifies allowable limits for cracks, loose rivets, and missing rivets. This action also requires repair if the common nozzle assembly damage exceeds allowable limits. This amendment is prompted by two reports of in-flight inner skin detachment. The actions specified in this AD are intended to detect cracks, loose rivets, and missing rivets, which could result in inner skin detachment, release of common nozzle assembly debris from the engine, and possible damage to the airplane control surfaces.

DATES: Effective January 12, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 12, 2001.

Comments for inclusion in the Rules Docket must be received on or before February 12, 2001.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–37–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax International Access Code 011, Country Code 44, 1332–249223. This information may be examined at the 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: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 series turbofan engines having common nozzle assembly P/N FK16544 or FK16558. The CAA received reports of cracking and rivet loss on the outer and inner skin of the common nozzle assembly, with two reports of inner skin detachment. Rolls-Royce has determined that cracks and detachment of inner skin, and cracks of outer skin occurred due to a combination of missing rivets, loose rivets, and high stress levels on common nozzle assemblies with a high number of flight cycles. This condition, if not corrected, could result in inner skin detachment, release of common nozzle assembly debris from the engine, and possible damage to the airplane control surfaces. The compliance times specified in this AD are based on Rolls-Royce service bulletin criteria and CAA recommendations.

Manufacturer's Service Information

RR has issued Mandatory Service Bulletin (MSB) No. RB.211–78–C931, Revision 1, dated June 13, 2000, that specifies procedures for initial visual inspections of inner and outer skin, including allowable limits, for cracks, missing rivets, and loose rivets. The MSB also specifies repair for common nozzle assemblies that are out of limits. The MSB also specifies on common nozzle assemblies with more than 1,500 cycles-since-new, initial visual inspections for cracks in inner and outer skins, missing rivets, loose rivets not later than 500 flight hours after release of AD, and repetitive inspections within 500 flight hours since the last inspection. The CAA classified this MSB as mandatory and issued airworthiness directive (AD) 005–06–

2000 in order to ensure the airworthiness of these engines in the UK.

Bilateral Airworthiness Agreement

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As required by this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for engines of this type design that could be used on airplanes certificated for operation in the United States.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design that could be used on airplanes registered in the United States, this AD requires initial and repetitive in-service visual inspections of the common nozzle assembly to detect cracks, missing rivets, and loose rivets, including allowable acceptance limits. This AD also requires repair for common nozzle assemblies that are out of limits. The actions must be done in accordance with the MSB described previously.

Immediate Adoption

A situation exists that allows the immediate adoption of this regulation. Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–37–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order (EO) 13132, because it would not have 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 proposal.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under EO 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 the following new airworthiness directive:

2000–24–24 Rolls-Royce plc: Amendment 39–12031. Docket 2000–NE–37–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 series turbofan engines having common nozzle assembly part number (P/N) FK16544 or FK16558 installed. These engines are installed on but not limited to Airbus A330–341 and A330–342 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 (c) 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

Required as indicated, unless accomplished previously.

To detect cracking, loose rivets, and missing rivets on common nozzle assembly P/N FK16544 or FK16558, which could result in inner skin detachment, release of exit nozzle debris from the engine, and possible damage to the airplane control surfaces, do the following:

Initial Inspection

(a) Visually inspect all common nozzle assemblies for cracks, missing rivets, and loose rivets, within 500 flight hours after the effective date of this AD, and disposition in accordance with Accomplishment Instructions, Paragraph 3A of RR Mandatory Service Bulletin (MSB) No. RB.211–78–C931, Revision 1, dated June 13, 2000.

Repetitive Inspections

(b) Thereafter, on common nozzle assemblies that have greater than 1,500 cycles-since-new, do repetitive visual inspection for cracks, loose rivets, and missing rivets, within 500 flight hours since the last inspection, and disposition in accordance with Accomplishment Instructions, Paragraph 3A of RR MSB No. RB.211–78–C931, Revision 1, dated June 13, 2000.

Alternative Methods of Compliance

(c) 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 shall submit their requests 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 AD, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 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 accomplished.

Incorporation by Reference

(e) The actions required by this AD must be performed in accordance with the Accomplishment Instructions of RR MSB No. RB.211–78–C931, Revision 1, dated June 13, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax: International Access Code 011, Country Code 44, 1332–249223. Copies may be inspected at the 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.

Effective Date of This AD

(f) This amendment becomes effective on January 12, 2001.

Issued in Burlington, Massachusetts, on November 28, 2000.

Mark C. Fulmer,

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

[FR Doc. 00–31113 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–33–AD; Amendment 39–12033; AD 2000–24–26]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Rolls-Royce plc RB211 Trent 800 series turbofan engines, that currently requires initial and repetitive ultrasonic inspections of fan blade roots for cracks, and replacement, if necessary, with serviceable parts. This amendment requires the reduction of the initial cyclic compliance threshold and repetitive inspection intervals. This amendment also allows inspections to be accomplished within 100 cycles-in-service if the initial or repetitive thresholds are exceeded on the effective date of this AD. This amendment is prompted by an improved understanding of the crack propagation mechanism and the latest service operational data. The actions specified by this AD are intended to detect and prevent fan blade failure, which could result in multiple fan blade releases, uncontained engine failure, and possible damage to the airplane.

DATES: Effective February 12, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone: (317) 230–3995, fax: (317) 230–4743. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7136, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–19–21, Amendment 39–10762 (63 FR 50484, September 22, 1998, corrected by 63 FR 52961, October 2, 1998), applicable to Rolls-Royce plc (RR) RB211 Trent 800 series turbofan engines, was published in the **Federal Register** on December 3, 1999 (64 FR 67806). That action proposed to require the reduction of initial compliance thresholds and repetitive cyclic inspection intervals. The action also proposed the allowance for inspections to be accomplished within 100 cycles-in-service if the initial or repetitive thresholds are exceeded on the effective date of the AD.

Comments Received

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

Request To Revise Economic Analysis

The comment states that all RR Trent 800 series engines on the US registry that will be affected by the AD have already been modified to RR Service Bulletin RB.211–72–C629. Therefore, the estimate of the total cost impact of the proposed action on US operators is zero.

The FAA disagrees. Although some Trent 800 series engines on US registered airplanes may have already been modified to RR Service Bulletin RB.211–72–C629 and the actual cost may be reduced, the original economic analysis is retained.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order (EO) 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under EO 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) 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 removing Amendment 39–10762 (63 FR 50484, September 22, 1998) and by adding a new airworthiness directive, Amendment 39–12033, to read as follows:

AD 2000—24–26 Rolls-Royce plc.: Amendment 39–12033. Docket 98–ANE–33–AD. Supersedes AD 98–19–21, Amendment 39–10762.

Applicability: Rolls-Royce plc (RR) RB211 Trent 875, RB211 Trent 877, RB211 Trent 884, RB211 Trent 892, and RB211 Trent 892B series turbofan engines, except if the fan blades described in RR Service Bulletin (SB) RB.211–72–C629 were installed as complete sets. These engines are installed on but not limited to Boeing 777 series airplanes.

Note 1: This airworthiness directive (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 (b) 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

Required as indicated, unless accomplished previously.

To prevent fan blade failure, which could result in multiple fan blade releases, uncontained engine failure, and possible damage to the airplane, accomplish the following:

Ultrasonic Inspections (Reduced Thresholds and Repetitive Intervals)

(a) Perform initial and repetitive inspections of fan blade roots for cracks, in accordance with RR SB No. RB211–72–C445, Revision 6, dated September 3, 1999, as follows:

(1) For Trent 875 series engines, inspect as follows:

(i) Initially, prior to accumulating 3,000 cycles-since-new (CSN).

(ii) Thereafter, at intervals not to exceed 400 cycles-in-service (CIS) since last inspection.

(2) For Trent 877 series engines, inspect as follows:

(i) Initially, prior to accumulating 2,000 CSN.

(ii) Thereafter, at intervals not to exceed 350 CIS since last inspection.

(3) For Trent 884 series engines, inspect as follows:

(i) Initially, prior to accumulating 1,500 CSN.

(ii) Thereafter, at intervals not to exceed 350 CIS since last inspection.

(4) For Trent 892 and 892B series engines, inspect as follows:

(i) Initially, prior to accumulating 900 CSN.

(ii) Thereafter, at intervals not to exceed 200 CIS since last inspection.

Engines Exceeding Thresholds and Repetitive Intervals

(5) For engines that exceed the initial inspection thresholds listed in paragraphs (a)(1)(i), (a)(2)(i), (a)(3)(i), and (a)(4)(i) on the effective date of this AD, conduct initial inspection within 100 CIS after the effective date of this AD.

(6) For engines that exceed the repetitive inspection intervals listed in paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(ii), and (a)(4)(ii) on the effective date of this AD, inspect within 100 CIS after the effective date of this AD.

Cracked Parts

(7) Prior to further flight, remove from service cracked fan blades and replace with serviceable parts.

Alternate Method of Compliance

(b) 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 shall submit their requests 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 AD, if any, may be obtained from the ECO.

Ferry Flights

(c) Special flight permits may be issued in accordance with sections 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 inspection requirements of this AD can be accomplished.

Incorporation by Reference Material

(d) The actions required by this AD must be done in accordance with the following Rolls-Royce SB:

Document No.	Pages	Revision	Date
RB.211–72–C445	1–9	6	September 3, 1999.
Appendix 1	1	Original	February 13, 1998.
	2	6	September 3, 1999.
	3–4	Original	February 13, 1998.
Appendix 2	1	Revision 4	November 6, 1998.
	2–3	Original	February 13, 1998.

Total pages: 16.

The incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone: (317) 230–3995; fax: (317) 230–4743. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on February 12, 2001.

Issued in Burlington, Massachusetts, on November 30, 2000.

Mark C. Fulmer,

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

[FR Doc. 00–31066 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–49–AD; Amendment 39–12037; AD 2000–25–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Inc. Model 205A–1, 205B, 212, 412, and 412CF Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Inc. (BHTI) Model 205A–1, 205B, 212, 412, and 412CF helicopters. This action requires inspecting the locking washer on each main rotor actuator (actuator) for twisting or damage to the tab and replacing any locking washer that has a twisted or damaged tab. Replacing certain locking washers, regardless of condition, is also required within a specified time period. Installing a certain airworthy locking device on each actuator constitutes terminating action for the requirements of this AD. This amendment is prompted by an incident in which a damaged locking washer allowed the rod end to detach from the collective actuator, causing loss of collective control of the main rotor. The current locking washer is subject to mechanical damage and failure, which allows the actuator piston to unthread itself from its rod end. This condition, if not corrected, could cause loss of control of the main rotor and subsequent loss of control of the helicopter.

DATES: Effective December 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 12, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–49–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

The service information referenced in this AD may be obtained from HR Textron, 25200 W. Rye Canyon Road, Santa Clarita, California 91355–1265, telephone (611) 702–5509, fax (661) 702–5970. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alfred Boutin, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5157, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for BHTI Model 205A–1, 205B, 212, 412, and 412CF helicopters. This AD requires, within 25 hours time-in-service (TIS), inspecting the tab on the NAS513–6 locking washer on all actuators, part number (P/N) 41105950, serial number with an ''HR'' prefix up to and including 490 and P/N 41000470, serial numbers with a prefix of ''HR'' up to and including 10010, for a twisted or damaged tab. P/N's 41105950 and 41000470 were assigned by the manufacturer; the BHTI P/N's are 205–076-036 and 212–076–005. Replacing any twisted or damaged locking washer with an airworthy NAS1193K6C locking device is required before further flight. Replacing any NAS513–6 locking washer with an airworthy NAS1193K6C locking device, regardless of the condition of the tab, is required within 100 hours TIS or at the next actuator overhaul, whichever occurs first. Installing an airworthy NAS 1193K6C locking device on all actuators constitutes terminating action for the requirements of this AD. This AD is prompted by the discovery of a damaged locking washer. The damage to the locking washer was discovered when an operator experienced a problem with a collective control while attempting to take off. The collective control could not be moved upward from the full down position. Further inspection revealed that the lower piston of the actuator had unthreaded and separated from the lower rod end, causing the piston to make contact with the rod end support assembly and lodge itself against the rod end shank at an angle limiting any movement of the collective control. The collective servo cylinder assembly is used to provide irreversible collective control of the main rotor. Because the actuator end locking washer failed, the servo lower piston could rotate inside the lower servo head assembly and unthread itself from the rod end. This condition, if not corrected, could cause loss of control of the main rotor and subsequent loss of control of the helicopter.

The FAA has reviewed HR Textron Alert Service Bulletin (ASB) No. 41000470–67A–05, Revision 1 and HR Textron ASB No. 41105950–67A–01, Basic Issue, both dated October 19, 2000, which describe procedures for inspecting and replacing certain locking washers. BHTI has issued ASB No.'s 205–00–79, 205B–00–33, 212–00–109, 412–00–105, and 412CF–00–12, all dated October 19, 2000, which include the applicable HR Textron Alert Service Bulletins.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 205A–1, 205B, 212, 412, and 412CF helicopters of the same type designs, this AD is being issued to prevent an actuator piston from unthreading itself from its rod end causing loss of collective control and subsequent loss of control of the helicopter. This AD requires inspecting the locking washers on all actuators for twisting or damage to the tab and replacing any locking washer that has a twisted or damaged tab. Replacing certain locking washers, regardless of condition, is also required within 100 hours TIS or at the next actuator overhaul, whichever occurs first. Installing an airworthy NAS1193K6C locking device on all actuators constitutes terminating action for the requirements of this AD. The actions must be accomplished in accordance with the HR Textron service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can

adversely affect the controllability of the helicopter. Therefore, the actions described previously are required at the specified time intervals, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 500 helicopters will be affected by this AD. It will take approximately 1 work hour to inspect the locking washer, 6 work hours per helicopter to replace the three locking devices on each helicopter, and the average labor rate is $60 per work hour. Required parts will cost approximately $20 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $190,000, assuming all the locking devices on all the helicopters are replaced.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–49–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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:

2000–25–03 Bell Helicopter Textron Inc.: Amendment 39–12037. Docket No. 2000–SW–49–AD.

Applicability: (a) Model 205A–1 helicopters with a hydraulic servo actuator (actuator), part number (P/N) 41105950, serial numbers with an ''HR'' prefix up to and including 490, installed, certificated in any category; and

(b) Model 205A–1, 205B, 212, 412, and 412CF helicopters with an actuator, P/N 41000470, serial numbers with an ''HR'' prefix up to and including 10010, installed, certificated in any category.

Note 1: P/N 41105950 is the P/N assigned by HR Textron, which is the actuator manufacturer. Bell Helicopter Textron, Inc. (BHTI) has assigned P/N 205–076–036 to this part when fitted with a support mount. P/N 41000470 is the P/N assigned by HR Textron; BHTI has assigned P/N 212–076–005 to this part when fitted with a support mount.

Note 2: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters 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 (d) 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

Required as indicated, unless accomplished previously.

To prevent an actuator piston from unthreading from its rod end, loss of control of the main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS), inspect the tab on the NAS513–6 locking washer on each actuator for any twisting or damage in accordance with the Accomplishment Instructions, paragraph A., of HR Textron Alert Service Bulletin (ASB) No. 41000470–67A–05, Revision 1, dated October 19, 2000 or HR Textron ASB No. 41105950–67A–01, Basic Issue, dated October 19, 2000, as applicable to the affected actuator P/N. Replace any twisted or damaged locking washer with an airworthy NAS1193K6C locking device before further flight.

(b) Within 100 hours TIS or at the next actuator overhaul, whichever occurs first, replace the NAS513–6 locking washer on each actuator with an airworthy NAS1193K6C locking device.

(c) Installation of an airworthy NAS1193K6C locking device on each of the three actuators constitutes terminating action for the requirements of this AD.

(d) 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, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspections and modifications shall be done in accordance with the Accomplishment Instructions, paragraph A., of HR Textron Alert Service Bulletin No. 41000470–67A–05, Revision 1 or HR Textron ASB No. 41105950–67A–01, Basic Issue, both dated October 19, 2000, as applicable to the affected actuator P/N. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from HR Textron, 25200 W. Rye Canyon Road, Santa Clarita, California 91355–1265, telephone (611) 294–6000, fax (661) 259–9622. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: BHTI ASB No.'s 205–00–79, 205B–00–33, 212–00–109, 412–00–105, and 412CF–00–12, all dated October 19, 2000, pertain to the subject of this AD and include the applicable HR Textron Alert Service Bulletins.

(g) This amendment becomes effective on December 28, 2000.

Issued in Fort Worth, Texas, on November 30, 2000.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–31317 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–60–AD; Amendment 39–12038; AD 2000–25–04]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model MU–300, MU–300–10, 400, 400A, and 400T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon (Beech) Model MU–300, MU–300–10, 400, 400A, and 400T series airplanes, that requires a one-time inspection to detect hydraulic fluid leakage from the B-nut area, which attaches a hydraulic tube to the anti-skid valve assembly, and corrective actions, if necessary; and installation of an additional support for the hydraulic tube. This amendment is intended to prevent an asymmetric braking condition and a longer stopping distance due to sudden loss of normal braking to the left wheel. Such loss of normal braking could result in the airplane overrunning the runway surface. This action is intended to address the identified unsafe condition.

DATES: Effective January 17, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Beechjet/Premier Technical Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 946–4142; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon (Beech) Model MU–300, MU–300–10, 400, 400A, and 400T series airplanes was published in the **Federal Register** on August 10, 2000 (65 FR 48945). That action proposed to require a one-time inspection to detect hydraulic fluid leakage from the B-nut area, which attaches a hydraulic tube to the anti-skid valve assembly, and corrective actions, if necessary; and installation of an additional support for the hydraulic tube.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 567 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 522 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $31 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $78,822, or $151 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Additionally, the manufacturer has indicated the warranty remedies may be available to defer the cost of the replacement parts also associated with accomplishing this actions required by this AD.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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 DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy

of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 the following new airworthiness directive:

2000–25–04 Raytheon Aircraft Company (Formerly Beech): Amendment 39–12038. Docket 2000–NM–60–AD.

Applicability: Model MU–300, MU–300–10, 400, 400A, and 400T series airplanes; as listed in Raytheon Aircraft Service Bulletin SB 32–3300, dated December 1999; certificated in any category.

Note 1: This AD applies to each airplane 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 airplanes 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 (b) 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

Required as indicated, unless accomplished previously.

To prevent an asymmetric braking condition and a longer stopping distance due to sudden loss of normal braking to the left wheel, which could result in the airplane overrunning the runway surface, accomplish the following:

General Visual Inspection

(a) Within 200 flight hours after the effective date of this AD, perform a one-time general visual inspection to detect hydraulic fluid leakage from the B-nut area, which attaches a hydraulic tube to the anti-skid valve assembly, in accordance with Raytheon Aircraft Service Bulletin SB 32–3300, dated December 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no leakage is found, prior to further flight, install an additional support (*i.e.,* new nutplate, clamp, and screw) for the hydraulic tube; in accordance with the service bulletin.

(2) If any leakage is found, prior to further flight, replace the hydraulic tube with a new or serviceable hydraulic tube, and install an additional support (*i.e.,* new nutplate, clamp, and screw) for the hydraulic tube; in accordance with the service bulletin.

Alternative Methods of Compliance

(b) 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, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 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 accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Raytheon Aircraft Service Bulletin SB 32–3300, dated December 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Beechjet/Premier Technical Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 17, 2001.

Issued in Renton, Washington, on December 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31316 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–384–AD; Amendment 39–12039; AD 2000–25–05]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes, that currently requires a one-time inspection of the coupling hinge and locking fastener of the Gamah couplings of the fuel system tubing located in the wing dry bay to detect discrepancies, and follow-on corrective actions. This amendment retains those requirements and adds a requirement to revise the applicability of the existing AD to add certain airplanes. The actions specified in this AD are intended to prevent failure of the rivets of the Gamah couplings and consequent separation of a Gamah coupling, which could result in fuel leakage and consequent fire in or around the wing. This action is intended to address the unsafe condition.

DATES: Effective December 28, 2000.

The incorporation by reference of a certain publication listed in the regulations, was approved previously by the Director of the Federal Register as of October 3, 2000, (65 FR 56231, September 18, 2000).

Comments for inclusion in the Rules Docket must be received on or before January 12, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–384–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this

location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–384–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Linda M. Haynes, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6091; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On September 8, 2000, the FAA issued AD 2000–19–03, amendment 39–11904 (65 FR 56231, September 18, 2000), applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes, to require a one-time inspection of the coupling hinge and locking fastener of the Gamah couplings of the fuel system tubing located in the wing dry bay to detect discrepancies, and follow-on corrective actions. The actions required by that AD are intended to prevent failure of the rivets of the Gamah couplings and consequent fire in or around the wing.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has advised the FAA that, certain airplanes were inadvertently not included in the effectivity of Embraer Alert Service Bulletin S.B. 145–28–A014, dated August 25, 2000 (the appropriate service information for AD 2000–19–03). Consequently, those additional airplanes are subject to the identified unsafe condition specified in this rule.

U.S. Type Certification of the Airplane

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 2000–19–03 to continue to require a one-time inspection of the coupling hinge and locking fastener of the Gamah couplings of the fuel system tubing located in the wing dry bay to detect discrepancies, and follow-on corrective actions. This AD also requires the addition of certain airplanes to the applicability of this AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–384–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 removing amendment 39–11904 (65 FR 56231, September 18, 2000), and by adding a new airworthiness directive (AD), amendment 39–12039, to read as follows:

2000–25–05 Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–12039. Docket 2000–NM–384–AD. Supersedes AD 2000–19–03, Amendment 39–11904.

Applicability: Model EMB–135 and EMB–145 series airplanes, as listed in Embraer Alert Service Bulletin S.B. 145–28–A014, dated August 25, 2000, and serial numbers 145301 through 145312, inclusive; certificated in any category.

Note 1: This AD applies to each airplane 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 airplanes 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 (d) 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

Required as indicated, unless accomplished previously.

To prevent failure of the rivets attaching the Gamah coupling hinge to the fuel system tubing and consequent separation of the coupling, which could result in fuel leakage and consequent fire in or around the wing, accomplish the following:

Continuing Requirements of AD 2000–19–03—General Visual Inspection

(a) Perform a one-time general visual inspection of the hinge and locking fastener of the Gamah couplings of the fuel system tubing located in the wing dry bay to detect discrepancies (including coupling separation, and loose rivets on the coupling hinge or locking fastener attaching points), in accordance with Embraer Alert Service Bulletin S.B. 145–28–A014, dated August 25, 2000; at the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable. If no discrepancies are detected, secure the Gamah couplings with locking wire in accordance with the alert service bulletin.

(1) For airplanes having serial numbers 145004 through 145103 inclusive; 145105 through 145121 inclusive; 145123 through 145139 inclusive; 145141 through 145153 inclusive; 145155 through 145176 inclusive: Within 400 flight hours after October 3, 2000 (the effective date of AD 2000–19–03, amendment 39–11904).

(2) For airplanes having serial numbers 145177 through 145189 inclusive; 145191 through 145230 inclusive; 145232 through 145251 inclusive; 145253 through 145255 inclusive; 145258 through 145262 inclusive; 145264 through 145293 inclusive; 145295, 145296, and 145298 through 145300 inclusive: Within 50 flight hours after October 3, 2000.

Follow-On Corrective Actions

(b) If any discrepancies (including coupling separation, and loose rivets on the coupling hinge or locking fastener attaching points) are detected after accomplishment of the inspection required by paragraph (a) of this AD: Before further flight, replace any affected Gamah couplings and secure the Gamah couplings with locking wire in accordance with Embraer Alert Service Bulletin S.B. 145–28–A014, dated August 25, 2000. Accomplishment of this paragraph terminates the requirements of this AD.

New Requirements of This AD—General Visual Inspection

(c) For airplanes having serial numbers 145301 through 145312, inclusive: Perform a one-time general visual inspection of the hinge and locking fastener of the Gamah couplings of the fuel system tubing located in the wing dry bay to detect discrepancies (including coupling separation, and loose rivets on the coupling hinge or locking fastener attaching points), in accordance with Embraer Alert Service Bulletin S.B. 145–28–A014, dated August 25, 2000, within 50 flight hours after the effective date of this AD.

(1) If no discrepancies are detected, secure the Gamah couplings with locking wire in accordance with the alert service bulletin.

(2) If any discrepancy is detected, before further flight, accomplish the requirements of paragraph (b) of this AD.

Alternative Methods of Compliance

(d) 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, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 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 accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Embraer Alert Service Bulletin S.B. 145–28–A014, dated August 25, 2000. The incorporation by reference of that document was approved previously by the Director of the Federal Register as of October 3, 2000 (65 FR 56231, September 18, 2000). Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on December 28, 2000.

Issued in Renton, Washington, on December 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31449 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–28–AD; Amendment 39–12042; AD 2000–15–52]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, 205A–1, 205B, and 212 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting superseding Airworthiness Directive (AD) 2000–15–52, which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. Model (BHTI) Model 204B, 205A, 205A–1, 205B, and 212 helicopters by individual letters. This AD reduces the retirement index number (RIN) life limit for the main rotor mast (mast); increases the RIN factor for masts and main rotor trunnions (trunnions); applies standard RIN factors for all external load lifts; and requires a one-time inspection of the snap ring groove area of the mast. This AD also establishes RIN factors for masts and trunnions that have been previously installed on military or restricted category helicopters and removes from service those masts that have been previously installed with a hub spring. This amendment is prompted by an occurrence of a cracked mast at a lower value than the established RIN life limit. The actions specified by this AD are intended to preclude the occurrence of fatigue

cracks in the damper clamp splined area of a mast. A crack in the damper clamp splined area could result in failure of a mast or trunnion, separation of the main rotor system, and subsequent loss of control of the helicopter.

DATES: Effective December 28, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–15–52, issued on July 25, 2000, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 12, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–28–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On November 13, 1998, the FAA issued AD 98–24–15 (Amendment 39–10900 (63 FR 64612, November 23, 1998), Docket No. 97–SW–20–AD. That AD required establishing a RIN tracking system for mast and trunnion torque events; creating component history cards or equivalent records; converting accumulated factored flight hours to a baseline accumulated RIN count; establishing a system for tracking increases to the accumulated RIN; and establishing a maximum accumulated RIN for certain masts and trunnions. That action was prompted by an accident involving a BHTI Model 205A–1 helicopter in which a mast failure caused a separation of the main rotor from the helicopter. A subsequent metallurgical examination revealed that the mast had fractured as a result of fatigue. Analyses and fatigue testing conducted by the manufacturer and assessed by the FAA confirmed that the remaining lives of the mast and trunnion are more accurately assessed by monitoring the number of torque events and flight hours on the helicopter rather than by monitoring only flight hours.

The FAA superseded AD 98–24–15 by issuing Emergency AD 2000–08–52 (Docket No. 2000–SW–20) on April 21, 2000. AD 2000–08–52 required a one-time special inspection for certain serial-numbered masts to detect burrs or inadequate radii in the snap ring groove areas that can cause fatigue failure. That AD was issued as a result of an accident involving a BHTI Model 212 helicopter following in-flight separation of its main rotor system. The post-accident investigation revealed a fatigue failure in the damper clamp splined area of the mast, part number (P/N) 204–011–450–007. Also, operators reported at least five other failures in the damper clamp splined area of masts, P/N 204–011–450–001, –007, and –105, in either the upper or lower snap ring grooves. That AD also reduced the maximum allowable RIN life for each affected mast and changed the RIN counting procedure to require application of a standard RIN factor for all external load lifts regardless of altitude change and the type of load lifted. The RIN factor assessed for each torque event was increased for masts installed on BHTI Model 204B and 205B helicopters. The requirements of AD 98–24–15 pertaining to trunnions, P/N 204–011–105–001 and –103, were not changed by AD 2000–08–52.

After issuing AD 2000–08–52, the FAA received a report of another cracked mast. Metallurgical inspection revealed that the mast cracked as a result of fatigue in snap ring groove radii that were smaller than the 0.020 inch minimum allowable dimension. Detailed takeoff (1,249) and lift (16,339) event data for the entire life of the mast confirmed that the accumulated RIN count at the time the fatigue crack was detected was approximately 68,000 when calculated in accordance with the most recent RIN counting procedure as defined in AD 2000–08–52. The FAA concluded that several corrections to the RIN counting procedure are required based on a review of the fatigue data and previously issued AD's.

On July 25, 2000, the FAA issued Emergency AD 2000–15–52 for BHTI Model 204B, 205A, 205A–1, 205B, and 212 helicopters. That Emergency AD reduces the RIN life limit for the mast and trunnion; increases the RIN factor for the masts and trunnions; applies standard RIN factors for all external load lifts; and requires a one-time inspection of the snap ring groove area of the mast. That Emergency AD also establishes RIN factors for masts and trunnions that have been previously installed on military or restricted category helicopters and removes from service those masts that have been previously installed with a hub spring. That action was prompted by an occurrence of a cracked mast at a lower value than the established RIN life limit. This condition, if not corrected, could result in failure of a mast or trunnion, separation of the main rotor system, and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other BHTI Model 204B, 205A, 205A–1, 205B, and 212 helicopters of the same type designs, the FAA issued Emergency AD 2000–15–52 to prevent failure of a mast or trunnion, separation of the main rotor system, and subsequent loss of control of the helicopter. The AD retains the following requirements from previously issued AD 2000–08–52:

- Reduces the allowable RIN life limit established in AD 98–24–15 for masts, P/N 204–011–450–001, –007, –105, –113, and –119;
- Increases the RIN factor assessed for each torque event for BHTI Model 204B and 205B helicopters;
- Applies a standard RIN factor for all external load lifts regardless of altitude change and type of load lifted; and
- Requires a one-time special inspection of certain S/N masts for inadequate radii and presence of burrs in the snap ring groove areas.

The Emergency AD differs from AD 2000–08–52 in that it:

- Requires, before further flight, that the accumulated RIN for all mast and trunnion history prior to the implementation of RIN counting (required by AD 98–24–15) be corrected for inadequate factors used to calculate factored hours TIS and to convert factored flight hours to accumulated RIN;
- Increases the RIN factor for each takeoff and external load lift for masts and trunnions installed on BHTI Model 204B, 205A, and 205A–1 helicopters to properly reflect the actual level of torque (horsepower rating) applied to the mast when it is installed in these helicopter models;
- Expands the requirement for a one-time special inspection to detect inadequate radii and burrs in the snap ring grooves to include masts with S/N's 00000 through 52720, 61433 through 61444, and 61457 through 61465, regardless of prefix;
- Establishes RIN factors for masts and trunnions that have been previously installed on military helicopters (BHTI-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1C, UH–1D, UH–1E, UH–1F, UH–1G, UH–1H, UH–1L, UH–1M, UH–1N, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1) and restricted category helicopters (Firefly Aviation Helicopter Services (previously Erickson Air Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International

Helicopters, Inc.; Tamarack Helicopters, Inc. (previously Ranger Helicopter Services, Inc.); Robinson Air Crane, Inc.; Williams Helicopter Corporation (previously Scott Paper Co.); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Utah State University; Western International Aviation, Inc.; and U.S. Helicopter, Inc.).

• Requires the immediate removal from service of any mast that has been previously installed with a hub spring.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the actions previously stated are required at the specified time intervals, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 25, 2000 to all known U.S. owners and operators of BHTI Model 204B, 205A, 205A–1, 205B, and 212 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 147 helicopters of U.S. registry will be affected by this AD. It will take approximately 10 work hours per helicopter to remove and replace the mast, if necessary; 10 work hours to remove and replace the trunnion, if necessary; and 6 work hours to inspect the mast for proper radius or a burr. The approximate time necessary for calculating the accumulated RIN, revising the Airworthiness Limitations section of the maintenance manuals, and providing the information requested to the FAA is 15 work hours per helicopter. The average labor rate is $60 per work hour. Required parts will cost approximately $9,538 to replace a mast, if necessary, and $5,300 to replace a trunnion, if necessary. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,675,506 ($11,398 per helicopter, assuming one inspection, one mast replacement, not trunnion replacement, and that the helicopter's accumulated RIN is calculated, the maintenance manuals are revised, and the requested information is submitted to the FAA).

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–28–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from 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 removing Amendment 39–10900 (63 FR 64612, November 23, 1998) and by adding a new airworthiness directive to read as follows:

2000–15–52 Bell Helicopter Textron Inc.: Amendment 39–12042. Docket No. 2000–SW–28–AD. Supersedes Emergency AD 2000–08–52, Docket No. 2000–SW–20–AD, and AD 98–24–15, Amendment 39–10900, Docket No. 97–SW–20–AD.

Applicability: Model 204B, 205A, 205A–1, 205B, and 212 helicopters, with main rotor mast (mast), part number (P/N) 204–011–450–001, –007, –105, –113, or –119, or main rotor trunnion (trunnion), P/N 204–011–105–001 or –103, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters 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 (i) 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

Required as indicated, unless accomplished previously.

Note 2: This AD has new requirements which must be complied with even if AD's

98–24–15 and 2000–08–52 have already been accomplished. This AD requires the recalculation of accumulated mast and trunnion RIN and increases the RIN factors for masts and trunnions installed on certain helicopter models. This AD also expands the S/N applicability for the one-time special inspection of the mast.

To prevent failure of a mast or trunnion, separation of the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, determine the accumulated Retirement Index Number (RIN) in accordance with the Instructions in Appendix 1 of this AD for the mast and Appendix 2 of this AD for the trunnion. If the helicopter model installation history or hours time-in-service (TIS) of the mast or trunnion is unknown, remove the mast or trunnion from service and replace it with an airworthy mast or trunnion. If the mast has been installed on certain military helicopters (BHTI-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1C, UH–1D, UH–1E, UH–1F, UH–1G, UH–1H, UH–1L, UH–1M, UH–1N, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, or SW205A–1) or restricted category helicopters (Firefly Aviation Helicopter Services (previously Erickson Air Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Tamarack Helicopters, Inc. (previously Ranger Helicopter Services, Inc.); Robinson Air Crane, Inc.; Williams Helicopter Corporation (previously Scott Paper Co.); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Utah State University; Western International Aviation, Inc.; and U.S. Helicopter, Inc.) and you cannot verify that hub springs have not been installed, remove the mast from service and replace it with an airworthy mast.

(b) Before further flight, replace any mast, P/N 204–011–450–113 or 119, that has accumulated 240,000 or more RIN with an airworthy mast. Before further flight, replace any mast, P/N 204–011–450–001, –007, or –105, that has accumulated 265,000 or more RIN with an airworthy mast.

(c) Before further flight, replace any trunnion, P/N 204–011–105–103, that has accumulated 240,000 or more RIN with an airworthy trunnion. Before further flight, replace any trunnion, P/N 204–011–105–001, that has accumulated 265,000 or more RIN with an airworthy trunnion.

(d) Before reaching 100,000 RIN, inspect the upper and lower snap ring grooves in the damper clamp splined area of any mast with serial number (S/N) 00000 through 52720, S/N 61433 through 61444, and S/N 61457 through S/N 61465 (regardless of prefix) for:

(1) A minimum radius of 0.020 inches around the entire circumference (see Figures 1 through 3), using a 100x or higher magnification. If any snap ring groove radius is less than 0.020 inches, replace the mast with an airworthy mast prior to exceeding 100,000 RIN.

(2) A burr, using a 200x or higher magnification. If a burr is found in any snap ring groove/spline intersection, replace the mast with an airworthy mast prior to exceeding 170,000 RIN.

BILLING CODE 4910–13–U

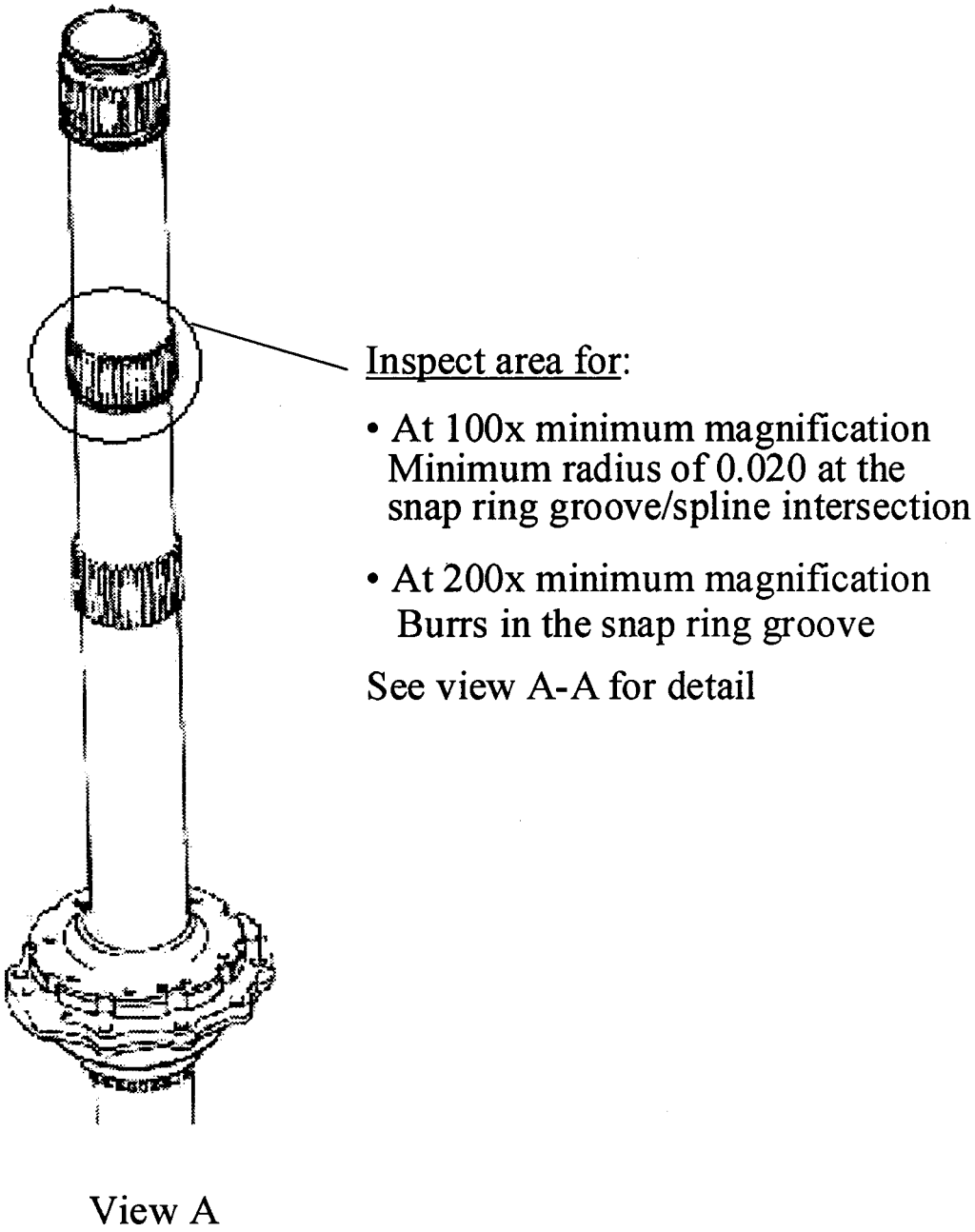

Inspect area for:
• At 100x minimum magnification
Minimum radius of 0.020 at the
snap ring groove/spline intersection
• At 200x minimum magnification
Burrs in the snap ring groove
See view A-A for detail
View A

Figure 1

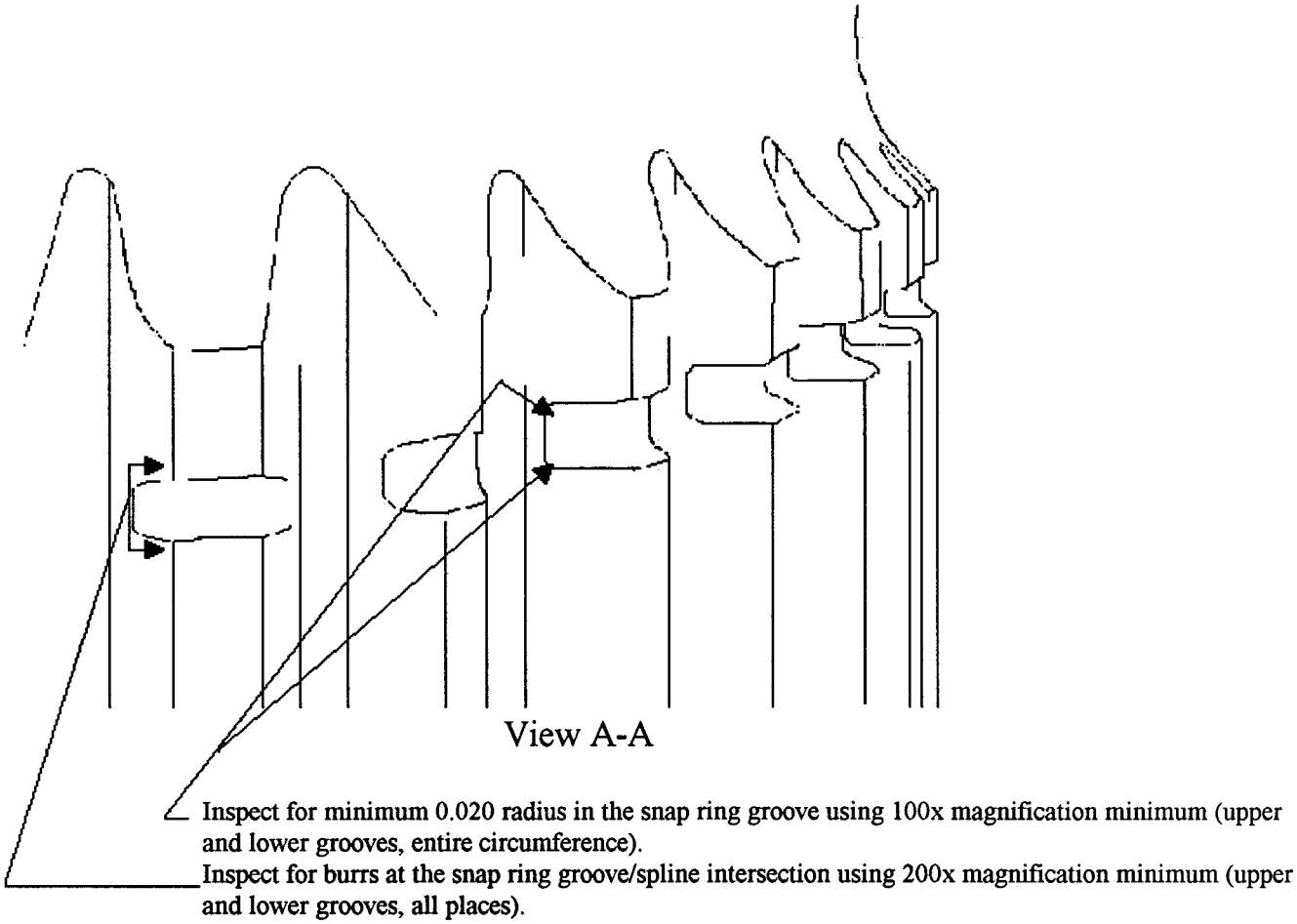
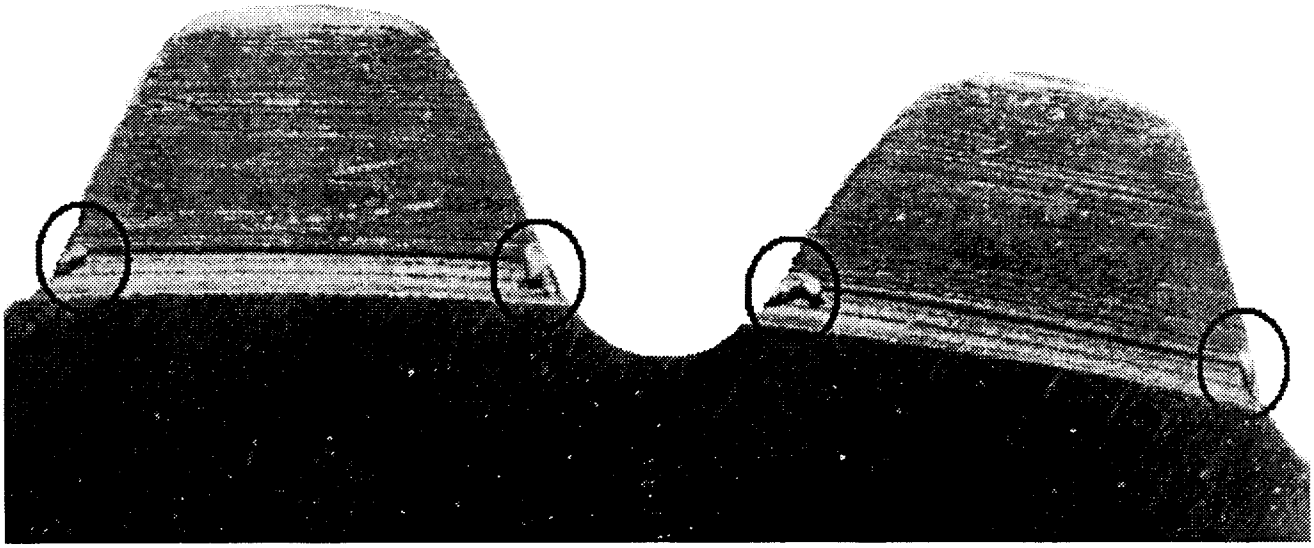


Figure 2
Snap Ring Groove/Spline Intersection



Cutaway View Looking Down from Inside Snap Ring Groove

Typical Burrs at Snap Ring Groove/Spline Intersection
Burrs are to be Inspected at 200x Minimum Magnification

Figure 3
Typical Burr at Snap Ring Groove

(e) Continue to calculate the accumulated RIN for the mast by multiplying all takeoff and external load lifts by the RIN factors defined in columns (D) and (G) of Table 1 of Appendix 1 of this AD.

(f) Continue to calculate the accumulated RIN for the trunnion by multiplying all takeoff and external load lifts by the RIN factors defined in columns (D) and (G) of Table 1 of Appendix 2 of this AD.

(g) Before further flight, revise the Airworthiness Limitations section of the maintenance manuals for the masts and trunnions in accordance with Figure 4.

MAST AND TRUNNION LIFE LIMITS

Mast part No.	Hours TIS life limit	RIN life limit	Trunnion part No.	Hours TIS life limit	RIN life limit
204–011–450–001	6,000	265,000	204–011–105–001	15,000	265,000
204–011–450–007	15,000	265,000	204–011–105–103	13,000	240,000
204–011–450–105	15,000	265,000			
204–011–450–113	13,000	240,000			
204–011–450–119	13,000	240,000			

(h) Within 10 days after completing the inspections required by this AD, provide the information contained on the AD inspection report, sample format, contained in Appendix 3 of this AD and send it to the Manager, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas, 76193–0170, USA. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(i) 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, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR

21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(k) This amendment becomes effective on December 28, 2000, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–15–52, issued July 25, 2000, which contained the requirements of this amendment.

APPENDIX 1

Instructions for Calculating Mast RIN

Definition of Retirement Index Number:

The overall **fatigue life** of a main rotor mast is a function of the number of cycles of torque, lift, and bending loads applied to it during the various modes of operation. The mast experiences both high cycle fatigue and low cycle fatigue during operation.

The **high cycle fatigue life** of the mast is a function of high frequency but relatively low level cyclic loads, which are primarily induced by rotor r.p.m. The high cycle fatigue life limit for the mast is defined in terms of hours TIS because rotor r.p.m. is basically a constant value.

The **low cycle fatigue life** of the mast is a function of the number of less frequent but relatively high level cyclic loads experienced primarily during takeoffs and external load lifts. The low cycle fatigue life limit for the mast is expressed in terms of the accumulated Retirement Index Number (RIN).

The **accumulated RIN** is defined as the total number of load cycles experienced (since new) by the mast multiplied by a **RIN factor** to account for the difference in torque levels applied to the same mast when installed in different helicopter models. The level of torque applied to the mast is directly proportional to the transmission output horsepower. The manufacturer's established mast **RIN life limit** is based on the measured number of cycles to failure of masts (in laboratory tests) at various levels of constant torque, lift, and bending loads which are representative of the expected operating environment.

Calculation of Retirement Index Number:

There are two methods for calculating the accumulated RIN, depending on the available service history information for the mast. In some cases, one method will be used for a portion of the mast service history, and the other method will be used for another portion of the mast service history. Both methods require knowledge of all the helicopter models in which the mast was installed.

Calculation of RIN when Number of Takeoffs and External Load Lifts is **Known** (Reference Table 1):

If the total number of takeoffs and the total number of external load lifts for the mast are known, the accumulated RIN must be calculated by multiplying each takeoff and each external load lift by a RIN factor determined to be appropriate for the torque (horsepower) of the helicopter model in which the mast is installed.

Table 1 of Appendix 1 is a worksheet for calculating the accumulated mast RIN when the number of takeoffs and external load lifts is known.

The RIN factor for each external load lift is twice that specified for each takeoff. This is because two torque events are experienced during a typical external load lift.

Using Table 1, calculate accumulated RIN as follows:

1. Enter the total number of takeoffs for the particular mast model/helicopter model combination in column (C).
2. Multiply the value entered in column (C) by the RIN factor listed in column (D), and enter the result in column (E). This is the total accumulated RIN due to takeoffs.
3. Enter the total number of external load lifts for the particular mast model/helicopter model combination in column (F).
4. Multiply the value entered in column (F) by the RIN factor listed in column (G), and enter the result in column (H). This is the accumulated RIN due to external load lifts.
5. Add the values from column (E) and column (H) and enter the result in column (I). This is the total accumulated RIN to date for the mast for the particular mast model/helicopter model combination.
6. Add the accumulated RIN subtotals for the various mast model/helicopter combinations in column (I) and enter the result in the space provided. This is the total accumulated RIN for the mast.

Calculation of RIN when Exact Number of Takeoffs and External Load Lifts is **Unknown** (Reference Tables 2 and 3):

If either the exact total number of takeoffs or the exact total number of external load lifts for the mast model/helicopter model combination is unknown, then the accumulated RIN must be calculated by multiplying the (unfactored) hours TIS by a RIN conversion factor based on the torque (horsepower) of the helicopter model in which it was installed. The resultant factored hours TIS is then multiplied by a RIN conversion factor retained from AD 98-24-15 to establish a baseline accumulated RIN count. The FAA has determined that the factors used to establish the factored hours in earlier ASB's as well as the RIN conversion factors specified in AD 98-24-15 are inadequate. Consequently, this AD (2000-15-52) requires that the baseline accumulated RIN count be further multiplied by an additional RIN adjustment factor.

Tables 2 and 3 of Appendix 1 are worksheets for calculating the accumulated mast RIN when the exact number of takeoffs and external load lifts is unknown. Using Tables 2 and 3, calculate accumulated mast RIN as follows:

1. Enter the (unfactored) hours TIS for the particular mast model/helicopter model combination in column (C) of Table 2.
2. Using service history for the mast, select the appropriate Frequency of Event Hour Factor from column (E) of Table 2 based on the total number of takeoffs + external load lifts per hour shown in column (D) of Table 2.

3. Multiply the value for (unfactored) hours TIS entered in column (C) by the appropriate value in column (E) for Frequency of Event Hour Factor as determined in step 2 above. Enter the result in column (F) of Table 2. This is the total FACTORED hours TIS for the particular mast model/helicopter model combination.
4. Enter the value for FACTORED hours TIS from column (F) of Table 2 into column (C) of Table 3.
5. Using Table 3, multiply the value for FACTORED hours TIS in column (C) by the appropriate RIN conversion factor listed in column (D), by the appropriate RIN adjustment factor in column (E) of Table 3, and enter the result in column (F) of Table 3. This is the accumulated RIN to date for the particular mast model/helicopter model combination.
6. Add the accumulated RIN subtotals for the various mast model/helicopter model combinations in column (F) of Table 3 and enter the result in the space provided. This is the total accumulated RIN for the mast.

Sample Mast RIN Calculation

Given the following known service history for the mast:

Mast Model –007 was first installed on a BHTI Model 204B helicopter for 1000 hours TIS and experienced an unknown number of takeoffs and external load lifts. The mast was then removed and subsequently installed on a BHTI Model 205A helicopter for 1500 hours TIS. It is known that the helicopter was used primarily for passenger carrying for the first 1000 hours of operation on this model. The exact number of takeoffs and external load lifts is unknown, but it is known that the helicopter averaged less than 20 takeoffs per hour, with no external load lifts. It was subsequently used for heavy lift operation for the remaining 500 hours of operation on this model, averaging between 20 and 44 external load lifts during this period of time. The mast was then removed and installed on a BHTI Model 212 helicopter for a total of 1500 hours TIS with accurate records indicating that it experienced 1000 takeoffs and 2000 external load lifts.

Calculate the total accumulated RIN to date since new for the mast as follows:

<u>Accumulated RIN while installed in BHTI Model 204B:</u>

Calculate factored flight hours from Table 2 as follows:

Factored Flight Hours = (unfactored flight hours) x (frequency of event hour factor)
= (column C) x (column E)
= (1000) x (3)
= 3000

Then using Table 3, calculate the accumulated RIN as follows:

= (factored hours TIS) x (RIN conversion factor) x (RIN adjustment factor)
= (column C) x (column D) x (column E)
= (3000) x (20) x (1)

= 60,000 RIN

<u>Accumulated RIN while installed in BHTI Model 205A:</u>

Calculate factored flight hours from Table 2 as follows:

Factored Flight Hours = (unfactored flight hours) x (frequency of event hour factor)
(for first 1000 hrs.) = (column C) x (column E)
= (1000) x (1)
= 1000

Factored Flight Hours =		(unfactored flight hours) x (frequency of event hour factor)
(for next 500 hrs)	=	(column C) x (column E)
	=	(500) x (2)
	=	1000

Then using Table 3, calculate the accumulated RIN as follows:

= (factored hours TIS) x (RIN conversion factor) x (RIN adjustment factor)
= (column C) x (column D) x (column E)
= (1000) x (20) x (10) + (1000) x (20) x (10)
= 200,000 + 200,000
= 200,000 + 200,000
= 400,000 RIN

Accumulated RIN while installed in BHTI Model 212:

Calculate the accumulated RIN from Table 1 and the given number of takeoff and lifts as follows:

Accumulated RIN = (number of takeoffs x RIN factor per takeoff) + (number of lifts x RIN Factor per lift)

= (column C) x (Column D) + (Column F) x (Column G)
= (1,000) x (5) + (2,000) x (10)
= 25,000 RIN

Therefore, the total accumulated RIN to date for the mast is the sum of the subtotals from Tables 1 and 3 for the period of time the mast was installed on the BHTI Model 204B, 205A, and 212 helicopters:

Total accumulated mast RIN	=	60,000 + 400,000 + 25,000
	=	**485,000**

Please note that the recalculated total accumulated RIN for this sample mast would have exceeded the 265,000 allowable RIN life. This mast would therefore be removed from service.

The values for the sample problem are shown in bold italics in Tables 1 – 3 for illustration purposes.

Mast RIN Calculation Based on Takeoffs and External Load Lifts

Mast A/C Model Installation	Mast P/N 204-011-450	Number Of Takeoffs	RIN Factor Per Takeoff	Total Takeoff RIN	Number of External Load Lifts	RIN Factor Per External Load Lift	Total Lift RIN	Accumulated RIN
(A)	(B)	(C)	(D)	(E) =(C) x (D)	(F)	(G)	(H) =(F) x (G)	(I) =(E) + (H)
204B (≤1100 T.O. hp SLS)	204-011-450-001		10			20		
204B (≤1100 T.O. hp SLS)	204-011-450-007		2			4		
204B (≤1100 T.O. hp SLS)	204-011-450-105		2			4		
204B (>1100 T.O. hp SLS)	All		Contact FAA*			Contact FAA*		Contact FAA*
205A/A-1 (≤1250 T.O. hp SLS)	204-011-450-007		5			10		
205A/A-1 (≤1250 T.O. hp SLS)	204-011-450-105		5			10		
205A/A-1 (>1250 T.O. hp SLS)	All		Contact FAA*			Contact FAA*		Contact FAA*
205B (≤1290 T.O. hp SLS)	204-011-450-007		6			12		
205B (≤1290 T.O. hp SLS)	204-011-450-105		6			12		
205B (>1290 T.O. hp SLS)	All		Contact FAA*			Contact FAA*		Contact FAA*
212 (≤1290 T.O. hp SLS)	204-011-450-007	*1000*	5	*5000*	*2000*	10	*20,000*	*25,000*
212 (≤1290 T.O. hp SLS)	204-011-450-105		5			10		
212 (>1290 T.O. hp SLS)	-007 or –105		Contact FAA*			Contact FAA*		Contact FAA*
212 (≤1350 T.O. hp SLS)	204-011-450-113		6			12		
212 (≤1350 T.O. hp SLS)	204-011-450-119		6			12		
Restricted Category or Military TIS with (≤700 T.O. hp SLS)	204-011-450-001		1.25			2.5		
	204-011-450-007		0.25			0.5		
	204-011-450-105		0.25			0.5		
Restricted Category or Military TIS with (≤1000 T.O. hp SLS)	204-011-450-001		7.5			15		
	204-011-450-007		1.5			3		
	204-011-450-105		1.5			3		
Restricted Category or Military TIS with (≤1100 T.O. hp SLS)	204-011-450-001		15			30		
	204-011-450-007		3			6		
	204-011-450-105		3			6		
Restricted Category or Military TIS with (≤1290 T.O. hp SLS)	204-011-450-001		Not Approved			Not Approved		Not Approved
	204-011-450-007		6			12		
	204-011-450-105		6			12		
Restricted Category or Military TIS with (>1290 T.O. hp SLS)	204-011-450-001		Contact FAA*			Contact FAA*		Contact FAA*
	204-011-450-007							
	204-011-450-105							
Total RIN=								*25,000*

*Contact FAA at (817) 222 – 5159

Appendix 1 - Table 1

Calculation of Mast Factored Hours Time-in-Service

Mast A/C Model Installation	Mast P/N 204-011-450	Unfactored Hours TIS on Model	Frequency Of Events Per Hour	Frequency of Event Hour Factor	FACTORED Hours TIS On Model
(A)	(B)	(C)	(D)	(E)	(F) = (C) x (E)
204B	204-011-450-001, -007,		1.0-20.00	1.00	
	or -105		20.01-44.00	2.00	
			44.01-69.00	3.00	
			Greater than 69.00	Contact FAA*	
		1,000	Unknown	3.00	***3,000***
205A/A-1	204-011-450-007,-105,	***1,000***	1.0-20.00	1.00	***1,000***
	-113, or -119	***500***	20.01-44.00	2.00	***1,000***
			44.01-69.00	3.00	
			Greater than 69.00	Contact FAA*	
			Unknown	3.00	
205B	204-011-450-007,-105		1.0-5.00	1.00	
			5.01-8.00	1.50	
			8.01-12.00	2.00	
			12.01-18.00	3.00	
			18.01-32.00	5.00	
			32.01-48.00	7.00	
			48.01-62.00	9.00	
			Greater than 62.00	Contact FAA*	
			Unknown	9.00	
212	204-011-450-007,-105,		1.0-5.00	1.00	
	-113, or -119		5.01-8.00	1.50	
			8.01-12.00	2.00	
			12.01-18.00	3.00	
			18.01-32.00	5.00	
			32.01-48.00	7.00	
			48.01-62.00	9.00	
			Greater than 62.00	Contact FAA*	
			Unknown	9.00	

*Contact FAA at (817) 222 – 5159 Appendix 1 - Table 2 (1st page of 2)

Calculation of Mast Factored Hours Time-in-Service

Mast A/C Model Installation	Mast P/N 204-011-450 (without a hub spring)	Unfactored Hours TIS on Model	Frequency Of Events Per Hour	Frequency of Event Hour Factor	FACTORED Hours TIS On Model
(A)	(B)	(C)	(D)	(E)	(F) = (C) x (E)
Restricted Category TIS (≤700 hp)	204-011-450-007		1.0-37.00	1.00	
	or –105		37.01-46.00	1.25	
			46.01-55.00	1.50	
			55.01-63.00	1.75	
			Greater than 63.00	Contact FAA*	
			Unknown	1.75	
Restricted Category TIS (≤1000 hp)	204-011-450-007		1.0-7.00	1.00	
	or -105		7.01-13.00	2.00	
			13.01-18.00	3.00	
			18.01-30.00	5.00	
			30.01-41.0	7.00	
			41.01-52.00	9.00	
			52.01-63.00	11.00	
			Greater than 63.00	Contact FAA*	
			Unknown	11.00	
Restricted Category TIS (≤1100 hp)	204-011-450-007		1.0-5.00	1.00	
	or -105		5.01-7.00	2.00	
			7.01-10.00	3.00	
			10.01-16.00	5.00	
			16.01-24.0	7.50	
			24.01-31.00	10.00	
			31.01-46.00	15.00	
			46.01-61.00	20.00	
			Greater than 61.00	Contact FAA*	
			Unknown	20.00	
Restricted Category TIS (≤1290 hp)	204-011-450-007		1.0-5.00	2.10	
	or -105		5.01-7.00	4.00	
			7.01-10.00	6.00	
			10.01-15.00	9.00	
			15.01-19.00	12.00	
			19.01-25.00	16.00	
			25.01-31.00	20.00	
			31.01-46.00	30.00	
			46.01-60.00	40.00	
			Greater than 60.00	Contact FAA*	
			Unknown	40.00	
Military TIS	204-011-450-001,				
(≤700 hp SLS)	-007, or -105		All	1.00	
(≤1000 hp SLS)			All	3.00	
(≤1100 hp SLS)			All	6.00	
(≤1290 hp SLS)			All	12.00	

*Contact FAA at (817) 222 – 5159

Appendix 1 - Table 2 (continued - 2nd page of 2)

Mast RIN Calculation Based on Hours Time-in-Service

Mast A/C Model Installation	Mast P/N 204-011-450	FACTORED Hours TIS On Model	RIN FACTOR Per AD 98-24-15	RIN Adjustment Per AD 2000-15-52	Accumulated RIN
(A)	(B)	(C) (From Table 2 of Appendix I)	(D)	(E)	(F) =(C) x (D) x (E)
204B (≤1100 T.O. hp SLS)	204-011-450-001		50	1	
204B (≤1100 T.O. hp SLS)	204-011-450-007	*3000*	20	1	*60,000*
204B (≤1100 T.O. hp SLS)	204-011-450-105		20	1	
204B (>1100 T.O. hp SLS)	All	Contact FAA*	Contact FAA*	Contact FAA*	Contact FAA*
205A/A-1 (≤1250 T.O. hp SLS)	204-011-450-007	*2000*	20	10	*400,000*
205A/A-1 (≤1250 T.O. hp SLS)	204-011-450-105		20	10	
205A/A-1 (>1250 T.O. hp SLS)	All	Contact FAA*	Contact FAA*	Contact FAA*	Contact FAA*
205B (≤1290 T.O. hp SLS)	204-011-450-007		20	1	
205B (≤1290 T.O. hp SLS)	204-011-450-105		20	1	
205B (>1290 T.O. hp SLS)	All	Contact FAA*	Contact FAA*	Contact FAA*	Contact FAA*
212 (≤1290 T.O. hp SLS)	204-011-450-007		20	1	
212 (≤1290 T.O. hp SLS)	204-011-450-105		20	1	
212 (>1290 T.O. hp SLS)	-007 or –105		Contact FAA*	Contact FAA*	Contact FAA*
212 (≤1350 T.O. hp SLS)	204-011-450-113		21.2	1.2	
212 (≤1350 T.O. hp SLS)	204-011-450-119		21.2	1.2	
212 (>1350 T.O. hp SLS)	-113 or –119	Contact FAA*	Contact FAA*	Contact FAA*	Contact FAA*
Restricted Category or Military TIS with (≤1290 T.O. hp SLS)	204-011-450-001		50	1	
	204-011-450-007		20	1	
	204-011-450-105		20	1	
Restricted Category or Military TIS with (>1290 T.O. hp SLS)	204-011-450-001	Contact FAA*	Contact FAA*	Contact FAA*	Contact FAA*
	204-011-450-007				
	204-011-450-105				
Total RIN=					*460,000*

*Contact FAA at (817) 222 – 5159

Appendix 1 - Table 3

APPENDIX 2

Instructions for Calculation of Trunnion RIN

Definition of Retirement Index Number:

The overall **fatigue life** of a main rotor trunnion is a function of the number of cycles of torque, lift, and bending loads applied to it during the various modes of operation. The trunnion experiences both high cycle fatigue and low cycle fatigue during operation.

The **high cycle fatigue life** of the trunnion is a function of high frequency but relatively low level cyclic loads, which are primarily induced by rotor r.p.m. The high cycle fatigue life limit for the trunnion is defined in terms of hours TIS because rotor r.p.m. is basically a constant value.

The **low cycle fatigue life** of the trunnion is a function of the number of less frequent but relatively high level cyclic loads experienced primarily during takeoffs and external load lift operations. The low cycle fatigue life limit for the trunnion is expressed in terms of the accumulated Retirement Index Number (RIN).

The **accumulated RIN** is defined as the total number of load cycles experienced (since new) by the trunnion multiplied by a **RIN factor** to account for the difference in torque levels applied to the same trunnion when installed in different helicopter models. The level of torque applied to the trunnion is directly proportional to the transmission output horsepower. The manufacturer's established trunnion **RIN life limit** is based on the measured number of cycles to failure of trunnions (in laboratory tests) at various levels of constant torque, lift, and bending loads, which are representative of the expected operating environment.

Calculation of Retirement Index Number:

There are two methods for calculating the accumulated RIN, depending on the available service history information for the trunnion. In some cases, one method will be used for a portion of the trunnion service history, and the other method will be used for another portion of the trunnion service history. Both methods require knowledge of all the helicopter models in which the trunnion was installed.

Calculation of RIN when Number of Takeoffs and External Load Lifts is **Known** Reference Table 1):

If the total number of takeoffs and the total number of external load lifts for the trunnion are known, the accumulated RIN must be calculated by multiplying each takeoff and each external load lift by a RIN factor determined to be appropriate for the torque (horsepower) of the helicopter model in which the trunnion is installed.

Table 1 of Appendix 2 is a worksheet for calculating the accumulated trunnion RIN when the number of takeoffs and external load lifts is known.

The RIN factor for each external load lift is twice that specified for each takeoff. This is because two torque events are experienced during a typical external load lift.

Using Table 1, calculate accumulated RIN as follows:

1. Enter the total number of takeoffs for the particular trunnion model/helicopter model combination in column (C).
2. Multiply the value entered in column (C) by the RIN factor listed in column (D), and enter the result in column (E). This is the total accumulated RIN due to takeoffs.
3. Enter the total number of external load lifts for the particular trunnion model/helicopter model combination in column (F).
4. Multiply the value entered in column (F) by the RIN factor listed in column (G), and enter the result in column (H). This is the accumulated RIN due to external load lifts.
5. Add the values from column (E) and column (H) and enter the result in column (I). This is the total accumulated RIN to date for the trunnion for the particular trunnion model/helicopter model combination.
6. Add the accumulated RIN subtotals for the various trunnion model/helicopter combinations in column (I) and enter the result in the space provided. This is the total accumulated RIN for the trunnion.

Calculation of RIN when Exact Number of Takeoffs and External Load Lifts is **Unknown** (Reference Tables 2 and 3):

If either the exact total number of takeoffs or the exact total number of external load lifts for the trunnion model/helicopter model combination is unknown, then the accumulated RIN must be calculated by multiplying the (unfactored) hours TIS by a RIN conversion factor based on the torque (horsepower) of the helicopter model in which it was installed. The resultant factored hours TIS is then multiplied by a RIN conversion factor retained from AD 98-24-15 to establish a baseline accumulated RIN count. The FAA has determined that the factors used to establish the factored hours in earlier ASB's as well as the RIN conversion factors specified in AD 98-24-15 are inadequate. Consequently, this AD (2000-15-52) requires that the baseline accumulated RIN count be further multiplied by an additional RIN adjustment factor.

Tables 2 and 3 of Appendix 2 are worksheets for calculating the accumulated trunnion RIN when the exact number of takeoffs and external load lifts is unknown. Using Tables 2 and 3, calculate accumulated trunnion RIN as follows:

1. Enter the (unfactored) hours TIS for the particular trunnion model/helicopter model combination in column (C) of Table 2.
2. Using service history for the trunnion, select the appropriate Frequency of Event Hour Factor from column (E) of Table 2 based on the total number of takeoffs + external load lifts per hour shown in column (D) of Table 2.

3. Multiply the value for (unfactored) hours TIS entered in column (C) by the appropriate value in column (E) for Frequency of Event Hour Factor as determined in step 2 above. Enter the result in column (F) of Table 2. This is the total FACTORED hours TIS for the particular trunnion model/helicopter model combination.
4. Enter the value for FACTORED hours TIS from column (F) of Table 2 into column (C) of Table 3.
5. Using Table 3, multiply the value for FACTORED hours TIS in column (C) by the appropriate RIN conversion factor listed in column (D), by the appropriate RIN adjustment factor in column (E) of Table 3, and enter the result in column (F) of Table 3. This is the accumulated RIN to date for the particular trunnion model / helicopter model combination.
6. Add the accumulated RIN subtotals for the various trunnion model / helicopter model combinations in column (F) of Table 3 and enter the result in the space provided. This is the total accumulated RIN for the trunnion.

Sample Trunnion RIN Calculation

Given the following known service history for the trunnion:

Trunnion Model –001 was first installed on a BHTI Model 204B helicopter for 1000 hours TIS, and experienced an unknown number of takeoffs and external load lifts. The trunnion was then removed and subsequently installed on a BHTI Model 205A helicopter for 1500 hours TIS. It is known that the helicopter was used primarily for passenger carrying for the first 1000 hours of operation on this model. The exact number of takeoffs and external load lifts is unknown, but it is known that the helicopter averaged less than 20 takeoffs per hour, with no external load lifts. It was subsequently used for heavy lift operation for the remaining 500 hours of operation on this model, averaging between 20 and 44 external load lifts during this period of time. The trunnion was then removed and installed on a model 212 helicopter for a total of 1500 hours TIS with accurate records indicating that it experienced 1000 takeoffs and 2000 external load lifts.

Calculate the total accumulated RIN to date since new for the trunnion as follows:

Accumulated RIN while installed in BHTI Model 204B:

Calculate factored flight hours from Table 2 as follows:

Factored Flight Hours = (unfactored flight hours) x (frequency of event hour factor)
= (column C) x (column E)
= (1000) x (3)
= 3000

Then using Table 3, calculate the accumulated RIN as follows:

= (factored hours TIS) x (RIN conversion factor) x (RIN adjustment factor)
= (column C) x (column D) x (column E)
= (3000) x (20) x (1)

= 60,000 RIN

Accumulated RIN while installed in BHTI Model 205A:

Calculate factored flight hours from Table 2 as follows:

Factored Flight Hours = (unfactored flight hours) x (frequency of event hour factor)
(for first 1000 hrs.) = (column C) x (column E)
= (1000) x (1)
= 1000

Factored Flight Hours = (unfactored flight hours) x (frequency of event hour factor)
(for next 500 hrs) = (column C) x (column E)
= (500) x (2)
= 1000

Then using Table 3, calculate the accumulated RIN as follows:

= (factored hours TIS) x (RIN conversion factor) x (RIN adjustment factor)
= (column C) x (column D) x (column E)
= (1000) x (20) x (10) + (1000) x (20) x (10)
= 200,000 + 200,000
= 200,000 + 200,000
= 400,000 RIN

Accumulated RIN while installed in BHTI Model 212:

Calculate the accumulated RIN from Table 1 and the given number of takeoff and lifts as follows:

Accumulated RIN = (number of takeoffs x RIN factor per takeoff) + (number of lifts x RIN Factor per lift)

= (column C) x (Column D) + (Column F) x (Column G)

= (1,000) x (5)+ (2,000) x (10)

= 25,000 RIN

Therefore, the total accumulated RIN to date for the trunnion is the sum of the subtotals for the period of time the trunnion was installed on the BHTI Model 204B, 205A, and 212 helicopters:

Total accumulated trunnion RIN = 60,000 + 400,000 + 25,000
= **485,000**

Please note that the recalculated total accumulated RIN for this sample trunnion would have exceeded the 265,000 allowable RIN life. This trunnion would therefore be removed from service.

The values for the sample problem are shown in bold italics in Tables 1 – 3 for illustration purposes.

Trunnion RIN Calculation Based on Takeoffs and External Load Lifts

Trunnion A/C Model Installation	Trunnion P/N	Number Of Takeoffs	RIN Factor Per Takeoff	Total Takeoff RIN	Number Of External Load Lifts	RIN Factor Per External Load Lift	Total Lift RIN	Accumulated RIN
(A)	(B)	(C)	(D)	(E) = (C) x (D)	(F)	(G)	(H) = (F) x (G)	(I) = (E) + (H)
204B (≤1100 T.O. hp SLS)	204-011-105-001		2			4		
204B (>1100 T.O. hp SLS)	204-011-105-001		Contact FAA*			Contact FAA*		Contact FAA*
205A/A-1 (≤1250 T.O. hp SLS)	204-011-105-001		5			10		-
205A/A-1 (>1250 T.O. hp SLS)	204-011-105-001		Contact FAA*			Contact FAA*		Contact FAA*
205B (≤1290 T.O. hp SLS)	204-011-105-001		6			12		
205B (>1290 T.O. hp SLS)	204-011-105-001		Contact FAA*			Contact FAA*		Contact FAA*
212 (≤1290 T.O. hp SLS)	204-011-105-001	*1000*	5	5000	*2000*	10	*20,000*	*25,000*
212 (>1290 T.O. hp SLS)	204-011-105-001		Contact FAA*			Contact FAA*		Contact FAA*
212 (≤1350 T.O. hp SLS)	204-011-105-103		6			12		
212 (>1350 T.O. hp SLS)	204-011-105-103		Contact FAA*			Contact FAA*		Contact FAA*
Restricted Category Or Military TIS with:	204-011-105-001							
(≤700 T.O. hp SLS)			0.25			0.5		
(≤1000 T.O. hp SLS)			1.5			3		
(≤1100 T.O. hp SLS)			3			6		
(≤1290 T.O. hp SLS)			6			12		
(>1290 T.O. hp SLS)			Contact FAA*			Contact FAA*		Contact FAA*
Total RIN=								*25,000*

*Contact FAA at (817) 222 – 5159

Appendix 2 - Table 1

Calculation of Trunnion Factored Hours Time-in-Service

Trunnion A/C Model Installation	Trunnion P/N	Unfactored Hours TIS on Model	Frequency Of Events Per Hour	Frequency of Event Hour Factor	FACTORED Hours TIS On Model
(A)	(B)	(C)	(D)	(E)	(F)
					= (C) x (E)
204B	204-011-105-001		1.0-20.00	1.00	
			20.01-44.00	2.00	
			44.01-69.00	3.00	
			Greater than 69.00	Contact FAA	
		1000	Unknown	3.00	***3000***
205A/A-1	204-011-105-001	***1000***	1.0-20.00	1.00	***1000***
		500	20.01-44.00	2.00	***1000***
			44.01-69.00	3.00	
			Greater than 69.00	Contact FAA	
			Unknown	3.00	
205B	204-011-105-001		1.0-5.00	1.00	
			5.01-8.00	1.50	
			8.01-12.00	2.00	
			12.01-18.00	3.00	
			18.01-32.00	5.00	
			32.01-48.00	7.00	
			48.01-62.00	9.00	
			Greater than 62.00	Contact FAA	
			Unknown	9.00	
212	204-011-105-001		1.0-5.00	1.00	
	or, -103		5.01-8.00	1.50	
			8.01-12.00	2.00	
			12.01-18.00	3.00	
			18.01-32.00	5.00	
			32.01-48.00	7.00	
			48.01-62.00 Greater than 62.00	9.00 Contact FAA	
			Unknown	9.00	

*Contact FAA at (817) 222 – 5159

Appendix 2 - Table 2 (1st page of 2)

Calculation of Trunnion Factored Hours Time-in-Service

Trunnion A/C Model Installation	Trunnion P/N 204-011-105-001 (without a hub spring)	Unfactored Hours TIS on Model	Frequency of Events Per Hour	Frequency of Event Hour Factor	FACTORED Hours TIS On Model
(A)	(B)	(C)	(D)	(E)	(F) = (C) x (E)
Restricted Category TIS (≤700 hp)	204-011-105-001		1.0-37.00	1.00	
			37.01-46.00	1.25	
			46.01-55.00	1.50	
			55.01-63.00	1.75	
			Greater than 63.00	Contact FAA*	
			Unknown	1.75	
Restricted Category TIS (≤1000 hp)	204-011-105-001		1.0-7.00	1.00	
			7.01-13.00	2.00	
			13.01-18.00	3.00	
			18.01-30.00	5.00	
			30.01-41.0	7.00	
			41.01-52.00	9.00	
			52.01-64.00	11.00	
			Greater than 64.00	Contact FAA*	
			Unknown	11.00	
Restricted Category TIS (≤1100 hp)	204-011-105-001		1.0-5.00	1.00	
			5.01-8.00	2.00	
			8.01-10.00	3.00	
			10.01-16.00	5.00	
			16.01-24.0	7.50	
			24.01-31.00	10.00	
			31.01-46.00	15.00	
			46.01-61.00	20.00	
			Greater than 61.00	Contact FAA*	
			Unknown	20.00	
Restricted Category TIS (≤1290 hp)	204-011-105-001		1.0-5.00	2.10	
			5.01-7.00	4.00	
			7.01-10.00	6.00	
			10.01-15.00	9.00	
			15.01-19.00	12.00	
			19.01-25.00	16.00	
			25.01-31.00	20.00	
			31.01-46.00	30.00	
			46.01-60.00	40.00	
			Greater than 60.00	Contact FAA*	
			Unknown	40.00	
Military TIS with:	204-011-105-001				
(≤700 hp SLS)			All	1.00	
(≤1000 hp SLS)			All	3.00	
(≤1100 hp SLS)			All	6.00	
(≤1290 hp SLS)			All	12.00	

*Contact FAA at (817) 222 – 5159

Appendix 2 - Table 2 (continued – 2nd page of 2)

Trunnion RIN Calculation Based on Hours Time-in-Service

Trunnion A/C Model Installation	Trunnion P/N	FACTORED Hours TIS On Model	RIN Factor Per AD 98-24-15	RIN Adjustment Per AD 2000-15-52	Accumulated RIN
(A)	(B)	(C) (From Table 2 of Appendix 2)	(D)	(E)	(F) = (C) x (D) x (E)
204B (≤1100 T.O. hp SLS)	204-011-105-001	*3000*	20	1	*60,000*
204B (>1100 T.O. hp SLS)	204-011-105-001		Contact FAA*	Contact FAA*	Contact FAA*
205A/A-1 (≤1250 T.O. hp SLS)	204-011-105-001	*2000*	20	10	*400,000*
205A/A-1 (>1250 T.O. hp SLS)	204-011-105-001		Contact FAA*	Contact FAA*	Contact FAA*
205B (≤1290 T.O. hp SLS)	204-011-105-001		20	1	
205B (>1290 T.O. hp SLS)	204-011-105-001		Contact FAA*	Contact FAA*	Contact FAA*
212 (≤1290 T.O. hp SLS)	204-011-105-001		20	1	
212 (>1290 T.O. hp SLS)	204-011-105-001		Contact FAA*	Contact FAA*	Contact FAA*
212 (≤1350 T.O. hp SLS)	204-011-105-103		21.2	1.2	
212 (>1350 T.O. hp SLS)	204-011-105-103		Contact FAA*	Contact FAA*	Contact FAA*
Restricted Category or Military TIS with (≤1290 T.O. hp SLS)	204-011-105-001		20	1	
Restricted Category or Military TIS with (>1290 T.O. hp SLS)	204-011-105-001		Contact FAA*	Contact FAA*	Contact FAA*
Total RIN=					*460,000*

*Contact FAA at (817) 222 – 5159

Appendix 2 - Table 3

BILLING CODE 4910–13–U

Appendix 3—Ad Compliance Inspection Report

P/N 204–011–450–001/–007/–105/–113/–119 Main Rotor Mast

Provide the following information and mail or fax it to: Manager, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas, 76193–0170, USA Fax: 817–222–5783

Operator Name:
Aircraft Registration No:
Helicopter Model:
Helicopter S/N:
Mast P/N:
Mast S/N:
Mast RIN:
Mast Total TIS:

Inspection Results

Were any radii during inspection of this mast determined to be less than 0.020 inches? If yes, what was the dimension measured?

Was a burr found in the inspected snap ring grooves?

Were cracks noted during the inspection?

Who performed this inspection?

Provide any other comments?

Issued in Fort Worth, Texas, on December 5, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–31628 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–42]

Amendment of Class E5 Airspace; Columbus, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes a technical amendment to the Class E5 airspace at Columbus, GA. The Lawson VOR has been upgraded to a VOR/DME. Therefore, the airspace legal description must be amended to reflect this change.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, Jr., Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

The Lawson VOR was upgraded to a VOR/DME. As a result the airspace legal description must be amended. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action has no impact on users of the airspace in the vicinity of the Columbus Metropolitan Airport, Columbus, GA, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. 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 7400.9H, dated September 1, 2000, and effective September 16, 2000, 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 Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E5 airspace at Columbus, GA.

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. 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 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Columbus, GA [Revised]

Columbus Metropolitan Airport, GA
(Lat. 32°30′59″ N, long. 84°56′20″ W)
Lawson AAF
(Lat. 32°20′17″ N, long. 84°59′32″ W)
Lawson VOR/DME
(Lat. 32°19′57″ N, long. 84°59′36″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Columbus Metropolitan Airport and within a 7.6-mile radius of Lawson AAF and within 2.5 miles each side of Lawson VOR/DME 340° radial, extending from the 7.6-radius to 15 miles north of the VOR/DME, excluding that airspace within Restricted Area 3002 when it is active.

* * * * *

Issued in College Park, Georgia, on November 29, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–31707 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–43]

Amendment of Class D and Class E5 Airspace; Vero Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action makes a technical amendment to the Class D and Class E5 airspace at Vero Beach, FL. The geographic position coordinates for the Vero Beach Municipal Airport have been updated. Therefore, the airspace legal descriptions must be amended to reflect this change.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, Jr., Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

The geographic position coordinates for the Vero Beach Municipal Airport have been updated. As a result the airspace legal descriptions must be amended. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action has no impact on users of the airspace in the vicinity of the Vero Beach Municipal Airport, Vero Beach, FL, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 5000 and 6005 respectively of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, 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 Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class D and Class E5 airspace at Vero Beach, FL.

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. 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 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Vero Beach, FL [Revised]

Vero Beach Municipal Airport, FL
(Lat. 27°39′20″ N, long. 80°25′05″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Vero Beach Municipal Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times 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.

* * * * *

ASO FL E5 Vero Beach, FL [Revised]

Vero Beach Municipal Airport, FL
(Lat. 27°39′20″ N, long. 80°25′05″ W)
Vero Beach VORTAC
(Lat. 27°40′42″ N, long. 80°29′23″ W)
St. Lucie County International Airport, FL
(Lat. 27°29′42″ N, long. 80°22′06″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Vero Beach Municipal Airport and within 2.5 miles each side of Vero Beach VORTAC 296° radial, extending from the 6.7-mile radius to 7 miles west of the VORTAC and within a 7-mile radius of St. Lucie County International Airport.

* * * * *

Issued in College Park, Georgia, on November 29, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–31706 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 000720214–0337–02]

RIN 0691–AA39

International Services Surveys: BE–93 Annual Survey of Royalties, License Fees and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules amend the reporting requirements for the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments Between U.S. and Unaffiliated Foreign Persons.

The BE–93 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The data are needed to support U.S. trade policy initiatives, compile the U.S. international transactions accounts and the national income and product accounts, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The revised rules raise the exemption level for the BE–93 survey to $2 million in covered receipts or payments, from $500,000 on the previous (1999) survey. Raising the exemption level will reduce respondent burden, particularly for small companies.

DATES: These rules will be effective January 12, 2001.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the September 21, 2000, **Federal Register**, volume 65, No. 184, 65 FR 57117–57119, BEA published a notice of proposed rulemaking setting forth revised reporting requirements for the BE–93 Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons. No comments on the proposed rules were received. Thus, these final rules are the same as the proposed rules.

These final rules amend 15 CFR part 801 by revising paragraph 801.9(b)(5)(ii) to set forth revised reporting requirements for the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments Between U.S. and Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (P.L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended). Section 3103(a) of the Act provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services. In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE–93 is an annual survey of U.S. royalty and license fee transactions for intangible rights with unaffiliated foreign persons. The data are needed to support U.S. trade policy initiatives, compile the U.S. international transactions accounts and national income and product accounts, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The change to the BE–93 annual survey contained in these final rules is to require a BE–93 from all U.S. persons whose total receipts from, or total payments to, unaffiliated foreign persons for intangible rights exceeded $2 million during the reporting year. The new exemption level is an increase from the current level of $500,000. The increase is intended to reduce respondent burden, particularly for small companies. The data collected on the BE–93 are disaggregated by country and by type of intangible right.

Executive Order 12866

These final rules are not significant for purposes of E.O. 12866.

Executive Order 13132

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information required in these final rules has been approved by the Office of Management and Budget under the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number; such a Control Number (0608–0017) has been displayed.

Public reporting burden for this collection of information is estimated to vary from less than one hour to 25 hours, with an overall average burden of 4 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing the reviewing the collection of information.

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A. Paperwork Reduction Project 0608–0017, Washington, DC 20530. (Attention PRA Desk Officer for BEA.)

Regulatory Flexibility Act

The Assistant General Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. While the survey does not collect data on total sales or other measures of the overall size of businesses that respond to the survey, historically the respondent universe has been comprised mainly of major U.S. corporations. With the proposed increase in the exemption level for the survey from $500,000 to $2 million in covered receipts or payments, even fewer small businesses can be expected to be subject to reporting than in the past. Of those smaller businesses that must report, most will tend to have specialized operations and activities and will likely report only one type of royalty or license transaction, often limited to transactions with a single partner country; therefore, the burden on them can be expected to be small.

List of Subjects in 15 CFR Part 801

Economic statistics, Balance of payments, Foreign trade, Penalties, Report and recordkeeping requirements.

Dated: November 27, 2000.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; and E.O. 11961, 3 CFR, 1977 Comp., p.86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147; E.O. 12318, 3 CFR, 1981 Comp., p. 173; and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Section 801.9 is amended by revising paragraph (b)(5)(ii) to read as follows:

§ 801.9 Reports required.

* * * * *

(b) * * *

(5) * * *

(ii) *Exemption.* A U.S. person otherwise required to report is exempt if total receipts and total payments of the types covered by the form are each $2 million or less in the reporting year. If the total of either covered receipts or payments is more than $2 million in the reporting year, a report must be filed.

* * * * *

[FR Doc. 00–31689 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12, 113, 163 and 178

[T.D. 00–87]

RIN 1515–AC43

Amended Bond Procedures for Articles Subject to an Exclusion Order Issued by the U.S. International Trade Commission

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, proposed amendments to the Customs Regulations regarding bond procedures for the entry of articles subject to an exclusion order issued by the U.S. International Trade Commission (''Commission''). Merchandise that is subject to a Commission exclusion order may be entitled to entry under a special bond

prescribed by the Secretary of the Treasury in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the complainant. This document adds the text of this special importation and entry bond to the Customs Regulations, and makes conforming changes to other regulatory provisions that are impacted by the addition of the new bond text.

EFFECTIVE DATE: January 12, 2001.

FOR FURTHER INFORMATION CONTACT: Glen Vereb, Entry Procedures and Carriers Branch, (202) 927–1327.

SUPPLEMENTARY INFORMATION:

Background

Under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), the U.S. International Trade Commission (''Commission'') has the authority to conduct investigations into certain alleged unfair practices in import trade. Most complaints filed under this provision involve allegations of patent infringement, trademark infringement, or misappropriation of trade secrets. The Commission may determine that section 337 has been violated or, during the course of an investigation, that there is reason to believe that section 337 has been violated.

If the Commission finds a violation, or reason to believe there is a violation, of section 337, it may direct the Secretary of the Treasury to exclude the subject articles from entry into the U.S. During the period the Commission's exclusion order remains in effect, and prior to the date that the Commission's determination of a violation of section 337 becomes final, articles otherwise excluded may be entered under a single entry bond prescribed by the Secretary of the Treasury.

Certain statutory changes to section 337 of the Tariff Act of 1930 were enacted pursuant to the Uruguay Round Agreements Act (URAA), Public Law 103–465, 108 Stat. 4809 (December 8, 1994). Paragraphs (e)(1) and (j)(3) of section 337, as respectively amended by sections 321(a)(3) and (6) of the URAA, provide that articles subject to a Commission exclusion order may be entered under bond prescribed by the Secretary of the Treasury in an amount determined by the Commission to be sufficient to protect the complainant from any injury and that if the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the complainant.

On February 8, 2000, Customs published a document in the **Federal Register** (65 FR 6062) that proposed to amend the Customs Regulations to implement the statutory changes to section 337 effected by section 321 of the URAA.

In that document, it was proposed to create a new single entry bond that must be filed for articles subject to a Commission exclusion order. It was proposed that the amount of the single entry bond would be determined by the Commission to be sufficient to protect the complainant from any injury. It was proposed that if the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the 3 complainant. The procedures for importing merchandise subject to the bonding requirements of section 337 were proposed to be set forth in § 12.39, Customs Regulations. The new bond conditions were proposed to be set forth in part 113, Customs Regulations.

Further, it was proposed to remove any reference to Commission exclusion orders from § 113.62, as this section pertains to basic importation and entry bonds. The newly proposed bond to indemnify the complainant under section 337 is applicable where merchandise is subject to a Commission exclusion order and is set forth in appendix B to part 113. Customs wishes to emphasize that the proposed special importation and entry bond is in addition to, not in lieu of, the basic importation and entry bond (§ 113.62) and any other Customs requirements for the importation of merchandise subject to a Commission exclusion order.

It was also noted in the proposal that the ''(a)(1)(A)'' list of documents required for entry, set forth in the appendix to part 163 of the Customs Regulations, would be amended if the proposal were adopted. The (a)(1)(A) list would be amended to reflect the fact that the new bond would be required as an entry document for entry of merchandise covered by a Commission exclusion order.

In addition, it was noted in the proposal that part 178, which lists the information collections contained in the regulations and the control numbers assigned by OMB, would be amended accordingly if the proposal were adopted.

Comments were solicited on the proposal.

Discussion of Comment

One comment was received by Customs in response to the solicitation of comments.

Comment: The commenter recommended four changes to the text of the proposed bond, as follows:

(1) *Bond Obligee:* That additional text be included in the bond to better identify the actual complainant. This is suggested to be achieved by including a blank space for the complainant's name to be typed on the bond and by including a blank space in which to type the specific Commission case or investigation number;

(2) *Description of the Merchandise:* That the bond text require the entry date and entry number for the merchandise so that there is certainty as to which merchandise is secured by which bond;

(3) *Prompt Notice to the Principal from the Port Director Regarding the Commission Exclusion Determination:* That a condition of the bond be that the port director's notice to redeliver to the importer be promptly issued after the Commission investigation; and

(4) *Agreement to Pay Face Value of the Bond Upon Default of the Principal's Obligation to Export/Destroy the Merchandise:* That the seventh paragraph of the proposed bond text be clarified to indicate that the principal and the surety, ''jointly and severally,'' agree to pay an amount equal to the face value of the bond in the event of default.

Customs Response: With respect to these four recommendations, Customs agrees with the adoption of all but the third (*i.e.*, ''Prompt Notice to the Principal from the Port Director regarding the Commission Exclusion Determination''). Unlike the previous Commission bond that indemnified the Government, the new Commission bond indemnifies the complainant. Consequently, the new bond should impose as few preconditions as possible on the Government. Since a Commission order is either served on the principal, or made by general announcement in the **Federal Register**, there is no need to add, as a condition of the bond, the requirement that a port director issue a notice to redeliver, let alone impose a requirement that such a notice be issued ''promptly'' within a specified time period.

Conclusion

After review of the comment and further consideration, Customs has decided that the proposed amendments, with the changes to the text of the proposed special importation and entry bond discussed above, should be adopted as a final rule.

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments conform the Customs Regulations to reflect the

terms of an existing statute regarding bond procedures for articles subject to an exclusion order issued by the Commission, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that these amendments will not have a significant impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0222. 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 control number assigned by OMB.

The collection of information in this final rule is in appendix B to part 113. Although other parts of the Customs Regulations are being amended, all information required by these amendments is contained or identified in appendix B to part 113. The information requested is necessary to enable Customs to permit the entry of merchandise the subject of a Commission exclusion order under a bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended. The likely respondents are individuals or commercial organizations that seek to import merchandise that is the subject of a section 337 exclusion order into the U.S.

The estimated average annual burden associated with the collection of information in this final rule is 30 minutes per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, N.W. Washington, D.C. 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch at the address set forth above.

Drafting Information

The principal author of this document was Suzanne Kingsbury, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Restricted merchandise, Unfair competition.

19 CFR Part 113

Bonds, Customs duties and inspection, Imports.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, parts 12, 113, 163 and 178 of the Customs Regulations (19 CFR parts 12, 113, 163 and 178) are amended as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 and the specific authority citation for § 12.39 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Section 12.39 is also issued under 19 U.S.C. 1337, 1623.

* * * * *

2. Section 12.39(b)(2) is revised to read as follows:

§ 12.39 Imported articles involving unfair methods of competition or practices.

* * * * *

(b) * * *

(2) During the period the Commission's exclusion order remains in effect, excluded articles may be entered under a single entry bond in an amount determined by the International Trade Commission to be sufficient to protect the complainant from any injury. On or after the date that the Commission's determination of a violation of section 337 becomes final, as set forth in paragraph (a) of this section, articles covered by the determination will be refused entry. If a violation of section 337 is found, the bond may be forfeited to the complainant under terms and conditions prescribed by the Commission. To enter merchandise that is the subject of a Commission exclusion order, importers must: 9

(i) File with the port director prior to entry a bond in the amount determined by the Commission that contains the conditions identified in the special importation and entry bond set forth in appendix B to part 113 of this chapter; and

(ii) Comply with the terms set forth in 19 CFR 210.50(d) in the event of a forfeiture of this bond.

* * * * *

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows, and a new authority citation is added for § 113.74:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.74 also issued under 19 U.S.C. 1337.

§ 113.62 [Amended]

2. In § 113.62:

a. The introductory paragraph is amended by removing that portion of the text which reads '', except that a bond taken in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 shall be a single entry bond''; and

b. Paragraph (l)(1) is amended by removing the words ''except that in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 which has been released before such order becomes final, the obligors agree to pay liquidated damages in the amount specified in the order for failure to redeliver such merchandise'';

3. A new § 113.74 is added to read as follows:

§ 113.74 Bond conditions to indemnify a complainant under section 337 of Tariff Act of 1930, as amended.

A bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended, must contain the conditions listed in appendix B to this part. The bond must be a single entry bond and must be filed in accordance with the provisions set forth in 19 CFR 12.39(b)(2). For the forfeiture or return of this bond, the provisions of 19 CFR 210.50(d) will apply.

4. A new appendix B is added to part 113 to read as follows:

Appendix B to Part 113—Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended

This appendix contains the bond to indemnify a complainant under section

337 of the Tariff Act of 1930, as amended. The provisions contained in 11 §§ 12.39(b)(2) and 113.74 of the Customs Regulations (19 CFR Chapter I) and § 210.50(d) of the U.S. International Trade Commission Regulations (19 CFR Chapter II) apply.

Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, As Amended

_____ as principal and _____ as surety, are held and bound to _____, as the complainant in U.S. International Trade Commission case/investigation number _____, of unfair practices or methods of competition in import trade in violation of section 337, Tariff Act of 1930, as amended, in the sum of _____ dollars ($_____), for payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, by these conditions.

Pursuant to the provisions of section 337, Tariff Act of 1930, as amended, the principal and surety recognize that the Commission has, according to the conditions described in its order, excluded from, or authorized, entry into the United States of the following merchandise _____ _____ under entry number _____, dated _____.

The principal and surety recognize that the Commission has excluded that merchandise from entry until its investigation is completed, or until its decision that there is a violation of section 337 becomes final.

The principal and surety recognize that certain merchandise excluded from entry by the Commission was, or may be, offered for entry into the United States while the Commission's prohibition is in effect.

The principal and surety recognize that the principal desires to obtain a release of that merchandise pending a final determination of the merchandise's admissibility into the United States, as provided under section 337, and, for that purpose, the principal and surety execute this stipulation:

If it is determined, as provided in section 337 of the Tariff Act of 1930, as amended, to exclude that merchandise from the United States, then, on notification from the port director of Customs, the principal is obligated to export or destroy under Customs supervision the merchandise released under this stipulation within 30 days from the date of the port director's notification.

The principal and surety, jointly and severally, agree that if the principal defaults on that obligation, the principal and surety shall pay to the complainant an amount equal to the face value of the bond as may be demanded by him/her under the applicable law and regulations.

Witness our hands and seals this _____ day of _____ (month), _____ (year).

_____ (seal)
Principal

_____ (seal)
Surety

PART 163—RECORDKEEPING

1. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. In the appendix to part 163—Interim (a)(1)(A) List, under section ''IV.,'' the list of documents/records or information required for entry of special categories of merchandise is amended by adding the following new listing in the appropriate numerical order:

* * * * *

Part 113, Appendix B—Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control no.
*	*	*
Part 113—Appendix B	Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended.	1515–0222
*	*	*

Raymond W. Kelly,
Commissioner of Customs.

Approved: December 7, 2000.

Timothy E. Skud,
Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–31699 Filed 12–12–00; 8:45 am]
BILLING CODE 4820–02–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 132 and 163

[T.D. 00—86]

RIN 1515–AC54

Export Certificates for Lamb Meat Subject to Tariff-Rate Quota

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change, the interim rule amending the Customs Regulations that was published in the **Federal Register** on December 2, 1999, as T.D. 99–87. The interim rule set forth the form and manner by which an importer establishes that a valid export certificate is in effect for certain fresh, chilled or frozen lamb meat that is the subject of a tariff-rate quota, and the product of a participating country, as defined in interim regulations of the United States Trade Representative (USTR). The export certificate enables the importer to claim the in-quota rate of duty on the lamb meat.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Porter, Office of Field Operations, (202–927–5399).

SUPPLEMENTARY INFORMATION:

Background

By Presidential Proclamation No. 7208 dated July 7, 1999, as modified by Presidential Proclamation No. 7214 of July 30, 1999, the President, acting under the authority of section 203 of the Trade Act of 1974 (19 U.S.C. 2253), established a tariff-rate quota with respect to certain fresh, chilled or frozen lamb meat exported to the United States on or after July 22, 1999.

Under a tariff-rate quota, the United States applies one tariff rate, known as the in-quota tariff rate, to imports of a product up to a particular amount, known as the in-quota quantity, and another, higher rate, known as the over-quota rate, to imports of a product in excess of the given amount. The preferential, in-quota tariff rate would be applicable only to the extent that the aggregate in-quota quantity of a product allocated to a country had not been exceeded.

It is noted that the tariff-rate quota on lamb meat was established in response to a determination by the U.S. International Trade Commission under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) that lamb meat was being imported into the United States in such increased quantities as to substantially threaten serious injury to the domestic lamb meat industry. The tariff-rate quota is temporary in duration, being established for a period of three years and one day. It is intended to help facilitate efforts during this period by the domestic lamb meat industry to adjust to the increased import competition.

Specifically, the lamb meat covered by the tariff-rate quota consists of fresh, chilled or frozen lamb meat that is classified in subheading 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, or 0204.43.20 of the Harmonized Tariff Schedule of the United States (HTSUS). In order to implement the tariff-rate quota for the described lamb meat, Presidential Proclamation No. 7208, as amended by Presidential Proclamation No. 7214, modified subchapter III of Chapter 99, HTSUS, so as to list the in-quota quantities of lamb meat allocated to those countries covered by the tariff-rate quota, together with the in-quota and over-quota rates of duty applicable to the lamb meat.

Under Presidential Proclamation No. 7214, the United States Trade Representative (USTR) was given authority to administer the tariff-rate quota on the imported lamb meat.

As part of the implementation of this tariff-rate quota, the USTR offered exporting countries that have an allocation of the in-quota quantity the opportunity to use export certificates for their lamb meat exports to the United States. While a country does not need to participate in the export-certificate program in order to receive the in-quota tariff rate for its share of the in-quota quantity, using export certificates assures an exporting country that only those exports that it intends for the United States market are counted against its in-quota allocation, and it helps ensure that such imports do not disrupt the orderly marketing of lamb meat in the United States.

The USTR issued an interim rule establishing regulations for this export-certificate program (15 CFR part 2014) (64 FR 56429; October 20, 1999). To this end, an exporting country wishing to participate in the export-certificate program must notify the USTR and provide the necessary supporting information. As defined in the USTR interim regulations (15 CFR 2014.2(c)), a participating country is a country that has received an allocation of the in-quota quantity of the tariff-rate quota, and that the USTR has determined, and has so informed Customs, is eligible to use export certificates for their lamb meat products exported to the United States. The USTR has stated that it intends to publish a notice in the **Federal Register** whenever a country becomes, or ceases to be, a participating country. In this connection, Australia and New Zealand have already requested, and have been approved by USTR, to use export certificates for their lamb meat that is exported to the United States, as noted in the USTR interim rule.

Accordingly, by a document published in the **Federal Register** (64 FR 67481) on December 2, 1999, as T.D. 99–87, Customs issued an interim rule setting forth a new § 132.16, Customs Regulations (19 CFR 132.16), in order to implement the USTR interim rule. Section 132.16 prescribes the form and manner by which an importer establishes that a valid export certificate exists, including a unique number for the certificate that must be referenced on the entry or withdrawal from warehouse for consumption. This was intended to ensure that no imports of the specified lamb meat products of a participating country would be counted against the country's in-quota allocation unless the products were covered by a proper export certificate. The export certificate enables the importer to claim the in-quota rate of duty on the lamb meat.

In addition, the interim rule revised the Interim (a)(1)(A) list of records required for the entry of merchandise, that is set forth in an Appendix to part 163, Customs Regulations (19 CFR part 163, Appendix). As amended, the list made reference to the requirement in § 132.15, Customs Regulations (19 CFR 132.15) and in new § 132.16, Customs Regulations (19 CFR 132.16), that an importer possess a valid export certificate, respectively, for beef or lamb meat subject to a tariff-rate quota that is the product of a participating country, in order that the importer may claim the applicable in-quota rate of duty. The interim rule also made a technical correction to § 132.15, Customs Regulations.

Discussion of Comments

Two comments were received in response to the interim rule. Both were submitted by or on behalf of trade associations. One commenter unconditionally supported the interim rule. The other commenter supported the establishment of an export-certificate program for lamb meat subject to the tariff-rate quota, but raised a question about how the applicable quota year under the export-certificate program was to be determined. The specific issue raised by this commenter, together with Customs response, is set forth below.

Comment

The commenter sought clarification as to whether the quota year under the export-certificate program was to be based on the date of entry or withdrawal for consumption, or on the date of exportation. The commenter asserted that the quota period for purposes of administering the tariff-rate quota for lamb meat should be based on the yearly period in which the lamb meat is entered or withdrawn for consumption, rather than on the yearly period in which the lamb meat is exported to the United States. The commenter requested that § 132.16 add a specific provision to this effect. The commenter believed that basing the quota period and the validity of the export certificate on the date of exportation, rather than on the date of entry or withdrawal for consumption, represented a departure from law as well as customary practice.

Customs Response

The administration of the tariff-rate quota for lamb meat was delegated to the USTR by Presidential Proclamation No. 7214 of July 30, 1999 (64 FR 42265; August 4, 1999). Thus, the determination of the quota year for purposes of the export-certificate program implementing this tariff-rate quota properly falls within the scope of USTR's authority. In adopting its interim rule as a final rule (65 FR 40049; June 29, 2000), the USTR has directly addressed the definition of the quota year in this matter.

Specifically, in accordance with 15 CFR 2014.2(g) of the USTR final rule, for purposes of applying the tariff-rate quota for lamb meat under the export-certificate program, the quota year is the yearly period in which the subject lamb meat is exported to the United States (from July 22, 1999 through July 21, 2000, inclusive; from July 22, 2000 through July 21, 2001, inclusive; and from July 22, 2001 through July 21, 2002, inclusive). This means that lamb meat covered by a valid export certificate would be entitled, upon entry or withdrawal for consumption, to the in-quota rate of duty that is in effect for the period within which the lamb meat is exported to the United States (15 CFR 2014.2(g), 2014.3(b)(2) and 2014.3(b)(4) of the USTR final rule).

For example, lamb meat subject to the export-certificate program that is exported on July 20, 2000, and entered for consumption on July 25, 2000, would be entitled to the in-quota rate of 9% ad valorem, if it is covered by a valid export certificate, because this is the in-quota rate in effect for the yearly (quota) period running from July 22, 1999, through July 21, 2000, inclusive, during which the product is exported to the United States.

It is noted that the USTR final rule in this case is governed by the Annex to Presidential Proclamation No. 7214 (64 FR 42265, at 42267) which plainly applies the tariff-rate quota for lamb meat based upon its date of exportation, as described above. To this effect, the Annex so modified subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS).

It is further noted that textile quotas, which are usually absolute in nature, are also similarly determined based upon the date of export, as opposed to the date of entry or withdrawal for consumption.

Conclusion

For these reasons, and after careful consideration of the comment and further review of the matter, Customs concludes that the amendments regarding parts 132 and 163, Customs Regulations (19 CFR parts 132 and 163) that appeared in the interim rule published in the **Federal Register** (64 FR 67481) on December 2, 1999, as T.D. 99–87, should be adopted as a final rule without change.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this final rule because it is within the foreign affairs function of the United States. Also, for the above reason, there is no need for a delayed effective date under 5 U.S.C. 553(d). Because this document is not subject to the requirements of 5 U.S.C. 553, as noted, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply; and because this document involves a foreign affairs function of the United States, it is not subject to the provisions of E.O. 12866.

Paperwork Reduction Act

The collections of information involved in this final rule have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0065 (Entry summary and continuation sheet) and 1515–0214 (General recordkeeping and record production requirements). This rule does not substantively change the existing approved information collections.

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 control number assigned by OMB.

List of Subjects

19 CFR Part 132

Agriculture and agricultural products, Customs duties and inspection, Quotas, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the amendments relating to parts 132 and 163 that appeared in the interim rule that was published at 64 FR 67481 on December 2, 1999, are adopted as a final rule without change.

Raymond W. Kelly,
Commissioner of Customs.

Approved: October 6, 2000.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–31700 Filed 12–12–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 602

[TD 8910]

RIN 1545–AV28

Electronic Tip Reports

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends the regulations dealing with the requirement that tipped employees report their tips to their employer. These final regulations permit employers to establish electronic systems for use by their tipped employees in reporting tips to the employer. These final regulations also address substantiation requirements for employees using the electronic system.

DATES: *Effective Date:* These regulations are effective December 13, 2000.

Applicability Dates: For dates of applicability, see § 31.6053–1(d)(6) of these regulations.

FOR FURTHER INFORMATION CONTACT: Karin Loverud at 202–622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations 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 1545–1603. Responses to this collection of information are mandatory.

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 control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent varies from 1 hour to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this 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 January 26, 1998, the IRS published in the **Federal Register** (63 FR 3681) a notice of proposed rulemaking (REG–104691–97) under section 6053 of the Internal Revenue Code relating to electronic tip reports. The notice proposed to amend § 31.6053–1 and § 31.6053–4 of the employment tax regulations.

No written comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held. Accordingly, the proposed regulations are adopted as final regulations.

The final regulations are consistent with the provisions of the Electronic Signatures in Global and National Commerce Act.

Special Analyses

It has been determined that these final regulations are 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. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act (5 U.S.C. chapter 6), that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. The collection of information in § 31.6053–1 is imposed solely on individuals, not on any small entities, and the regulations provide flexibility to employees who must provide the information required by statute, thereby reducing burden. With respect to the collection of information in § 31.6053–4, the certification is based on the expectation of the IRS that most businesses that choose to implement the electronic tip reporting provisions will be larger businesses with many employees and sophisticated computer systems. Moreover, because the provision is wholly elective, any small business that would be adversely impacted may choose not to use electronic tip reporting. Finally, the Service expects that for those small entities that choose to implement the provision, the use of electronic tip reporting will reduce overall burden by reducing paper collections. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Karin Loverud, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 31

Employment taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.6053–1 is amended as follows:

1. Paragraph (a) is revised.
2. The introductory text of paragraph (b)(1) is revised.
3. The last sentence of paragraph (b)(1)(iii) is revised.
4. Paragraph (b)(2) is revised.
5. Paragraph (c) is revised.
6. Paragraph (d) is added.

The revisions and additions read as follows:

§ 31.6053–1 Report of tips by employee to employer.

(a) *Requirement that tips be reported*—(1) *In general.* An employee who receives, in the course of employment by an employer, tips that constitute wages as defined in section 3121(a) or section 3401, or compensation as defined in section 3231(e), must furnish to the employer a statement, or statements, disclosing the total amount of the tips received by the employee in the course of employment by the employer. Tips received by an employee in a calendar month in the course of employment by an employer that are required to be reported to the employer must be reported on or before the 10th day of the following month. For example, tips received by an employee in January 2000 are required to be reported by the employee to the employer on or before February 10, 2000.

(2) *Cross references.* For provisions relating to the treatment of tips as wages for purposes of the Federal Insurance Contributions Act (FICA) tax under sections 3101 and 3111, see sections 3102(c), 3121(a)(12), and 3121(q) and §§ 31.3102–3 and 31.3121(a)(12)–1. For provisions relating to the treatment of tips as wages for purposes of the tax under section 3402 (income tax withholding), see sections 3401(a)(16), 3401(f), and 3402(k) and §§ 31.3401(a)(16)–1, 31.3401(f)–1, and 31.3402(k)–1. For provisions relating to the treatment of tips as compensation for purposes of the Railroad Retirement Tax Act (RRTA) tax under sections 3201 and 3201, see section 3231(e) and § 31.3231(e)–1(a).

(b) * * * (1) *In general.* The statement described in paragraph (a) of this section can be provided on paper or transmitted electronically. The statement must be signed by the employee and must disclose:

* * * * *

(iii) * * * If the statement is for a period of less than 1 calendar month, the beginning and ending dates of the period must be included (for example, January 1 through January 8, 1998).

* * * * *

(2) *Form of statement*—(i) *In general.* No particular form is prescribed for use in furnishing the statement required by this section. The statement may be furnished on paper or transmitted electronically. An electronic system and all tip statements generated by that system must meet the requirements of paragraph (d) of this section. If the employer does not provide any other means for the employee to report tips, the employee may use Form 4070, ''Employee's Report of Tips to Employer.''

(ii) *Single-purpose forms.* A statement may be furnished on an employer-provided form. The form may be on paper or in electronic form. An employer that provides a paper form must make blank copies of the form readily available to all tipped employees. Any form, whether paper or electronic, provided by an employer for use by its tipped employees solely to report tips must meet all the requirements of paragraph (b)(1) of this section.

(iii) *Regularly used forms.* Instead of requiring that tips be reported as described in paragraph (b)(2)(ii) of this section on a special form used solely for tip reporting, an employer may prescribe regularly used forms for use by employees in reporting tips. A regularly used form may be on paper or in electronic form (such as a time card or report), must meet the requirements of paragraph (b)(1) (iii) and (iv) of this section, must contain identifying information that will ensure accurate identification of the employee by the employer, and is permitted to be used only if the employer furnishes the employee a statement suitable for retention showing the amount of tips

reported by the employee for the period. The employer statement may be furnished when the employee reports the tips, when wages are first paid following the reporting of tips by the employee, or within a short time after the wages are paid. The employer may meet this requirement, for example, through the use of a payroll check stub or other payroll document regularly furnished (if not less frequent than monthly) by the employer to the employee showing gross pay and deductions.

(c) *Period covered by, and due date of, tip statement*—(1) *In general.* A tip statement furnished by an employee to an employer may not cover a period greater than 1 calendar month. An employer may, however, require the submission of a statement in respect of a specified period of time, for example, on a weekly or biweekly basis, regular payroll period, etc. An employer may specify, subject to the limitation in paragraph (a) of this section, the time within which, or the date on which, the statement for a specified period of time should be submitted by the employee. For example, a statement covering a payroll period may be required to be submitted on the first (or second) day following the close of the payroll period. A statement submitted by an employee after the date specified by the employer for its submission nevertheless is a statement furnished pursuant to section 6053(a) and this section if it is submitted to the employer on or before the 10th day following the month in which the tips were received.

(2) *Termination of employment.* If an employee's employment terminates, the employee must furnish a tip statement to the employer when the employee ceases to perform services for the employer. A statement submitted by an employee after the date on which the employee ceases to perform services for the employer is a statement furnished pursuant to section 6053(a) and this section if the statement is submitted to the employer on or before the earlier of the day on which the final wage payment is made by the employer to the employee or the 10th day following the month in which the tips were received.

(d) *Requirements for electronic systems*—(1) *In general.* The electronic system must ensure that the information received is the information transmitted by the employee and must document all occasions of access that result in the transmission of a tip statement. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and transmitting the statement is the employee identified in the statement transmitted.

(2) *Same information as on paper statement.* The electronic tip statement must provide the employer with all the information required by paragraph (b)(1) of this section.

(3) *Signature.* The electronic tip statement must be signed by the employee. The electronic signature must identify the employee transmitting the electronic tip statement and must authenticate and verify the transmission. For this purpose, the terms *authenticate* and *verify* have the same meanings as they do when applied to a written signature on a paper tip statement. Any form of electronic signature that satisfies the foregoing requirements is permissible.

(4) *Copies of electronic tip statements.* Upon request by the Internal Revenue Service (IRS), the employer must supply the IRS with a hard copy of the electronic tip statement and a statement that, to the best of the employer's knowledge, the electronic tip statement was filed by the named employee. The hard copy of the electronic tip statement must provide the information required by paragraph (b)(1) of this section, but need not be a facsimile of Form 4070 or any employer-designed form.

(5) *Record retention.* The record retention requirements applicable to automatic data processing systems also apply to electronic tip reporting systems.

(6) *Effective date.* The provisions pertaining to electronic systems and electronic tip reports are applicable as of December 13, 2000. However, employers may apply these provisions to earlier periods.

Par. 3. Section 31.6053–4 is amended as follows:

1. A sentence is added to paragraph (a)(1) after the third sentence.

2. A sentence is added to paragraph (a)(2) after the fourth sentence.

The additions read as follows:

§ 31.6053–4 Substantiation requirements for tipped employees.

(a) * * * (1) * * * The Commissioner may by revenue ruling, procedure or other guidance of general applicability provide for other methods of demonstrating evidence of tip income. * * *

(2) * * * In addition, an electronic system maintained by the employer that collects substantially similar information as Form 4070A may be used to maintain such daily record, provided the employee receives and maintains a paper copy of the daily record. * * *

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (b) is amended by revising the entries for 31.6053–1 and 31.6053–4 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * *	*
31.6053–1	1545–0029 1545–0062 1545–0064 1545–0065 1545–1603
* * * *	*
31.6053–4	1545–0065 1545–1603
* * * *	*

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: August 25, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–31499 Filed 12–12–00; 8:45 am]

BILLING CODE 4830–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2525

RIN 3045–AA09

AmeriCorps Education Awards

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: We are amending a provision of our National Service Trust regulations relating to the permitted uses of the AmeriCorps education award. This change will expand the definition of ''current'' educational expenses to include expenses incurred after an individual enrolls in a term of service as an AmeriCorps member.

DATES: This final rule is effective February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Gary Kowalczyk, Coordinator of National Service Programs, Corporation for National and Community Service, (202) 606–5000, ext. 340. T.D.D. (202) 565–2799.

SUPPLEMENTARY INFORMATION:

Background

Through this document, the Corporation for National and Community Service adopts a final rule regarding AmeriCorps education awards. Under the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*), an individual who successfully completes a term of service in a national service position (referred to as an ''AmeriCorps member'') is eligible for an education award. An AmeriCorps member may use an education award to repay qualified student loans or to pay for approved educational expenses.

We published a proposed rule on December 1, 1999 (64 FR 67235) to clarify one provision regarding eligibility for an education award and another provision concerning the use of the education award to pay current educational expenses at an institution of higher education. We have determined not to proceed on the proposed change regarding eligibility. Accordingly, this final rule involves only a change to the rules governing the payment of current educational expenses.

Definition of Current Educational Expenses

Section 148(c) allows an AmeriCorps member to use the education award to pay for ''current'' costs of attendance at a qualified institution of higher education. The previous rule published on July 12, 1999, defined ''current'' expenses as covering only those expenses incurred after the completion of service. This rule expands the definition of ''current'' educational expenses to include expenses incurred after an individual enrolls in a term of service as an AmeriCorps member. We believe that this change in definition will help to avoid unnecessary financial hardship for AmeriCorps members who serve while also attending an institution of higher education.

Discussion of the Public Comments

The proposed rule of December 1, 1999, gave the public sixty days to submit comments. We received one comment regarding current educational expenses. One commenter expressed concern that the change in definition of ''current'' educational expenses would place an undue administrative burden on the Corporation and local program operators to monitor the pace of such expenditures against the value of the education award as it is earned. We do not believe that this concern is well-founded. The change in definition will not require such monitoring, as there is no necessary connection between the two amounts. The rule simply authorizes an AmeriCorps member to use an education award to pay for costs of attendance at an approved institution of higher education for a period of attendance that begins after the member's term of service.

Executive Order 12866

We have determined that this regulatory action is not a ''significant'' rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

We have determined that this regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, we have not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Because these changes do not authorize any information collection activity outside the scope of existing regulations, this regulatory action is not subject to review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*). For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects in 45 CFR Part 2525

Grant programs—social programs, Student aid, Volunteers.

Accordingly, the Corporation for National and Community Service amends 45 CFR chapter XXV as follows:

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

1. The authority citation for part 2525 continues to read as follows:

Authority: 42 U.S.C. 12601–12604.

2. Section 2525.20 is amended by revising the definition of ''Current educational expenses'' to read as follows:

§ 2525.20 Definitions.

* * * * *

Current educational expenses. The term *current educational expenses* means the cost of attendance for a period of enrollment in an institution of higher education that begins after an individual enrolls in an approved national service position.

* * * * *

Dated: December 6, 2000.

Wendy Zenker,

Chief Operating Officer, Corporation for National and Community Service.

[FR Doc. 00–31669 Filed 12–12–00; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 80 and 95

[PR Docket No. 92–257; RM–9664; FCC 00–370]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: In this document, the Commission amends its rules to promote operational, technical, and regulatory flexibility for Automated Maritime Telecommunications System (AMTS) and high seas public coast stations. These final rules will eliminate the application and engineering study requirements and modify the broadcaster notification requirement for new AMTS stations that qualify as fill-in stations, extend the construction requirement for new AMTS systems from eight months to two years, provide

AMTS licensees with much-needed technical flexibility, extend the high seas public coast construction requirement to twelve months, and eliminate the HF channel loading requirement for high seas public coast stations. The Commission believes that this action will increase competition in the provision of telecommunications services, promote more efficient use of maritime spectrum, increase the types of telecommunications services available to vessel operators, allow maritime commercial mobile radio service (CMRS) providers to respond more quickly to market demand, and reduce regulatory burdens on AMTS and high seas public coast station licensees.

DATES: Effective January 12, 2001.

FOR FURTHER INFORMATION CONTACT: Keith Fickner, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–7308.

SUPPLEMENTARY INFORMATION:

1. The Commission's Fourth Report and Order (4th R&O) PR Docket No. 92–257, FCC 00–370, was adopted October 13, 2000, and released on November 16, 2000. The full text of this Commission's 4th R&O is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037. The full text may also be downloaded at: *http://www.fcc.gov/Wireless/Orders/2000/fcc00370.txt.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the 4th R&O

2. The Commission amends its rules to eliminate the application and engineering study requirements and to modify the broadcaster notification requirement for new AMTS stations whose predicted interference contours do not encompass any land area beyond the composite interference contour of the applicant's existing system. This is consistent with the Commission's treatment of certain other CMRS licensees (*i.e.*, paging and radiotelephone service licensees, and SMR system licensees in the 800 MHz band).

3. The Commission concludes that the construction requirement for new AMTS systems and system extensions should be extended from eight months to two years because the Wireless Telecommunications Bureau's licensing experience has shown that licensees generally have found eight months to be insufficient time in which to construct a system of coast stations. It believes that the one-year period that it has adopted for other site-based CMRS services would be insufficient in most AMTS cases.

4. The Commission amends its rules to eliminate the modulation and channelization requirements for AMTS coast stations, so long as transmissions do not exceed the adjacent channel emission limitations of each station's authorization. It concludes that modulation and channelization requirements are unnecessary with respect to AMTS because AMTS frequencies are assigned in channel blocks. AMTS transmitters will now be allowed to use any modulation or channelization scheme so long as emissions are attenuated at the band edges of each station's assigned frequency group(s) in accordance with § 80.211 of the Commission's Rules.

5. The Commission concludes that AMTS licensees should have the authority to provide fixed or hybrid CMRS services on a co-primary basis with mobile services. It believes that this operational flexibility will enhance AMTS licensees ability to meet customer requirements and demand, and promote regulatory parity among maritime CMRS providers and between maritime CMRS providers and other CMRS providers.

6. The Commission amends its rules to eliminate channel loading requirements for high seas public coast stations, including the limits that were placed on the number of frequencies that could be obtained in an initial or subsequent application, because it concludes that the imposition of such requirements could unfairly impair AMTS providers ability to compete with other maritime CMRS providers.

7. Finally, the Commission extends the existing construction requirement from eight months to twelve months for high seas public coast stations because a twelve-month construction period is consistent with the construction periods that have been adopted for other site-based CMRS licensees. The Commission believes that employing long-term construction requirements based on population or geographic service areas, in this case, is inappropriate.

Final Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Second Further Notice of Proposed Rule Making (2nd FNPRM) in this proceeding. The Commission sought written public comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the 4th R&O

9. Our objective is to promote operational, technical, and regulatory flexibility for Automated Maritime Telecommunications System (AMTS) and high seas public coast stations. Specifically, this action will: (1) Provide additional flexibility for AMTS coast stations by permitting the construction and operation of fill-in stations without prior Commission authorization, eliminating the current emission restrictions and channel plan, and increasing the permitted power levels for point-to-point communications, and (2) eliminate the required showing of channel loading and extend the construction period for high seas public coast stations. We find that these actions will allow maritime CMRS providers to better respond to market demand, increase competition in the provision of telecommunications services, promote more efficient use of marine spectrum, increase the types of telecommunications services available to vessel operators, and reduce regulatory burdens on coast station licensees. Thus, we conclude that the public interest is served by amending our rules as described above.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

10. No comments were submitted in response to the IRFA. In general comments on the 2nd FNPRM, however, some small business commenters (*i.e.*, Paging Systems, Inc., RegioNet Wireless LLC, Waterway Communications System LLC) raised issues that might affect small business entities. In particular, some small business commenters argued that the construction period for AMTS and high seas public coast stations should be extended from eight months to two years, and that AMTS licensees should be permitted to construct fill-in stations without prior Commission approval. The Commission carefully considered each of these comments in reaching the decision set forth herein.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

11. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA

generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

12. The rules adopted herein will affect licensees using AMTS and high seas public coast spectrum. In the *Third Report and Order* in this proceeding, the Commission defined the term ''small entity'' specifically applicable to public coast station licensees as any entity employing fewer than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of AMTS and high seas public coast station licensees that are small businesses, and no commenters responded to our request for information regarding the number of small entities that use or are likely to use public coast spectrum, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. There are three AMTS public coast station licensees and approximately thirteen high seas public coast station licensees. Based on the rules adopted herein, it is unlikely that more than seven licensees will be authorized in the future. Therefore, for purposes of our evaluations and conclusions in this FRFA, we estimate that there are approximately twenty-five AMTS and high seas public coast station licensees that are small businesses, as that term is defined by the Small Business Administration.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. In order to permit AMTS licensees to construct fill-in stations without notifying the Commission, while still enabling amateur radio licensees to abide by the exclusion and notification distances in our rules, we are requiring AMTS licensees to notify two organizations that represent amateur licensees of the location of their fill-in stations. The estimated time for preparing these letters is twenty minutes per fill-in station. This is the same time requirement for both large and small entities, however, it is such a nominal requirement that it should not be a burden to any entity.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

15. The Commission in this proceeding has considered comments on implementing broad changes to the maritime service rules. It has adopted alternatives which minimize burdens placed on small entities. First, it has decided to permit AMTS licensees to construct fill-in stations without notifying the Commission, avoiding the need to file an application. Also, it has extended the eight-month construction requirement to two years for all AMTS stations and one year for all high seas public coast stations. In addition, the Commission has eliminated the requirement that applicants for HF high seas frequencies show that their current channels are fully loaded before they may obtain additional channels.

16. The Commission considered and rejected several significant alternatives. It rejected the National Association of Broadcasters and Association for Maximum Service Television's alternative of moving the rules governing the Low Power Radio Service from Part 95 to Part 80 of its rules. This was rejected because it could have caused confusion among licensees. Instead, the Commission will leave the LPRS rules in place. The Commission also rejected the alternative of basing the construction requirement for high seas public coast stations on the population of the station's service area as it has for other services, such as AMTS. This would have required licensees to acquire and act upon additional data. Instead, the Commission used a time-based construction requirement because it will ensure rapid delivery of service to the public.

Report to Congress

The Commission will send a copy of the 4th R&O, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the 4th R&O, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the 4th R&O and FRFA (or summaries thereof) will be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

List of Subjects 47 CFR Parts 80 and 95

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 80 and 95 as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.25 is amended by revising paragraph (b) to read as follows:

§ 80.25 License term.

* * * * *

(b) Licenses other than ship stations in the maritime services will normally be issued for a term of ten years from the date of original issuance, major modification, or renewal.

* * * * *

3. Section 80.49 is amended by revising paragraph (a)(2) and adding a new paragraph (a)(3) to read as follows:

§ 80.49 Construction and regional service requirements.

(a) * * *

(2) For LF, MF, and HF band public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies

authorized have not been placed in operation within twelve months from the date of grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

(3) For AMTS band public coast station licensees, when a new license has been issued or additional operating frequencies have been authorized, if the station or frequencies authorized have not been placed in operation within two years from the date of grant, the authorization becomes invalid and must be returned to the Commission for cancellation.

* * * * *

4. Section 80.105 is revised to read as follows:

§ 80.105 General obligations of coast stations.

Each coast station or marine-utility station must acknowledge and receive all calls directed to it by ship or aircraft stations. Such stations are permitted to transmit safety communication to any ship or aircraft station. VHF (156–162 MHz) and AMTS (216–220 MHz) public coast stations may provide fixed or hybrid services on a co-primary basis with mobile operations.

5. Section 80.213 is amended by revising paragraphs (a)(2) and (d) to read as follows:

§ 80.213 Modulation requirements.

(a) * * *

(2) When phase or frequency modulation is used in the 156–162 MHz band the peak modulation must be maintained between 75 and 100 percent. A frequency deviation of ± 5 kHz is defined as 100 percent peak modulation; and

* * * * *

(d) Ship and coast station transmitters operating in the 156–162 MHz band must be capable of proper operation with a frequency deviation of ± 5 kHz when using any emission authorized by § 80.207 of this part.

* * * * *

6. Section 80.215 is amended by removing and reserving footnote 7, and revising the introductory test of paragraphs (h)(2), and (i) and revising paragraph (h)(5) to read as follows:

§ 80.215 Transmitter power.

* * * * *

(h) * * *

(2) Coast stations located less than 169 kilometers (105 miles) from a channel 13 TV station, or less than 129 kilometers (80 miles) from a channel 10 TV station, or when using a transmitting antenna height above ground greater than 61 meters (200 feet), must submit a plan to limit interference to TV reception, unless the station's predicted interference contour is fully encompassed by the composite interference contour of the system's existing stations, or the station's predicted interference contour extends the system's composite interference contour over water only (disregarding uninhabited islands). The plan must include:

* * * * *

(5) The transmitter power, as measured at the input terminals to the station antenna, must be 50 watts or less.

(i) A ship station must have a transmitter output not exceeding 25 watts and an ERP not exceeding 18 watts. The maximum transmitter output power is permitted to be increased to 50 watts under the following conditions:

* * * * *

7. Section 80.357 is amended by removing paragraphs (b)(2)(ii)(A) through (b)(2) (ii)(C) and revising paragraph (b)(2)(ii) to read as follows:

§ 80.357 Morse code working frequencies.

* * * * *

(b) * * *

(2) * * *

(ii) Frequencies above 5 MHz may be assigned primarily to stations serving the high seas and secondarily to stations serving inland waters of the United States, including the Great Lakes, under the condition that interference will not be caused to any coast station serving the high seas.

* * * * *

8. Section 80.371 is amended by removing paragraph (b)(3) and (b)(4), and revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(b) *Working frequencies in the 4000–27500 kHz band.* (1) The following table specifies the carrier frequencies available for assignment to public coast stations. The paired ship frequencies are available for use by authorized ship stations. The specific frequency assignment available to public coast stations for a particular geographic area is indicated by an ''x'' under the appropriate column. The allotment areas are in accordance with the ''Standard Defined Areas'' as identified in the International Radio Regulations, Appendix 25 Planning System, and indicated in the preface to the International Frequency List (IFL).

WORKING CARRIER FREQUENCY PAIRS IN THE 4000–27500 KHZ BAND

Channel	Ship transmit	Coast transmit	USA–E	USA–W	USA–S	USA–C	VIR	HWA	ALS	PTR	GUM
401	4065	4357	x	x	x	x					
403	4071	4363	x	x	x	x		x		x	
404	4074	4366	x	x		x			x		
405	4077	4369	x	x	x	x		x	x		
409	4089	4381	x	x	x	x					
410	4092	4384	x								x
411	4095	4387	x	x		x					
412	4098	4390	x	x	x						
414	4104	4396	x		x				x	x	
416	4110	4402	x	x		x			x		
417	4113	4405	x	x	x	x					
418	4116	4408				x		x			
419	4119	4411		x	x			x		x	x
422	4128	4420	x	x					x		
423	4131	4423	x	x	x	x			x		
424	4134	4426				x					
427	4143	4435	x	x	x	x	x	x	x		
428	4060	4351			x						
604	6209	6510	x	x	x	x		x	x	x	x

WORKING CARRIER FREQUENCY PAIRS IN THE 4000–27500 kHz BAND—Continued

Channel	Ship transmit	Coast transmit	USA–E	USA–W	USA–S	USA–C	VIR	HWA	ALS	PTR	GUM
605	6212	6513				x					
607	6218	6519			x						
802	8198	8722	x		x			x	x		
803	8201	8725				x					
804	8204	8728	x	x	x						
805	8207	8731	x	x	x						
807	8213	8737				x					
808	8216	8740	x	x				x	x		x
809	8219	8743	x	x							
810	8222	8746	x	x	x						
811	8225	8749	x	x	x						
814	8234	8758	x	x	x	x		x	x		
815	8237	8761	x	x	x						
817	8243	8767				x					
819	8249	8773				x					
822	8258	8782	x	x	x						
824	8264	8788	x	x	x						
825	8267	8791	x	x	x						
826	8270	8794	x			x					x
829	8279	8803	x	x	x					x	
830	8282	8806			x					x	
831	8285	8809		x	x					x	
836	8113	8713			x						
837	8128	8716			x						
1201	12230	13077	x	x	x						
1202	12233	13080	x	x	x	x					
1203	12236	13083	x	x	x	x		x	x		
1206	12245	13092	x	x	x						
1208	12251	13098	x		x						
1209	12254	13101	x	x	x				x		
1210	12257	13104	x	x	x						x
1211	12260	13107	x	x	x	x			x		
1212	12263	13110	x		x			x	x	x	
1215	12272	13119		x	x					x	
1217	12278	13125				x					
1222	12293	13140						x			
1223	12296	13143	x	x	x						x
1225	12302	13149	x		x						
1226	12305	13152	x	x	x						
1228	12311	13158	x	x		x					
1229	12314	13161		x							
1230	12317	13164	x	x	x			x			
1233	12326	13173			x						
1234	12329	13176		x	x			x	x		
1235	12232	13179			x						
1236	12335	13182			x						
1237	12338	13185	x		x	x	x				
1601	16360	17242	x		x			x	x		
1602	16363	17245	x	x	x						
1603	16366	17248	x	x	x				x		
1605	16372	17254	x	x							
1607	16378	17260	x	x	x				x		
1609	16384	17266	x	x	x						
1610	16387	17269	x	x	x						
1611	16390	17272	x	x	x						
1616	16405	17287	x	x	x			x	x		
1620	16417	17299	x			x					
1624	16429	17311	x	x	x						
1626	16435	17317	x								
1631	16450	17332	x								
1632	16453	17335	x	x	x				x		
1641	16480	17362	x	x	x						
1642	16483	17365	x	x	x	x	x	x	x	x	
1643	16486	17368			x						
1644	16489	17371	x	x	x	x		x	x		
1645	16492	17374			x						
1646	16495	17377		x							
1647	16498	17380	x	x	x	x			x		
1648	16501	17383		x		x	x	x	x	x	
1801	18780	19755	x	x	x	x	x	x	x	x	
1802	18783	19758	x		x	x	x			x	

WORKING CARRIER FREQUENCY PAIRS IN THE 4000–27500 KHZ BAND—Continued

Channel	Ship transmit	Coast transmit	USA–E	USA–W	USA–S	USA–C	VIR	HWA	ALS	PTR	GUM
1803 ..	18786	19761	x	x	.....	x	x	x	x	x	.....
1804 ..	18789	19764	.....	x	x	.....	.....	x	x	.....	.....
1805 ..	18792	19767	.....	x	.....	.....	.....	.....	x	.....	.....
1807 ..	18798	19773	.....	.....	x	.....	.....	.....	.....	.....	.....
1808 ..	18801	19776	x	x	x	x	x	x	x	x	.....
2201 ..	22000	22696	x	x	x	.....	.....	.....	.....	.....	x
2205 ..	22012	22708	x	x	x	.....	.....	.....	.....	.....	.....
2210 ..	22027	22723	x	.....	.....	.....	.....	.....	.....	.....	.....
2214 ..	22039	22735	x	x	x	.....	.....	.....	.....	.....	.....
2215 ..	22042	22738	x	x	x	.....	.....	.....	.....	.....	.....
2216 ..	22045	22741	x	.....	x	.....	.....	.....	.....	.....	x
2222 ..	22063	22759	x	.....	.....	.....	.....	.....	.....	.....	.....
2223 ..	22066	22762	x	x	x	.....	.....	x	x	x	.....
2227 ..	22078	22774	x	x	x	.....	.....	.....	.....	.....	.....
2228 ..	22081	22777	x	x	.....	.....	.....	.....	.....	.....	.....
2231 ..	22090	22786	x	x	x	.....	.....	.....	x	.....	.....
2236 ..	22105	22801	x	x	.....	.....	.....	.....	.....	.....	.....
2237 ..	22108	22804	x	x	x	.....	.....	.....	.....	.....	.....
2241 ..	22120	22816	x	x	x	x	x	x	x	x	.....
2242 ..	22123	22819	.....	.....	x	.....	.....	.....	.....	.....	.....
2243 ..	22126	22822	x	x	x	x	x	x	x	x	.....
2244 ..	22129	22825	.....	x	.....	.....	.....	x	x	.....	.....
2245 ..	22132	22828	.....	x	x	.....	.....	x	x	.....	.....
2246 ..	22135	22831	.....	.....	x	.....	.....	.....	.....	.....	.....
2247 ..	22138	22834	x	x	x	x	x	x	x	.....	.....
2501 ..	25070	26145	x	x	x	x	.....	x	x	.....	.....
2502 ..	25073	26148	x	x	x	x	x	x	x	x	.....
2503 ..	25076	26151	.....	.....	x	.....	.....	.....	.....	.....	.....
2504 ..	25079	26154	x	x	x	x	x	x	x	x	.....

(2) The following table specifies the non-paired carrier frequencies that are available for assignment to public coast stations for simplex operations. These frequencies are available for use by authorized ship stations for transmissions to coast stations (simplex operations). Assignments on these frequencies must accept interference. They are shared with government users and are considered ''common use'' frequencies under the international Radio Regulations. They cannot be notified for inclusion in the Master International Frequency Register, which provides stations with interference protection, but may be listed in the international List of Coast Stations. (*See* Radio Regulation No. 1220 and Recommendation 304.)

PUBLIC CORRESPONDENCE SIMPLEX

[Non-paired radiotelephony frequencies in the 4000–27500 kHz Band[1] Carrier Frequencies (kHz)]

16537	18825	22174	25100
16540	18828	22177	25103
	18831	.....	25106
	18834	.....	25109
	18837	.....	25112

[1] Coast stations limited to a maximum transmitter power of 1 kW (PEP).

* * * * *

§ 80.374 [Amended]

9. Section 80.374 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as (a) and (b).

10. Section 80.475 is amended by redesignating paragraph (b) as paragraph (c), and revising paragraph (a)(1) and adding a new paragraph (b) to read as follows:

§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).

(a) * * *

(1) Applicants proposing to locate a coast station transmitter within 169 kilometers (105 miles) of a channel 13 TV station or within 129 kilometers (80 miles) of a channel 10 TV station or with an antenna height greater than 61 meters (200 feet), must submit an engineering study clearly showing the means of avoiding interference with television reception within the grade B contour, *see* § 80.215(h) of this chapter, unless the proposed station's predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system, or the proposed station's predicted interference contour extends the system's composite interference contour over water only (disregarding uninhabited islands).

* * * * *

(b) Coast stations for which the above specified need not be submitted because the proposed station's predicted interference contour is fully encompassed by the composite interference contour of the applicant's existing system or the proposed station's

predicted interference contour extends the system's composite interference contour over water only (disregarding uninhabited islands) must, at least 15 days before the station is put into operation, give written notice to the television stations which may be affected of the proposed station's technical characteristics, the date it will be put into operation, and the licensee's representative (name and phone number) to contact in the event a television station experiences interference. No prior FCC authorization is required to construct and operate such a station, but, at the time the station is added, the AMTS licensee must make a record of the technical and administrative information concerning the station and, upon request, supply such information to the FCC. In addition, when the station is added, the AMTS licensee must send notification of the station's location to the American Radio Relay League, Inc., 225 Main Street, Newington, CT 06111–1494, and Interactive Systems, Inc., Suite 1103, 1601 North Kent Street, Arlington, VA 22209.

* * * * *

11. Section 80.477 is amended by adding a new paragraph (d) to read as follows:

§ 80.477 AMTS points of communication.

* * * * *

(d) AMTS licensees may use AMTS coast and ship frequencies on a secondary basis for fixed service communications to support AMTS deployment in remote fixed locations at which other communications facilities are not available.

12. A new § 80.481 is added to read as follows:

§ 80.481 Alternative technical parameters for AMTS transmitters.

In lieu of the technical parameters set forth in this part, AMTS transmitters may utilize any modulation or channelization scheme so long as emissions are attenuated in accordance with § 80.211 at the band edges of each station's assigned channel group or groups.

PART 95—PERSONAL RADIO SERVICES

13. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

14. Section 95.1013 is amended by revising paragraph (a) to read as follows:

§ 95.1013 Antennas.

(a) The maximum allowable ERP for a station in the LPRS other than an AMTS station is 100 mW. The maximum allowable ERP for an AMTS station in the LPRS is 1 W, so long as emissions are attenuated, in accordance with § 80.211 of this chapter, at the band edges.

* * * * *

[FR Doc. 00–31310 Filed 12–12–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF DEFENSE

48 CFR Parts 212, 225, and 252

[DFARS Case 2000–D301]

Defense Federal Acquisition Regulation Supplement; Domestic Source Restrictions-Ball and Roller Bearings and Vessel Propellers

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8064 of the DoD Appropriations Act for Fiscal year 2001 and Section 805 of the DoD Authorization Act for Fiscal Year 2001. These laws place restrictions on the acquisition of vessel propellers and ball and roller bearings from foreign sources.

DATES: *Effective date:* December 13, 2000.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before February 12, 2001, to be considered in the formation of the final rule.

ADDRESSES: E-mailed comments are preferred. Submit comments to: dfars@acq.osd.mil. Please cite DFARS Case 2001–D301 in the subject line.

Respondents that cannot submit comments by e-mail may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2000–D301.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the DFARS to implement Section 8064 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106–259) and Section 805 of the DoD Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 8064 of Public Law 106–259 restricts the acquisition of ball and roller bearings and vessel propellers to those produced by a domestic source and of domestic origin. The restriction does not apply to the purchase of commercial items, except ball or roller bearings purchased as end items. Section 805 of Public Law 106–398 extends the restriction on acquisition of ball and roller bearings at 10 U.S.C. 2534 through fiscal year 2005.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An initial regulatory flexibility analysis has been prepared and is summarized as follows: The objective of this interim rule is to protect the domestic industrial base for ball and roller bearings and vessel propellers as required by Section 8064 of Public Law 106–259 and 10 U.S.C. 2534. By restricting foreign competition, the rule will benefit domestic small business concerns that manufacture ball or roller bearings, bearing components, vessel propellers, or vessel propeller casings. This rule does not duplicate, overlap, or conflict with other relevant Federal rules.

DoD has submitted a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the analysis from the point of contact specified herein. Comments are invited. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D301.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to

comment. This interim rule implements Section 8064 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106–259) and Section 805 of the DoD Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 8064 of Public Law 106–259 restricts the acquisition of ball and roller bearings and vessel propellers to those produced by a domestic source and of domestic origin. Section 805 of Public Law 106–398 extends the restriction on acquisition of ball and roller bearings at 10 U.S.C. 2534 through fiscal year 2005. Section 8064 of Public Law 106–259 became effective on August 9, 2000, and Section 805 of Public Law 106–398 became effective on October 30, 2000. DoD will consider comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 212, 225, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.503 is amended by revising paragraph (a)(xi) to read as follows:

212.503 Applicability of certain laws to Executive Agency contracts for the acquisition of commercial items.

(a) * * *

(xi) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7019–2(b) (Section 8064 of Public Law 106–259).

* * * * *

3. Section 212.504 is amended by revising paragraph (a)(xxv) to read as follows:

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(xxv) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see 225.7019–2(b) (Section 8064 of Public Law 106–259).

* * * * *

PART 225—FOREIGN ACQUISITION

225.7019–1 [Amended]

4. Section 225.7019–1 is amended in paragraph (a) by removing the phrase ''fiscal year 2000'' and adding in its place ''fiscal year 2005''.

5. Section 225.7019–2 is amended by revising paragraph (b) to read as follows:

225.7019–2 Exceptions.

* * * * *

(b) The restriction in 225.7019–1(b) does not apply to contracts or subcontracts for acquisition of commercial items, except for commercial ball and roller bearings acquired as end items.

6. Section 225.7019–4 is revised to read as follows:

225.7019–4 Contract clause.

(a) Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, unless—

(1) The restrictions in 225.7019–1 do not apply or a waiver has been granted; or

(2) The contracting officer knows that the items being acquired do not contain ball or roller bearings.

(b) In solicitations and contracts that use simplified acquisition procedures, use the clause with its Alternate I.

7. Sections 225.7020 through 225.7020–4 are added to read as follows:

225.7020 Restriction on vessel propellers.

225.7020–1 Restriction.

In accordance with Section 8064 of the National Defense Appropriations Act for Fiscal Year 2001 (Public Law 106–259), do not use fiscal year 2000 or 2001 funds to acquire vessel propellers other than those produced by a domestic source of domestic origin, *i.e.*, vessel propellers—

(a) Manufactured in the United States or Canada; and

(b) For which all component castings were poured and finished in the United States or Canada.

225.7020–2 Exceptions.

This restriction does not apply to contracts or subcontracts for acquisition of commercial items.

225.7020–3 Waiver.

The Secretary of the department responsible for acquisition may waive this restriction on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7020–4 Contract clause.

Use the clause at 252.225–7023, Restriction on Acquisition of Vessel Propellers, in solicitations and contracts for the acquisition of vessels or vessel propellers, unless—

(a) An exception under 225.7020–2 is known to apply or a waiver has been granted in accordance with 225.7020–3; or

(b) The vessels being acquired do not contain vessel propellers.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 252.212–7001 is amended by revising the clause date; and in paragraph (a) by adding, in numerical order, a new entry ''252.225–7016'' to read as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (Dec 2000)

(a) * * *

____252.225–7016 Restriction on Acquisition of Ball and Roller Bearings (____Alternate I) (Section 8064 of Pub. L. 106–259).

* * * * *

9. Section 252.225–7016 is amended by revising the clause date and paragraph (c)(1); and by adding Alternate I to read as follows:

252.225–7016 Restriction on Acquisition of Ball and Roller Bearings.

* * * * *

Restriction on Acquisition of Ball and Roller Bearings (Dec 2000)

* * * * *

(c)(1) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as components if—

(i) The end items or components containing ball or roller bearings are commercial items; or

(ii) The ball or roller bearings are commercial components manufactured in the United Kingdom.

* * * * *

Alternate I (Dec 2000) As prescribed in 225.7019–4(b), substitute the following paragraph (c)(1)(ii) for paragraph (c)(1)(ii) of the basic clause:

(c)(1)(ii) The ball or roller bearings are commercial components.

10. Section 252.225–7023 is added to read as follows:

252.225–7023 Restriction on Acquisition of Vessel Propellers.

As prescribed in 225.7020–4, use the following clause:

Restriction on Acquisition of Vessel Propellers (Dec 2000)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall deliver under this contract, whether as end items or components of end items, vessel propellers—

(1) Manufactured in the United States or Canada; and

(2) For which all component castings were poured and finished in the United States or Canada.

(b) The restriction in paragraph (a) of this clause—

(1) Does not apply to vessel propellers that are commercial items; and

(2) For other than commercial items, may be waived upon request from the Contractor in accordance with subsection 225.7020–3 of the Defense Federal Acquisition Regulation Supplement.

(End of clause)

[FR Doc. 00–31600 Filed 12–12–00; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Part 215

[DFARS Case 2000–D300]

Defense Federal Acquisition Regulation Supplement; Profit Incentives To Produce Innovative New Technologies

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 813 of the National Defense Authorization Act for Fiscal Year 2000. Section 813 requires DoD to review its profit guidelines to consider whether appropriate modifications, such as placing increased emphasis on technical risk as a factor for determining appropriate profit margins, would provide an increased profit incentive for contractors to develop and produce complex and innovative new technologies.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; facsimile (703) 602–0350. Please cite DFARS Case 2000–D300.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DoD profit policy to implement Section 813 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). The rule amends the weighted guidelines method of profit computation at DFARS 215.404–71 to combine the management and cost control elements of the performance risk factor; to establish a new ''technology incentive'' range for technical risk; and to slightly modify some of the cost control standards. In addition, the rule amends DFARS 215.404–4(b) to clarify that DoD departments and agencies must use a structured approach for developing a prenegotiation profit for fee objective on any negotiated contract action when cost or pricing data is obtained.

DoD published a proposed rule at 65 FR 32066 on May 22, 2000. Five sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule. The final rule is similar to the proposed rule, except for changes at 215.404–71–2(c)(3) that: (1) Permit use of the technology incentive range for acquisitions that include application of innovative new technologies; and (2) specify that the technology incentive range does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because most contracts awarded to small entities are below $500,000, are based on adequate price competition, or are for commercial items, and do not require submission of cost or pricing data.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 215

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 215 is amended as follows:

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.404–4 is amended by revising paragraph (b)(1) introductory text to read as follows:

215.404–4 Profit.

(b) * * * (1) Departments and agencies must use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when cost or pricing data is obtained, except for cost-plus-award-fee contracts (see 215.404–74) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see 215.404–75). There are three structured approaches—

* * * * *

3. Section 215.404–71–2 is revised to read as follows:

215.404–71–2 Performance risk.

(a) *Description.* This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of two parts:

(1) Technical—the technical uncertainties of performance.

(2) Management/cost control—the degree of management effort necessary—

(i) To ensure that contract requirements are met; and

(ii) To reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor risk factors	Assigned weighting	Assigned value	Base (item 18)	Profit objective
21.	Technical	(1)	(2)	N/A	N/A
22.	Management/Cost Control	(1)	(2)	N/A	N/A
23.	Reserved.				
24.	Performance Risk (Composite)	N/A	(3)	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the two weights equals 100 percent.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluatio criteria in paragraphs (d) and (e) of this subsection.

(3) Compute the composite as shown in the following example:

[In percentage]

	Assigned weighting	Assigned value	Weighted value
Technical ...	60	5.0	3.0
Management/Cost Control ...	40	4.0	1.6
Composite Value	100	.....	4.6

(4) Insert the amount from Block 18 of the DD Form 1547. Block 18 is total contract costs, excluding general and administrative expenses, contractor independent research and development and bid and proposal expenses, and facilities capital cost of money.

(5) Multiply (3) by (4).

(c) *Values: Normal and designated ranges.*

[In percentage]

	Normal value	Designated range
Standard	4	2 to 6.
Alternate	6	4 to 8.
Technology Incentive.	8	6 to 10.

(1) *Standard.* The standard designated range should apply to most contracts.

(2) *Alternate.* Contracting officers may use the alternate designated range for research and development and service contractors when these contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. If the alternate designated range is used, do not give any profit for facilities capital employed (see 215.404–71–4(c)(3)).

(3) *Technology incentive.* For the technical factor only, contracting officers may use the technology incentive range for acquisitions that include development, production, or application of innovative new technologies. The technology incentive range does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

(d) *Evaluation criteria for technical.*

(1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

(A) Items are being manufactured using specifications with stringent tolerance limits;

(B) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;

(C) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(D) The contractor's independent development and investment has reduced the Government's risk or cost;

(E) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or

(F) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine;

(F) Programs are mature; or

(G) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government-furnished information; or

(D) Simple operations with Government-furnished property.

(4) *Technology incentive range.*

(i) The contracting officer may assign values within the technology incentive range when contract performance includes the introduction of new, significant technological innovation. Use the technology incentive range only for the most innovative contract efforts. Innovation may be in the form of—

(A) Development or application of new technology that fundamentally changes the characteristics of an existing product or system and that results in increased technical performance, improved reliability, or reduced costs; or

(B) New products or systems that contain significant technological advances over the products or systems they are replacing.

(ii) When selecting a value within the technology incentive range, the contracting officer should consider the relative value of the proposed innovation to the acquisition as a whole. When the innovation represents a minor benefit, the contracting officer should consider using values less than the norm. For innovative efforts that will have a major positive impact on the product or program, the contracting officer may use values above the norm.

(e) *Evaluation criteria for management/cost control.*

(1) The contracting officer should evaluate—

(i) The contractor's management and internal control systems using contracting office information and

reviews made by field contract administration offices or other DoD field offices;

(ii) The management involvement expected on the prospective contract action;

(iii) The degree of cost mix as an indication of the types of resources applied and value added by the contractor;

(iv) The contractor's support of Federal socioeconomic programs;

(v) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(vi) The contractor's cost reduction initiatives (*e.g.,* competition advocacy programs, technical insertion programs, obsolete parts control programs, dual sourcing, spare parts pricing reform, value engineering);

(vii) The adequacy of the contractor's management approach to controlling cost and schedule; and

(viii) Any other factors that affect the contractor's ability to meet the cost targets (*e.g.,* foreign currency exchange rates and inflation rates).

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value when the management effort is intense. Indicators of this are—

(A) The contractor's value added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination;

(C) The contractor has a substantial record of active participation in Federal socioeconomic programs;

(D) The contractor provides fully documented and reliable cost estimates;

(E) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(F) The contractor uses a high degree of subcontract competition (*e.g.,* aggressive dual sourcing);

(G) The contractor has a proven record of cost tracking and control; or

(H) The contractor aggressively seeks process improvements to reduce costs.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (*e.g.,* offsets with foreign vendors); or

(C) Has critically important milestones.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) the contractor adds minimal value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs;

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal;

(G) The contractor's cost estimating system is marginal;

(H) The contractor has made minimal effort to initiate cost reduction programs;

(I) The contractor's cost proposal is inadequate; or

(J) The contractor has a record of cost overruns or another indication of unreliable cost estimates and lack of cost control.

(ii) The following may justify a value significantly below normal—

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (*e.g.,* quality assurance, property, control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

4. Section 215.404–72 is amended by adding paragraph (b)(1)(iii) to read as follows:

215.404–72 Modified weighted guidelines method for nonprofit organizations other than FFRDCs.

* * * * *

(b) * * *

(1) * * *

(iii) Do not assign a value from the technology incentive designated range.

* * * * *

[FR Doc. 00–31601 Filed 12–12–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 217, 219, and 236

[DFARS Case 2000–D015]

Defense Federal Acquisition Regulation Supplement; North American Industry Classification System

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). The rule converts programs based on the Standard Industrial Classification (SIC) system to the North American Industry Classification System (NAICS), in accordance with the final rule issued by the Small Business Administration (SBA) on May 15, 2000.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2000–D015.

SUPPLEMENTARY INFORMATION:

A. Background

SBA issued a final rule at 65 FR 30836 on May 15, 2000, providing a new size standards listing that is based on NAICS rather than SIC codes. The SBA rule requires Federal agencies to use the new size standards to determine whether a business is a small business concern. An interim rule amending the Federal Acquisition Regulation was published at 65 FR 46055 on July 26, 2000, to establish policy for use of the new size standards in Government acquisitions. DoD published an interim rule at 65 FR 50148 on August 17, 2000, to make corresponding changes to the DFARS. One source submitted comments on the interim DFARS rule. DoD considered those comments in the decision to convert the interim rule to a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule implements the final rule issued by SBA on May 15, 2000, and SBA has certified that the impact of the change from SIC to NAICS on each business will not be substantial.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 217, 219, and 236

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 217, 219, 236, and Appendix I to Chapter 2, which was published at 65 FR 50148 on August 17, 2000, is adopted as a final rule without change.

[FR Doc. 00–31602 Filed 12–12–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2000–D017]

Defense Federal Acquisition Regulation Supplement; Polyacrylonitrile Carbon Fiber

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to phase out restrictions on the acquisition of polyacrylonitrile (PAN) carbon fiber from foreign sources. The restrictions will be phased out over a 5-year period to minimize short-term risks to DoD and current domestic suppliers.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; facsimile (703) 602–0350.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises DFARS 225.7103–1 and 225.7103–3 to phase out restrictions on the acquisition of PAN carbon fiber from foreign sources. DoD conducted a review of the administratively imposed restrictions that included an evaluation of DoD applications for PAN carbon fiber, key domestic and foreign suppliers, supply and demand market information, potential impacts on DoD and key suppliers, and potential national security issues. As a result, DoD is phasing out the restrictions over the 5-year period ending May 31, 2005. The phased elimination will minimize short-term risks to both DoD and current domestic suppliers and will allow for a gradual introduction of competition that will encourage innovation and affordability. This action is consistent with DoD's interest in promoting vigorous competition in defense markets while ensuring that industrial capabilities essential to national defense are preserved. The market for PAN carbon fiber is projected to grow in the future as defense and commercial application demand increases. The 5-year phase-in period gives domestic suppliers time to adjust to market conditions and also gives DoD the flexibility to adjust its policy (*i.e.,* extend the restrictions) if projected circumstances do not materialize.

DoD published a proposed rule at 65 FR 41037 on July 3, 2000. Three sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the known domestic manufacturers of PAN carbon fiber are not small businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7103–1 is revised to read as follows:

225.7103–1 Policy.

DoD has imposed restrictions on the acquisitions of PAN carbon fiber from foreign sources. DoD is phasing out the restrictions over the 5-year period ending May 31, 2005. Contractors with contracts that contain the clause at 252.225–7022 must use U.S. or Canadian manufacturers or producers for all PAN carbon fiber requirements.

3. Section 225.7103–3 is revised to read as follows:

225.7103–3 Contract clause.

Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in solicitations and contracts for major systems as follows:

(a) In solicitations and contracts issued on or before May 31, 2003, if—

(1) The system is not yet in production (milestone III as defined in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPS) and Major Automated Information System (MAIS) Acquisition Programs); or

(2) The clause was used in prior program contracts.

(b) In solicitations and contracts issued during the period beginning June 1, 2003, and ending May 31, 2005, if the system is not yet in engineering and manufacturing development (milestone II as defined in DoD 5000.2–R).

[FR Doc. 00–31603 Filed 12–12–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 242 and 252

[DFARS Case 2000–D003]

Defense Federal Acquisition Regulation Supplement; Material Management and Accounting Systems

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the criteria for determining when review of a contractor's material management and accounting system (MMAS) is needed. The rule also replaces the current requirement for an MMAS ''demonstration'' with a requirement for the contractor to provide the results of internal reviews that it has conducted to ensure compliance with established MMAS policies, procedures, and operating instructions.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132,

3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2000–D003.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule makes the following changes to the DFARS:

1. Revises the prescription for use of the clause at 252.242–7004, Material Management and Accounting System, to—

a. Require inclusion of the clause only in cost-reimbursement contracts and in fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract; and

b. Eliminate the requirement for inclusion of the clause in contracts with small businesses, educational institutions, and nonprofit organizations.

2. Revises the clause at 252.242–7004 to replace the requirement for an MMAS ''demonstration'' with a requirement for the contractor to—

a. Have policies, procedures, and operating instructions that adequately describe its MMAS; and

b. Provide to the Government, upon request, the results of internal reviews that it has conducted to ensure compliance with established MMAS policies, procedures, and operating instructions.

3. Makes the dollar threshold for conducting an MMAS review consistent with the threshold for conducting a Contractor Insurance/Pension Review ($40 million of qualifying sales to the Government during the contractor's preceding fiscal year).

4. Clarifies the responsibilities of the ACO and the MMAS team members.

DoD published a proposed rule at 65 FR 41038 on July 3, 2000. Six sources submitted comments on the proposed rule. DoD considered all comment sin the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the DFARS already exempts small business concerns from the major MMAS requirements.

C. Paperwork Reduction Act

The rule eliminates the requirement for contractors to demonstrate their material management and accounting systems, and will reduce the number of contractors that must disclose their systems to the Government. Therefore, this rule reduces the paperwork burden hours approved under Office of Management and Budget Control Number 0704–0250.

List of Subjects in 48 CFR Parts 242 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 242 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 242 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Subpart 242.72 is revised to read as follows:

Subpart 242.72—Contractor Material Management and Accounting System

Sec.

242.7200 Scope of subpart.
242.7201 Definitions.
242.7202 Policy.
242.7203 Review procedures.
242.7204 Contract clause.

242.7200 Scope of subpart.

(a) This subpart provides policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS).

(b) The policies, procedures, and standards in this subpart—

(1) Apply only when the contractor has contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and are either—

(i) Cost-reimbursement contracts; or

(ii) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract; and

(2) Do not apply to small businesses, educational institutions, or nonprofit organizations.

242.7201 Definitions.

Material management and accounting system and *valid time-phased requirements* are defined in the clause at 252.242–7004, Material Management and Accounting System.

242.7202 Policy.

DoD policy is for its contractors to have an MMAS that conforms to the standards in paragraph (e) of the clause at 252.242–7004, so that the system—

(a) Reasonably forecasts material requirements;

(b) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(c) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

242.7203 Review procedures.

(a) *Criteria for conducting reviews.* Conduct an MMAS review when—

(1) A contractor has $40 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(2) The administrative contracting officer (ACO), with advice from the auditor, determines an MMAS review is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(b) *Qualifying sales.* Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(c) *System evaluation.* Cognizant contract administration and audit activities must jointly establish and manage programs for evaluating the MMAS systems of contractors and must annually establish a schedule of contractors to be reviewed. In addition, they must—

(1) Conduct reviews as a team effort.

(i) the ACO—

(A) Appoints a team leader; and

(B) Ensures that the team includes appropriate functional specialists (*e.g.,* industrial specialist, engineer, property administrator, auditor).

(ii) The team leader—

(A) Advises the ACO and the contractor of findings during the review and at the exit conference; and

(B) Makes every effort to resolve differences regarding questions of fact during the review.

(iii) The contract auditor—

(A) Participates as a member of the MMAS team or serves as the team leader (see paragraph (c)(1)(i) of this section); and

(B) Issues an audit report for incorporation into the MMAS report based on an analysis of the contractor's books, accounting records, and other related data.

(2) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(3) Prepare the MMAS report.

(d) *Disposition of evaluation team findings.* The team leader must document the evaluation team findings and recommendations in the MMAS report to the ACO. If there are any significant MMAS deficiencies, the report must provide an estimate of the adverse impact on the Government resulting from those deficiencies.

(1) *Initial notification to the contractor.* The ACO must provide a copy of the report to the contractor immediately upon receipt from the team leader.

(i) The ACO must notify the contractor in a timely manner if there are no deficiencies.

(ii) If there are any deficiencies, the ACO must request the contractor to provide a written response within 30 days (or such other date as may be mutually agreed to by the ACO and the contractor) from the date of initial notification.

(iii) If the contractor agrees with the report, the contractor has 60 days (or such other date as may be mutually agreed to by the ACO and the contractor) to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(iv) If the contractor disagrees with the report, the contractor must provide rationale in the written response.

(2) *Evaluation of the contractor's response.* The ACO, in consultation with the auditor, evaluates the contractor's response and determines whether—

(i) The MMAS contains any deficiencies and, if so, any corrective action is needed;

(ii) The deficiencies are significant enough to result in the reduction of progress payments or disallowance of costs on vouchers; and

(iii) Proposed corrective actions (if the contractor submitted them) are adequate to correct the deficiencies.

(3) *Notification of ACO determination.*

(i) The ACO must notify the contractor in writing (copy to auditor and functional specialists) of—

(A) Any deficiencies and the necessary corrective action;

(B) Acceptability of the contractor's corrective action plan (if one was submitted) or the need for a corrective action plan; and

(C) Any decision to reduce progress payments or disallow costs on vouchers.

(ii) The Government does not approve or disapprove the contractor's MMAS. ACO notifications should avoid any such implications.

(iii) From the time the ACO determines that there are any significant MMAS deficiencies until the time the deficiencies are corrected, all field pricing reports for that contractor must contain a recommendation relating to proposed adjustments necessary to protect the Government's interests.

(iv) The ACO should consider the effect of any significant MMAS deficiencies in reviews of the contractor's estimating system (see 215.407–5).

(4) *Reductions or disallowances.*

(i) When the ACO determines the MMAS deficiencies have a material impact on Government contract costs, the ACO must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503–6) and/or disallow costs on vouchers (in accordance with FAR 42.803). The reductions or disallowances must remain in effect until the ACO determines that—

(A) The deficiencies are corrected; or

(B) The amount of the impact is immaterial.

(ii) The maximum payment adjustment is the adverse material impact to the Government as specified in the MMAS report. The ACO should use the maximum adjustment when the contractor did not submit a corrective action plan with its response, or when the plan is unacceptable. In other cases, the ACO should consider the quality of the contractor's corrective action plan in determining the appropriate percentage.

(iii) As the contractor implements its accepted corrective action plan, the ACO should reinstate a portion of withheld amounts commensurate with the contractor's progress in making corrections. However, the ACO must not fully reinstate withheld amounts until the contractor corrects the deficiencies, or until the impact of the deficiencies become immaterial.

(5) *Monitoring contractor's corrective action.* The ACO and the auditor must monitor the contractor's progress in correcting deficiencies. When the ACO determines the deficiencies have been corrected, the ACO must notify the contractor in writing. If the contractor fails to make adequate progress, the ACO must take further action. The ACO may—

(i) Elevate the issue to higher level management;

(ii) Further reduce progress payments and/or disallow costs on vouchers;

(iii) Notify the contractor of the inadequacy of the contractor's cost estimating system and/or cost accounting system; and

(iv) Issue cautions to contracting activities regarding the award of future contracts.

242.7204 Contract clause.

Use the clause at 252.242–7004, Material Management and Accounting System, in all solicitations and contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and—

(a) Are not awarded to small businesses, educational institutions, or nonprofit organizations; and

(b) Are either—

(1) Cost-reimbursement contracts; or

(2) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.242.7004, is revised to read as follows:

252.242–7004 Material Management and Accounting System.

As prescribed in 242.7204, use the following caluse:

Material Management and Accounting System (Dec 2000)

(a) *Definitions.* As used in this clause—

(1) *Material management and accounting system (MMAS)* means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) *Valid time-phased requirements* means material that is—

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(3) ''Contractor'' means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

(b) *General.* The Contractor shall—

(1) Maintain an MMAS that—

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (e) of this clause.

(c) *Disclosure and maintenance requirements.* The Contractor shall—

(1) Have policies, procedures, and operating instructions that adequately described its MMAS;

(2) Provide to the Administrative Contracting Officer (ACO), upon request, the results of the internal reviews that it has conducted to ensure compliance with established MMAS policies, procedures, and operating instructions; and

(3) Disclose significant changes in its MMAS to the ACO at least 30 days prior to implementation.

(d) *Deficiencies.*

(1) If the Contractor receives a report from the ACO that identifies any deficiencies in its MMAS, the Contractor shall respond as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall—

(A) Within 30 days (or such other date as may be mutually agreed to by the ACO and the Contractor), state its agreement in writing; and

(B) Within 60 days (or such other date as may be mutually agreed to by the ACO and the Contractor), correct the deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall, within 30 days (or such other date as may be mutually agreed to by the ACO and the Contractor), state its rationale for each area of disagreement.

(2) The ACO will evaluate the Contractor's response and will notify the Contractor in writing of the—

(i) Determination concerning any remaining deficiencies;

(ii) Adequacy of any proposed or completed corrective action plan; and

(iii) Need for any new or revised corrective action plan.

(3) When the ACO determines the MMAS deficiencies have a material impact on Government contract costs, the ACO must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503–6) and/or disallow costs on vouchers (in accordance with FAR 42.803) until the ACO determines that—

(i) The deficiencies are corrected; or

(ii) The amount of the impact is immaterial.

(e) *MMAS standards.* The MMAS shall have adequate internal controls to ensure system and data integrity, and shall—

(1) Have an adequate system description including policies, procedures, and operating instructions that comply with the FAR and Defense FAR Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions.

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall provide adequate evidence that—

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions such as excess/residual inventory as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall provide adequate evidence that—

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances that will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions as follows:

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411–50(b). The Contractor shall maintain consistency across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The ''loan/pay-back technique'' means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the ACO. When the technique is used, the Contractor shall have controls to ensure—

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;

(8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs (e)(2) and (7) of this clause) to ensure that—

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements that are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Regardless of the provisions of FAR 45.505–3(f)(1)(ii), have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (e)(1) through (8) of this clause. Government-furnished material shall not be—

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal reviews to ensure compliance with established policies and procedures.

(End of clause)

[FR Doc. 00–31605 Filed 12–12–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 250

[DFARS Case 2000–D025]

Defense Federal Acquisition Regulation Supplement; Authority to Indemnify Against Unusually Hazardous or Nuclear Risks

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the authority of the Under Secretary of Defense (Acquisition, Technology, and Logistics) to indemnify a contractor against unusually hazardous or nuclear risks.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2000–D025.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Part 250, Extraordinary Contractual Actions, to clarify that the Under Secretary of Defense (Acquisition, Technology, and Logistics) may indemnify a contractor against unusually hazardous or nuclear risks, in accordance with the acquisition

authority provided the Under Secretary at 10 U.S.C. 133.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D025.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 250

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 250 is amended as follows:

1. The authority citation for 48 CFR Part 250 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

2. Section 250.201 is revised to read as follows:

250.201 Delegation of authority.

(b) Authority under FAR subpart 50.4 to approve actions obligating $50,000 or less may not be delegated below the level of the head of the contracting activity.

(d) In accordance with the acquisition authority of the Under Secretary of Defense (Acquisition, Technology, and Logistics (USD (AT&L)) under 10 U.S.C. 133, in addition to the Secretary of Defense and the Secretaries of the military departments, the USD (AT&L) may exercise authority to indemnify against unusually hazardous or nuclear risks.

3. Section 250.201–70 is amended by revising paragraphs (b)(1) and (c) to read as follows:

250.201–70 Delegations.

* * * * *

(b) * * *

(1) Requests to obligate the Government in excess of $50,000 must be submitted to the USD (AT&L) for approval.

* * * * *

(c) *Approvals.* The Secretary of the military department or the agency director must approve any delegations in writing.

[FR Doc. 00–31604 Filed 12–12–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040-0040-01; I.D. 120800B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Hook-and-line in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific cod allocated for catcher processor vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 9, 2000, until 2400 hrs, A.l.t., December 31, 2000.

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

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

The share of the 2000 TAC of Pacific cod allocated to catcher processor vessels using hook-and-line gear in the BSAI was established by the Revision of the 2000 BSAI Pacific cod Harvest Specifications of Groundfish for the BSAI (65 FR 51553, August 24, 2000) and subsequent reallocation (65 FR 65272, November 1, 2000) as a directed fishing allowance of 81,958 mt. See § 679.20(c)(3)(iii) and § 679.20(a)(7)(i)(A)&(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC of Pacific cod allocated to catcher processor vessels using hook-and-line gear as a directed fishing allowance in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod for vessels using hook-and-line and pot gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the 2000 TAC of Pacific cod allocated to catcher processor vessels using hook-and-line gear in the BSAI. NMFS finds that the prevention of overharvesting of Pacific cod constitutes good cause to waive the requirement for prior notice and comment pursuant to 5 U.S.C 553(b)(B) as such procedures are contrary to the public interest. The Pacific cod directed fishing allowance established for catcher processor vessels using hook-and-line gear will soon be reached. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: December 8, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–31733 Filed 12–8–00; 4:44 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register
Vol. 65, No. 240
Wednesday, December 13, 2000

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A69, et al.; DA–00–03]

Milk in the Northeast and Other Marketing Areas; Referendum Order; Determination of Representative Period and Designation of Referendum Agent

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum Order.

SUMMARY: This document announces a referendum to be conducted to determine whether producers favor issuance of the order regulating the handling of milk in the Upper Midwest marketing area, as proposed to be amended in the tentative final decision issued by the Deputy Under Secretary on November 29, 2000 (65 FR 76831), regarding the pricing formulas for milk used in Class III and Class IV.

DATES: The referendum is to be completed on or before December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968 South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address connie.brenner@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued April 6, 2000; published April 14, 2000 (65 FR 20094).

Tentative Final Decision: Issued November 29, 2000; published December 7, 2000 (65 FR 76831).

On November 29, 2000, the Deputy Under Secretary, Marketing and Regulatory Programs, issued a tentative final decision on proposed amendments to the Class III and Class IV pricing formulas for Federal milk orders, as required by the Consolidated Appropriations Act, 2000 (P.L. 106–113, 115 Stat. 1501).

Each of the eleven Federal milk orders must be approved by the producers whose milk would be pooled under the order. The tentative final decision included a referendum order for two Federal milk orders, the Northeast and Mideast, for which approval by the necessary two-thirds of producers, or by producers who produced at least two-thirds of the total milk produced under the order, could not be determined by means other than referenda of all producers and cooperative associations that bloc vote. After issuance of the tentative final decision, it was determined that approval of the Upper Midwest order also would require a referendum of all producers and bloc-voting cooperative associations. Accordingly, the following referendum order is issued to determine approval of the Upper Midwest order as amended by the provisions contained in the tentative final decision.

7 CFR Part	Marketing Area	AO Nos.
1001	Northeast	AO–14–A69.
1005	Appalachian	AO–388–A11.
1006	Florida	AO–356–A34.
1007	Southeast	AO–366–A40.
1030	Upper Midwest	AO–361–A34.
1032	Central	AO–313–A43.
1033	Mideast	AO–166–A67.
1124	Pacific Northwest	AO–368–A27.
1126	Southwest	AO–231–A65.
1131	Arizona-Las Vegas	AO–271–A35.
1135	Western	AO–380–A17.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Upper Midwest marketing area, as amended by the tentative final decision issued on November 29, 2000 (65 FR 76831), is approved by at least two-thirds of the producers, or by producers who produced at least two-thirds of the total milk produced during the representative period.

The month of September 2000 is hereby determined to be the representative period for the conduct of such referendum.

H. Paul Kyburz is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*)

Such referendum shall be completed on or before 30 days from the issuance of the tentative final decision.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

Milk marketing orders.

Authority: 7 U.S.C. 601–674.

Dated: December 8, 2000.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 00–31762 Filed 12–11–00; 10:11 am]

BILLING CODE 3410–02–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 32

RIN 3038–AB61

Trade Options on Enumerated Agricultural Commodities

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend the exemption from its agricultural trade option rule, to clarify its operation in light of amendments to the exemption for bilateral transactions, published elsewhere in this issue of the **Federal Register**.

DATES: Comments must be received by December 28, 2000.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521 or by e-mail to *secretary@cftc.gov.* Reference should be made to ''Amendment to Rule 32.13(g).''

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, or Nancy E. Yanofsky, Assistant Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5260. E-mail: *PArchitzel@cftc.gov* or *NYanofsky@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is proposing a technical revision to its agricultural trade option rule to clarify the requirements for an exemption therefrom. As revised, the exemption from the agricultural trade option rule will be based only on the net worth requirement in the current rule. *See* Rule 32.13(g)(1)(iii).[1] A revised part 35, published elsewhere in this issue of the **Federal Register**, establishes an exemption from the regulatory requirements of the Commodity Exchange Act (Act) and the Commission's regulations for certain bilateral transactions between eligible participants. In adopting part 35, however, the Commission reserved the applicability of rule 32.13. Today's proposal is designed to make the operation of the exemption from rule 32.13 consistent with the broader exemption of part 35. Transactions between counterparties meeting the net worth requirement although not subject to the requirements of rule 32.13 remain subject to the provisions of part 35.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires that agencies consider the impact of their rules on small businesses. The proposed rule amendment simply clarifies the scope of an existing regulatory exemption available to high net worth entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that this proposed amendment will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3504(h) (PRA), which imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to the proposed amendment to this rule. The Commission believes the proposed amendment does not contain information collection requirements which require the approval of the Office of Management and Budget. The purpose of the proposed amendment is to clarify the scope of an existing regulatory exemption.

[1] The Commission's agricultural trade option rule currently provides a three-prong test for an exemption therefrom. In addition to the net worth requirement, the rule requires that: (a) the option be offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the option transaction, or the products or byproducts thereof; and (b) such producer, processor, commercial user of or merchant is offered or enters into the option solely for purposes related to its business as such. *See* Rule 32.13(g)(1)(i) and (ii). The Commission is proposing to remove these latter two requirements and make the exemption from the agricultural trade option rule available to parties based solely on their ability to meet the net worth requirement.

List of Subjects in 17 CFR Part 32

Commodity futures, Commodity options, Prohibited transactions, Trade options.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 2(a)(1)(A), 4c and 8a of the Act, 7 U.S.C. 2, 6c and 12a, as amended, the Commission hereby proposes to amend Chapter I, Part 32 of Title 17 of the Code of Federal Regulations as follows:

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

1. The authority section for part 32 continues to read as follows:

Authority: 7 U.S.C. 2, 6c and 12a.

2. Section 32.13 is proposed to be amended by revising paragraph (g) to read as follows:

§ 32.13 Exemption from prohibition of commodity option transactions for trade options on certain agricultural commodities.

* * * * *

(g) *Exemption.* The provisions of this section shall not apply to a commodity option entered into between counterparties that have a reasonable basis to believe that each has a net worth of not less than $10 million or the party's obligations on the option are guaranteed by a person which has a net worth of $10 million and has a majority ownership interest in, is owned by, or is under common ownership with, the party to the option; *provided*, *however*, that part 35 of this chapter and § 32.9 apply to such option transactions.

Issued in Washington, D.C., this 7th day of December, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–31732 Filed 12–12–00; 8:45 am]

BILLING CODE 6351–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. 00N–1380]

Human Bone Allograft: Manipulation and Homologous Use in Spine and Other Orthopedic Reconstruction and Repair; Public Meeting; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 60 days the comment period for a public meeting entitled ''Human Bone Allograft: Manipulation and Homologous Use in Spine and Other Orthopedic Reconstruction and Repair'' that was held on August 2, 2000. The agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments to FDA on the issues discussed at the public meeting.

DATES: Submit written comments by February 12, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 18, 2000 (65 FR 44485), FDA published a notice of public meeting that would give the public an opportunity to provide additional information to the agency about the characteristics of various bone products as they relate to the agency's proposed definitions for ''minimal manipulation'' and ''homologous use.'' Such information would be considered for future guidance to industry in conjunction with regulations that have been proposed. Interested persons were given until September 1, 2000, to submit written comments. The agency received several requests for an extension of the comment period to allow interested parties additional time to address the complex issues concerning FDA's proposed regulatory framework for bone allografts used for reconstruction and repair, to provide adequate time to review the transcript of the meeting, and to conduct research into the issues discussed at the meeting in formulating comments to submit to FDA. FDA finds these requests are reasonable, and, therefore, is reopening the comment period for an additional 60 days. Stakeholders are encouraged to provide information about the following issues:

1. Which processing procedures applied to human bone allograft fall within, or outside of, FDA's proposed definition for ''minimal manipulation?''

2. Which uses of human bone allograft fall within, or outside of, FDA's proposed definition for ''homologous use?''

3. What risks to health have been identified and characterized for human bone allograft products?

4. What controls have been identified to adequately address the risk to health of human bone allograft products?

5. What industry standards for bone allograft products are available, and what standards will be needed in the future?

Interested persons may submit to the Dockets Management Branch (address above) written comments on the issues discussed at the public meeting by February 12, 2001. 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 Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31653 Filed 12–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–221]

RIN 2115–AA97

Safety Zone: New York Harbor, Western Long Island Sound, East River, and Hudson River Fireworks

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish ten permanent safety zones for fireworks displays located in the Port of New York/New Jersey, to expand the size of one current safety zone, and to modify effective times and notice requirements of existing permanent safety zones. This action is necessary to provide for the safety of life on navigable waters during the events. This action establishes permanent exclusion areas that are only active prior to the start of the fireworks display until shortly after the fireworks display is completed, and is intended to restrict vessel traffic in the affected waterways, expand the effective times of the zones to allow for earlier displays during daylight savings time, and to require one sign that may be used for displays from a barge or onshore.

DATES: Comments and related material must reach the Coast Guard on or before February 12, 2001.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01–00–221), Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 204, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

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 (CGD01–00–221), 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 the Waterways Oversight Branch 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

The Coast Guard proposes to establish ten permanent safety zones that will be activated for fireworks displays occurring throughout the year that are not held on an annual basis but are normally held in one of these ten locations. The ten locations are south of

Ellis Island, Rockaway Beach, and Rockaway Inlet in New York Harbor, Larchmont Harbor in western Long Island Sound, Pier 16 and Newtown Creek on the East River, Pier 54 and Pier 84, Manhattan, Peekskill Bay, and Jersey City on the Hudson River. The Coast Guard also proposes to expand the diameter of the current safety zone west of Pier 90, on the Hudson River, to 360 yards from the current 300 yards. The Coast Guard received 17 applications for fireworks displays in these new areas from 1999 to 2000. In 1997, the Coast Guard received four applications for fireworks displays in these locations. In the past, temporary safety zones were established with limited notice for preparation by the U.S. Coast Guard and limited opportunity for public comment. Establishing permanent safety zones by notice and comment rulemaking at least gives the public the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active. The Coast Guard has promulgated safety zones for fireworks displays at all 11 areas in the past and we have not received notice of any impact to waterway traffic resulting from the zones' enaction. Marine traffic would still be able to transit around the proposed safety zones because all of the zones prohibit vessels from entering only the zones themselves. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the proposed safety zones. This proposal would also move the zone effective time back two hours so that zones are enacted beginning at 6 p.m. versus 8 p.m. The safety zone termination time remains the same. Finally, the proposed rule would only require one sign reading ''FIREWORKS—STAY AWAY''. The current regulations require a sign that reads ''FIREWORKS BARGE'' for displays from barges, and a separate sign that reads ''FIREWORKS SITE'' for displays from shore. The sign dimensions and letter requirements remain the same.

This proposed rule revises 33 CFR 165.168 by adding ten permanent safety zones to the 24 existing ones, expanding the diameter of the safety zone west of Pier 90, on the Hudson River, to 360 yards from the current 300 yards, expanding the effective time of the zones to allow for earlier displays during Daylight Savings Time, and simplifying the requirements for signs used as on-scene notification.

Discussion of Proposed Rule

The proposed sizes of these safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 6 to 12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in these areas. Proposed barge locations and mortar sizes were adjusted to try and ensure the proposed safety zone locations would not interfere with any known marinas or piers. The proposed earlier effective time for the zones would allow for earlier fireworks displays during Daylight Savings Time. The proposed new sign requirements are to make it easier for the fireworks companies to make on-scene notifications. The 11 proposed safety zones are:

New York Harbor

The first proposed safety zone includes all waters of Upper New York Bay within a 240-yard radius of the fireworks barge in approximate position 40°41′39.9″N 074°02′33.7″W (NAD 1983), about 260 yards south of Ellis Island. The proposed safety zone prevents vessels from transiting a portion of Upper New York Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Anchorage Channel as it is unaffected by this zone. Additionally, vessels would still be able to anchor in Federal Anchorage No. 20–B, to the north, and 20–C, to the south of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The second proposed safety zone includes all waters of the Atlantic Ocean within a 360-yard radius of the fireworks barge in approximate position 40°34′28.2″N 073°50′00.0″W (NAD 1983), off Beach 116th Street. The proposed safety zone prevents vessels from transiting a portion of the Atlantic Ocean and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the Atlantic Ocean near Rockaway Beach. Additionally, vessels would not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone and there are no commercial facilities in the vicinity of the zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The third proposed safety zone includes all waters of Rockaway Inlet within a 360-yard radius of the fireworks barge in approximate position 40°34′19.1″N 073°54′43.5″W (NAD 1983), about 1,200 yards south of Point Breeze. The proposed safety zone prevents vessels from transiting a portion of Rockaway Inlet and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Rockaway Inlet. Additionally, vessels would not be precluded from mooring at or getting underway from recreational piers in the vicinity of the zone and there are no commercial facilities in the vicinity of the zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

Western Long Island Sound

The proposed safety zone includes all waters of Larchmont Harbor within a 240-yard radius of the fireworks barge in approximate position 40°55′21.8″N 073°44′21.7″W (NAD 1983), about 540 yards north of Umbrella Rock. The proposed safety zone prevents vessels from transiting a portion of Larchmont Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational traffic will still be able to transit through the western 100 yards and eastern 40 yards of the 620-yard wide Larchmont Harbor. There are currently no commercial facilities in Larchmont Harbor. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

East River

The first proposed safety zone includes all waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42′12.5″N 074°00′02.0″W (NAD 1983), about 200 yards east of Pier 16. The proposed safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Vessel traffic will be able to transit through the eastern 140 yards of the 490-yard wide East River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone.

The second proposed safety zone includes all waters of the East River

within a 360-yard radius of the fireworks barge in approximate position 40°44′24.0″N 073°58′00.0″W (NAD 1983), about 785 yards south of Belmont Island. The proposed safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and non-deep draft commercial vessel traffic will be able to transit through the western 160 yards of the 910-yard wide East River during the event. This safety zone would close this portion of the East River for vessels that must use the Poorhouse Flats Range. This range marks the area where the 35-foot deep main channel crosses from the west side of the river to the east side of the river. The Poorhouse Flats Range marks the best water in this crossover. But the Coast Guard will minimize any negative impact from this safety zone by ensuring that this zone is not effective during slack tide, which is typically when vessels that must use the Poorhouse Flats Range transit this portion of the East River. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone.

Hudson River

The first proposed safety zone includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′31″N 074°01′00″W (NAD 1983), about 380 yards west of Pier 54. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 170 yards of the 885-yard wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The second proposed safety zone includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°45′56.9″N 074°00′25.4″W (NAD 1983), about 380 yards west of Pier 84. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 165 yards of the 875-yard wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The third proposed safety zone includes all waters of Peekskill Bay within a 360-yard radius of the fireworks barge in approximate position 41°17′16″N 073°56′18″W (NAD 1983), about 670 yards north of Travis Point. The proposed safety zone prevents vessels from transiting a portion of Peekskill Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Peekskill Bay Channel during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The fourth proposed safety zone includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42′37.3″N 074°01′41.6″W (NAD 1983), about 420 yards east of Morris Canal Little Basin. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 535 yards of the 1,215-yard wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The fifth proposed safety zone includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°46′11.8″N 074°00′14.8″W (NAD 1983), about 375 yards west of Pier 90, Manhattan. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 160 yards of the 895-yard wide Hudson River during the event. This would expand the diameter of the current safety zone (§ 165.168(d)(4)) from 300 yards to 360 yards. This expanded safety zone would only be authorized when it would not interfere with vessel traffic at the New York Passenger Ship Terminal. Normally, this safety zone is established in conjunction with a passenger ship arrival or departure from Pier 88, 90, or 92. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The Coast Guard does not know the actual dates that these safety zones will be activated at this time. Coast Guard Activities New York will give notice of the activation of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public. The Coast Guard expects that the notice of the activation of each permanent safety zone in this rulemaking will normally be made between thirty and fourteen days before the zone is actually activated. Fireworks barges used in the locations stated in this rulemaking will also have a sign on the port and starboard side of the barge labeled ''FIREWORKS—STAY AWAY''. This will provide on-scene notice that the safety zone the fireworks barge is located in is or will be activated on that day. This sign will consist of 10'' high by 1.5'' wide red lettering on a white background. Displays launched from shore sites will have a sign labeled ''FIREWORKS—STAY AWAY'' with the same size requirements. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 15 minutes after its completion to enforce each safety zone.

The effective period for each proposed safety zone is from 6 p.m. (e.s.t.) to 1 a.m. (e.s.t.). This is two hours earlier than the current regulations and is to allow for earlier fireworks displays during Daylight Savings Time. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present.

This rule is being proposed to provide for the safety of life on navigable waters

during the events and to give the marine community the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active.

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 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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners from the zones' activation. Vessels may also still transit through New York Harbor, western Long Island Sound, the East River, and Hudson River, during these events. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Advance notifications would also be made to the local maritime community by the Local Notice to Mariners. Marine information and facsimile broadcasts may also be made to notify the public. Additionally, the Coast Guard anticipates that there will only be 18 total activations of these safety zones per year.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of New York Harbor, western Long Island Sound, the East River, and Hudson River, during the times these zones are activated.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic could transit around all 11 safety zones. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Before the effective period, we would issue maritime advisories widely available to users of the Port of New York/New Jersey by local notice to mariners. Marine information and facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

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 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) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes 11 safety zones. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard 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.

2. Section 165.168 is amended as follows:

a. Revise the section heading;

b. Revise paragraph (a) introductory text and add paragraphs (a)(7) through (a)(9);

c. Revise paragraph (b) introductory text and add paragraph (b)(10);

d. Revise paragraph (c) introductory text and add paragraphs (c)(3) through (c)(4);

e. Revise paragraphs (d) introductory text and (d)(4) and add paragraphs (d)(8) through (d)(11);

f. Revise paragraphs (e) and (f); and

g. Revise Figures 1 through 4.

The additions and revisions read as follows:

§ 165.168 Safety Zones: New York Harbor, Western Long Island Sound, East River, and Hudson River Fireworks.

(a) *New York Harbor.* Figure 1 of this section displays the safety zone areas in paragraphs (a)(1) through (a)(9).

* * * * *

(7) *South Ellis Island Safety Zone:* All waters of Upper New York Bay within a 240-yard radius of the fireworks barge in approximate position 40°41′39.9″N 074°02′33.7″W (NAD 1983), about 260 yards south of Ellis Island.

(8) *Rockaway Beach Safety Zone:* All waters of the Atlantic Ocean within a 360 yard radius of the fireworks barge in approximate position 40°34′28.2″N 073°50′00.0″W (NAD 1983), off Beach 116th Street.

(9) *Rockaway Inlet Safety Zone:* All waters of Rockaway Inlet within a 360 yard radius of the fireworks barge in approximate position 40°34′19.1″N 073°54′43.5″W (NAD 1983), about 1,200 yards south of Point Breeze.

(b) *Western Long Island Sound.* Figure 2 of this section displays the safety zone areas in paragraphs (b)(1) through (b)(10).

* * * * *

(10) *Larchmont Harbor, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°55′21.8″N 073°44′21.7″W (NAD 1983), about 540 yards north of Umbrella Rock.

(c) *East River.* Figure 3 of this section displays the safety zone areas in paragraphs (c)(1) through (c)(4).

* * * * *

(3) *Pier 16, East River Safety Zone:* All waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42′12.5″N 074°00′02.0″W (NAD 1983), about 200 yards east of Pier 16.

(4) *Newtown Creek, East River Safety Zone:* All waters of the East River within a 360-yard radius of the fireworks barge in approximate position 40°44′24.0″N 073°58′00.0″W (NAD 1983), about 785 yards south of Belmont Island.

(d) *Hudson River.* Figure 4 of this section displays the safety zone areas in paragraphs (d)(1) through (d)(11).

* * * * *

(4) *Pier 90, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°46′11.8″N 074°00′14.8″W (NAD 1983), about 375 yards west of Pier 90, Manhattan.

* * * * *

(8) *Pier 54, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′31″N 074°01′00″W (NAD 1983), about 380 yards west of Pier 54, Manhattan.

(9) *Pier 84, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°45′56.9″N 074°00′25.4″W (NAD 1983), about 380 yards west of Pier 84, Manhattan.

(10) *Peekskill Bay, Hudson River Safety Zone:* All waters of Peekskill Bay within a 360-yard radius of the fireworks barge in approximate position 41°17′16″N 073°56′18″W (NAD 1983), about 670 yards north of Travis Point.

(11) *Jersey City, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42′37.3″N 074°01″41.6″W (NAD 1983), about 420 yards east of Morris Canal Little Basin.

(e) *Notification.* Coast Guard Activities New York will cause notice of the activation of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the local notice to mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This sign will consist of 10″ high by 1.5″ wide red lettering on a white background. Shore sites used in these locations will display a sign labeled ''FIREWORKS—STAY AWAY'' with the same dimensions.

(f) *Effective Period.* This section is effective from 6 p.m. (e.s.t.) to 1 a.m. (e.s.t.) each day a barge with a ''FIREWORKS—STAY AWAY'' sign on the port and starboard side is on-scene or a ''FIREWORKS—STAY AWAY'' sign is posted in a location listed in paragraphs (a) through (d) of this section. Vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York or designated Coast Guard patrol personnel on scene.

* * * * *

BILLING CODE 4910–15–U

Figure 1
§ 165.168(a) New York Harbor Fireworks Safety Zones drawn to scale.

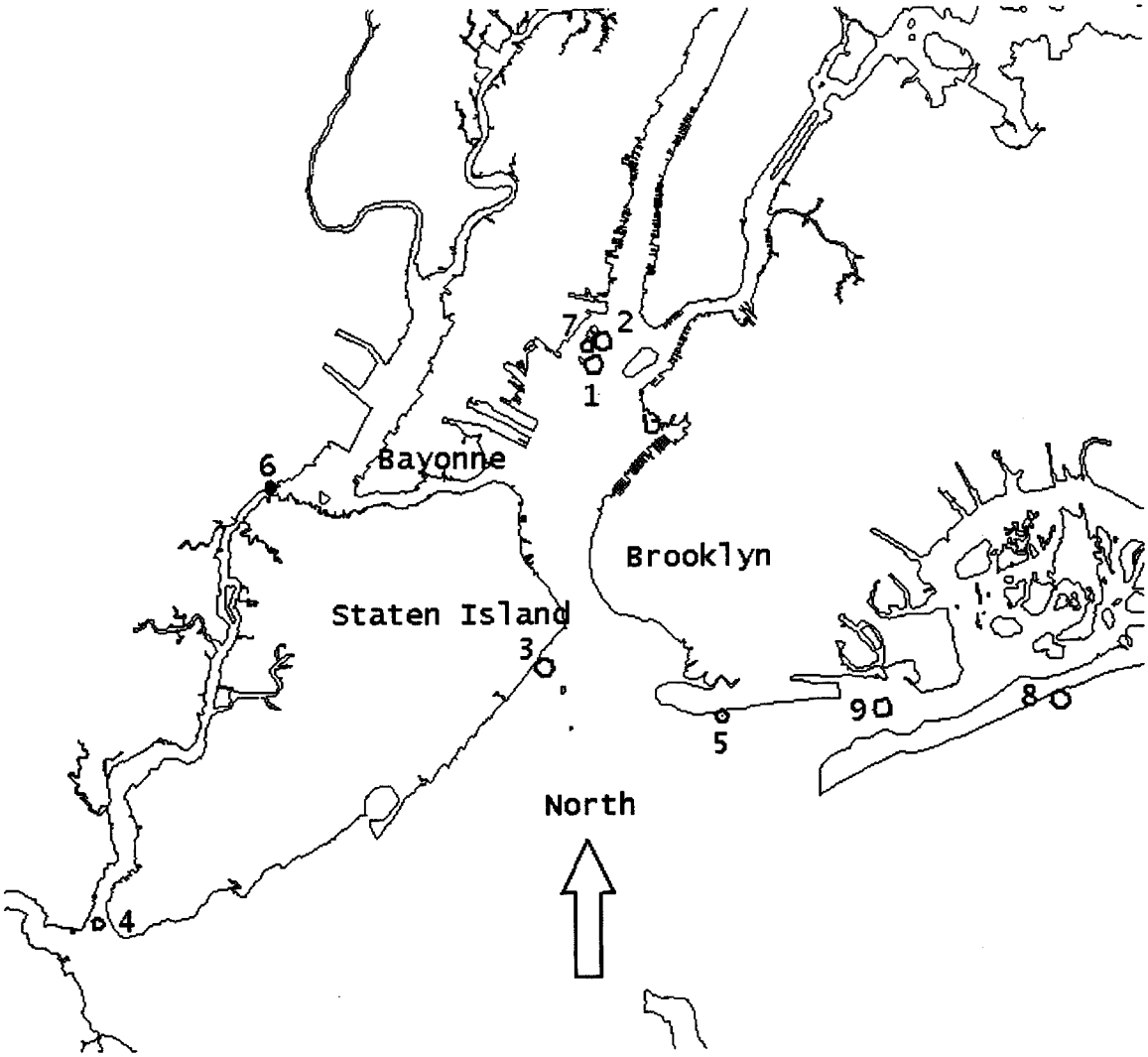


Figure 2
§ 165.168(b) Western Long Island Sound Fireworks Safety Zones drawn to scale.

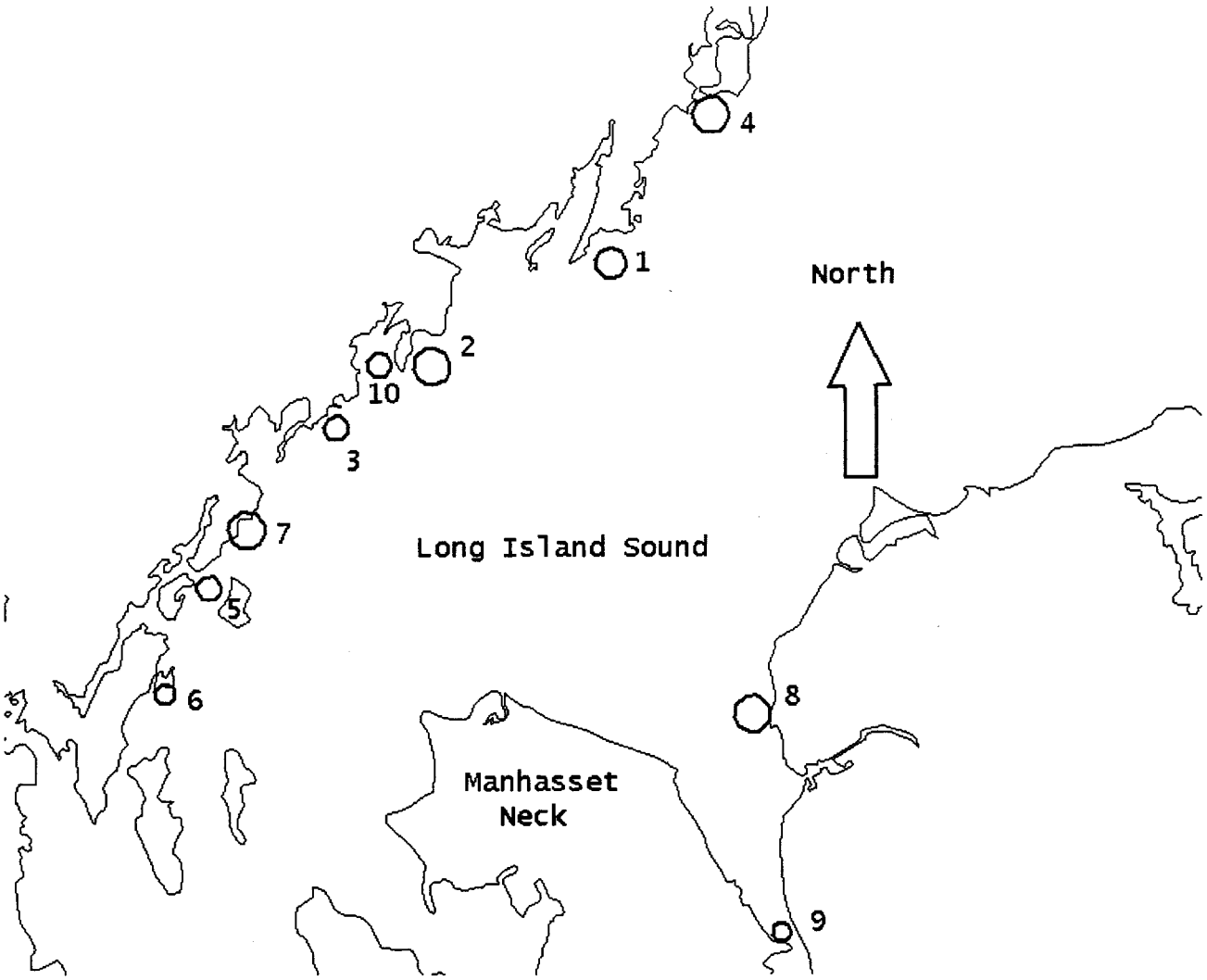
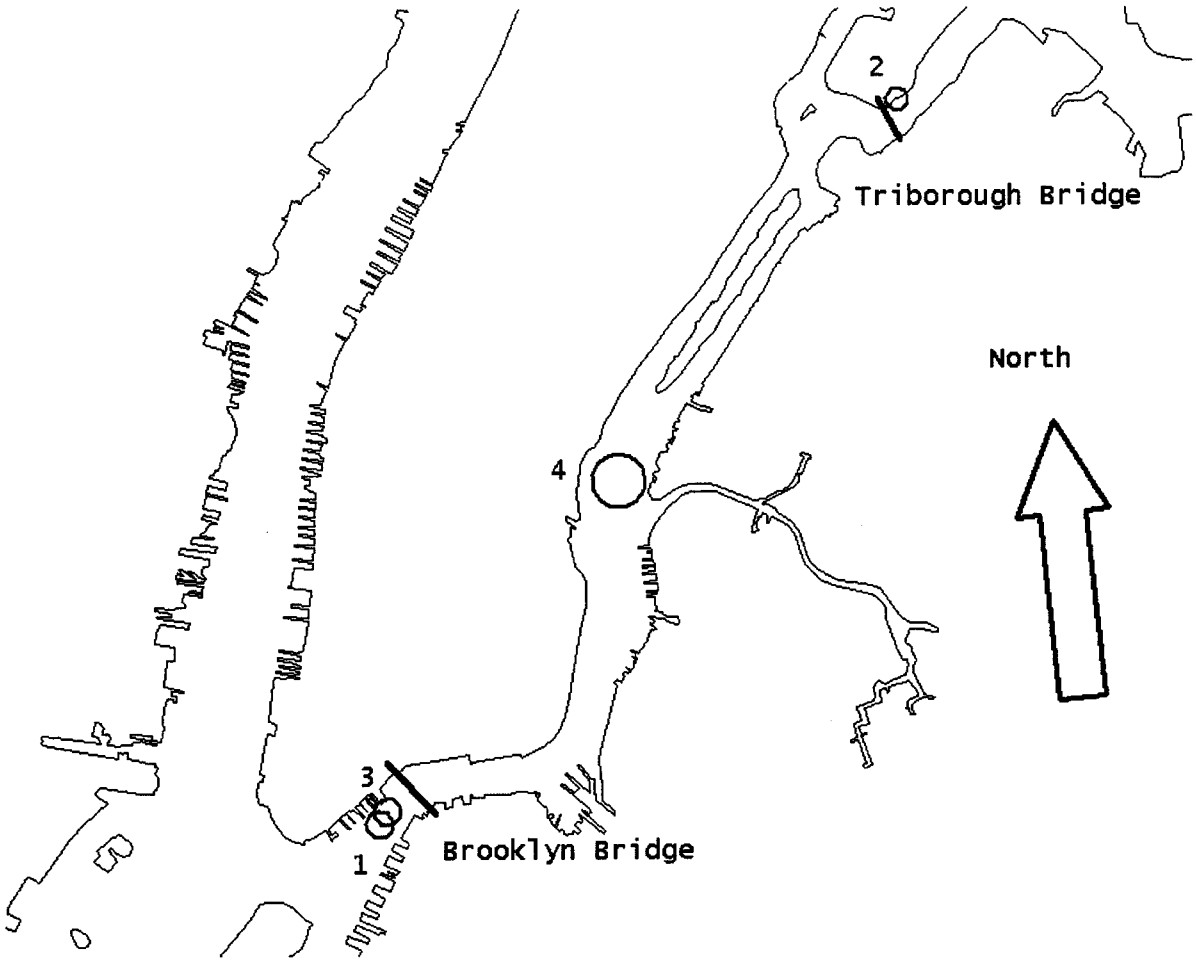


Figure 3
§ 165.168(c) East River Fireworks Safety Zones drawn to scale.



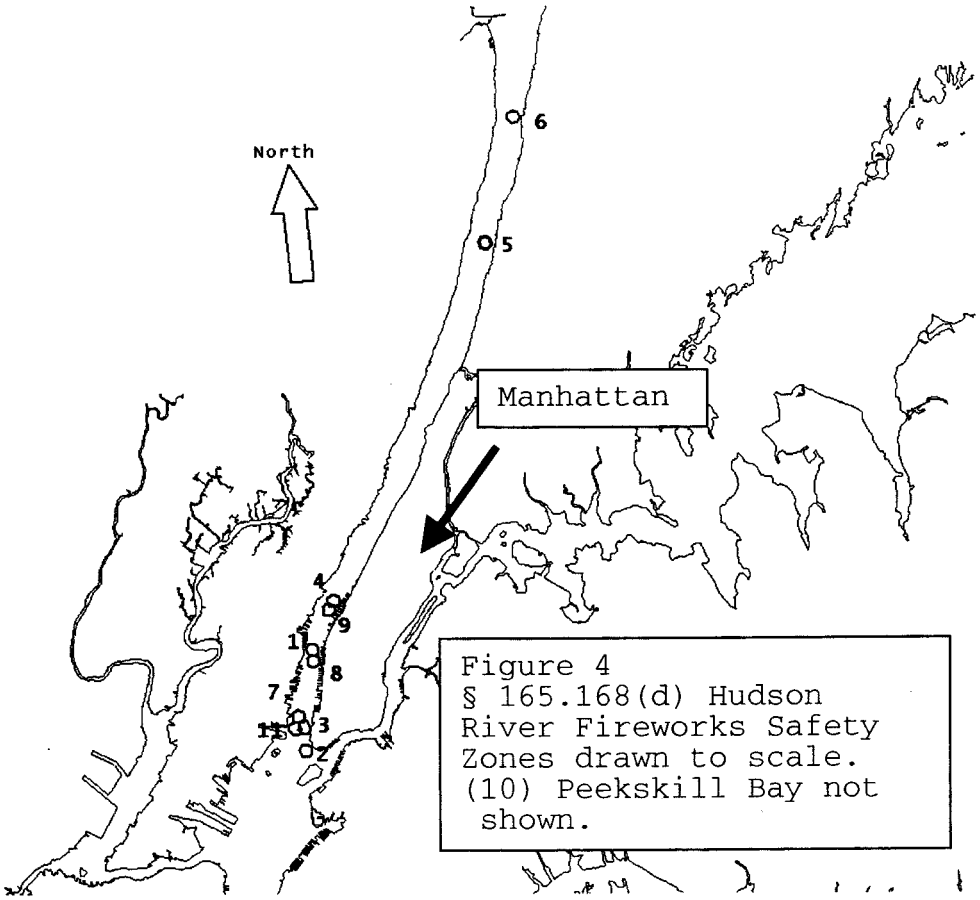


Figure 4
§ 165.168(d) Hudson River Fireworks Safety Zones drawn to scale. (10) Peekskill Bay not shown.

Dated: November 3, 2000.

P.A. Harris,

Captain, U.S. Coast Guard, Captain of the Port, New York, Acting.

[FR Doc. 00–31705 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–15–C

Notices

Federal Register

Vol. 65, No. 240

Wednesday, December 13, 2000

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

DEPARTMENT OF AGRICULTURE

Forest Service

Lassen National Forest; California; Lakes Forest Recovery Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service intends to prepare an environmental impact statement to analyze and disclose the environmental effects of implementing resource management activities that include fuelbreak construction consisting of a strategic system of defensible fuel profile zones, group selection and individual tree selection harvests, and riparian restoration projects on the Almanor Ranger District in the Lassen National Forest. These activities are part of a 5-year pilot project to test and demonstrate the effectiveness of certain resource management activities designed to meet ecologic, economic, and fuel reduction objectives on the Lassen National Forest as well as the Plumas National Forest and on the Sierraville Ranger District of the Tahoe National Forest. This notice applies only to the Lassen National Forest; however, all three National Forests were named in the Record of Decision (August 1999) for the Herger-Feinstein Quincy Library Group Forest Recovery Act Final Environmental Impact Statement. The Record of Decision amended the management direction in the Land and Resource Management Plans for these three National Forests. The need for the Record of Decision and Final Environmental Impact Statement was generated from the Herger-Feinstein Quincy Library Group Forest Recovery Act of October 21, 1998.

DATES: Comments concerning the scope of the analysis should be received in writing on or before January 12, 2001.

ADDRESSES: Send written comments to Susan Jeheber-Matthews, Almanor District Ranger, P.O. Box 767, Chester, CA, 96020.

FOR FURTHER INFORMATION CONTACT: Dominic Cesmat, Interdisciplinary Team Leader, telephone: (530) 258–2141.

SUPPLEMENTARY INFORMATION:

Proposed Action

To accomplish the purpose of the Herger-Feinstein Quincy Library Group Forest Recovery Act (Act), resource management activities included in the proposed Lakes Forest Recovery Project are defensible fuel profile zone (DFPZ) construction, group selection and individual tree selection harvests, and riparian restoration projects. The proposed project is located in Butte County, California, within the Almanor Ranger District of the Lassen National Forest in all or portions of Sections 1–3, 10–15, 22–27, 34–36, T.25N, R.4E., Sections 3–10, 15–20, 29–30, T.25N., R.5E., Sections 1–4, 9–15, 22–26, 34–36, T.26N., R.4E., Section 4–10, 14–23, 26–35, T.26N., R.5E., Sections 33–36, T.27N., R.4E., and Sections 31–33, T.27N., R.5E., MDM.

The Lakes Forest Recovery Project area is one of five sub networks established to implement a DFPZ network on the District. The purpose of DFPZs in this area is to reduce the number of acres that would be burned by high-intensity and stand-replacing fires. DFPZs are needed in this area in order to improve suppression efficiency by creating an environment where wildfires would burn at lower intensities and where fire fighting production rates would be increased. DFPZ are strategically located strips of land on which forest fuels, both living and dead, have been modified in order to reduce the potential for a sustained crown fire and to allow fire suppression personnel a safer location from which to take action against a wildfire. Fuels treatment strategies would focus on the alteration or reduction of surface fuels, ladder fuels, and canopy closure in order to effectively alter fire behavior and severity. Treatment methods would include thinning timbered stands, hand or machine piling of excessive forest fuels, and prescribed fire. The Lakes Forest Recovery Project proposes to construct 7,780 acres of DFPZs in the Lake's project area including an estimated 5,520 acres that would be thinned.

Groups selection harvests would be implemented to promote diversity in stand age and structure. Root disease centers or dwarf mistletoe infected areas would be targeted for group selection, as well as those stands that are even-aged in structure. Some understocked areas would also be regenerated using the group selection prescription. Group selection harvests would be implemented in some aspen stands where competition for light and soil moisture from conifers is causing a decline in health and structure of the aspen stand. Treatment would consist of removing most of the conifers within identified aspen stands. Group selection harvests would also be utilized to treat stands with meadow attributes that are declining due to conifer encroachment within the meadow. Group selection harvests would be performed to reduce the encroachment of conifers. Group selection would be implemented on an estimated 1,100 acres within the Lakes Forest Recover Project area. Fuels treatment would occur on 650 acres within group selections.

Individual tree selection is allowed in the Act to promote forest health and provide an uneven-aged structure to forested lands. Individual tree selection would be implemented on an estimated 460 acres within the Lakes Forest Recovery Project area.

Included in the proposed action for the Lakes Forest Recovery Project is the realignment of a boundary for a protected activity center for the California spotted owl, and the establishment of a new goshawk management area for a nesting pair of goshawks.

New construction of permanent and temporary roads would be needed to economically access stands requiring treatment for DFPZ and group selection harvest. Within the project area, 19.9 miles of permanent new road construction and 8.2 miles of temporary road construction would be implemented for this purpose. New construction of permanent roads would be added to the Forest transportation system. Temporary roads would be obliterated upon completion of use.

Riparian restoration projects would include erosion control treatment on existing landings and skidtrails, and on eroding streambanks that are contributing sediment to the streams. Treatment of existing roads would be

implemented as part of an overall riparian restoration strategy to reduce impacts caused by roads. Impacts include erosion and increased runoff from inadequately or poorly drained roads, especially those located close to streams and with poorly designed drainage structures and stream crossings. Road treatments would include road relocation (11.2 miles of new construction, all of which is included in the new construction mentioned above), reconstruction (44 miles of existing roads for DFPZ and group selection access), and decommissioning (14.9 miles). Reconstruction activities would also include improvement or relocation of several in-channel water sources.

Decision To Be Made

The decision to be made is whether to implement the proposed action as described above, to meet the purpose and need for action through some other combination of activities, or to take no action at this time.

In order to fully test the Herger-Feinstein Quincy Library Group Forest Recovery Act on the Almanor Ranger District (*e.g.,* implement contiguous DFPZs on the landscape), it is necessary to analyze and implement the resource management activities outlined in the Act within suitable habitat for the California spotted owl. The Lakes Forest Recovery Project proposed action includes projects within suitable habitat.

The Record of Decision for the Herger-Feinstein Quincy Library Group Forest Recovery Act Final Environmental Impact Statement (FEIS) stated that California spotted owl habitat would be avoided at the site-specific project level until a new California spotted owl habitat management strategy is released. The decision to implement resource management activities within suitable owl habitat in the Lakes Forest Recovery Project area will be based upon one or more of the following three actions:

(1) A decision is made on the Sierra Nevada Conservation Framework (that would amend the Lassen National Forest (NF) Land and Resource Management Plan) that defines a new owl strategy and allows the implementation of resource management activities as outlined in the Act, or;

(2) A new California spotted owl viability assessment is completed providing direction encompassing the species' range and the Lassen NF Land and Resource Management Plan is amended to include the new owl strategy, or;

(3) A site-specific California spotted owl strategy would be developed and implemented for this project resulting in a non-significant amendment to the Lassen NF Forest Plan.

Responsible Official and Lead Agency

The USDA Forest Service is the lead agency for this proposal. District Ranger Susan Jeheber-Matthews is the responsible official.

Tentative or Preliminary Issues and Possible Alternatives

Comments from the public and other agencies will be used in preparation of the draft environmental impact statement (EIS). The scoping process will be used to identify questions and issues regarding the proposed action. An issue is defined as a point of dispute, debate, or disagreement related to a specific proposed action based on its anticipated effects. Significant issues brought to our attention are used during an environmental analysis to develop alternatives to the proposed action. Some issues raised in scoping may be considered non-significant because they are: (1) Beyond the scope of the proposed action and its purpose and need; (2) already decided by law, regulation, or the Land and Resource Management Plan; (3) irrelevant to the decision to be made; or (4) conjectural and not supported by scientific or factual evidence.

An anticipated public issue with the Lakes Forest Recovery Project is the proposal to implement resource management activities within suitable California spotted owl habitat. Alternatives currently being considered for the Lakes Forest Recovery Project include: (a) No action; (b) the proposed action as outlined above, and; (c) an alternative, based on the proposed action, that does not enter into suitable California spotted owl habitat.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS.

Identification of Permits or Licenses Required

No permits or licenses have been identified to implement the proposal action.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review on March 2001. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability of the draft EIS in the **Federal Register.**

The Reviewers Obligation To Comment

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 statements must structure their participation in the environmental review of the proposal so that 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 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 Regulation of implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: December 6, 2000.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 00–31694 Filed 12–12–00; 8:45 am]

BILLING CODE 3410—11—M

BROADCASTING BOARD OF GOVERNORS

Performance Review Board Members

AGENCY: Broadcasting Board of Governors.

ACTION: Notice of Membership.

SUMMARY: This Notice is issued to announce the membership of the Broadcasting Board of Governors (BBG) Performance Review Board.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT: Ms. Linda C. Beard (Executive Secretary), Office of Personnel, Broadcasting Board of Governors, 330 Independence Avenue SW, Washington, DC 20237, Telephone: (202) 619–1523.

SUPPLEMENTARY INFORMATION: In accordance with sections 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95454), the following is a list of members of the 2000 Performance Review Board for the Broadcasting Board of Governors.

Chairperson: Director for International Broadcasting Bureau, Brian Conniff (Acting). Panel 1—International Broadcasting Bureau SES Members.

Chairperson: Chief of Staff for the Broadcasting Board of Governors, Josiah H. Beeman. Panel 2: Broadcasting Board of Governors SES Members Career SES Members.

Patricia Popovich, Deputy Chief, Information Officer For Management, Information Resources Management Bureau, Department of State.

Mike Blank, Executive Officer for the Immediate Office of the Secretary for Health and Human Services.

Alternate Career SES Members, Stephen Smith, Associate Director for Management, International Broadcasting Bureau, Broadcasting Board of Governors.

Dated: December 7, 2000.

John S. Welch,

Director, Office of Personnel.

[FR Doc. 00–31746 Filed 12–12–00; 8:45 am]

BILLING CODE 8610–01–P

COMMISSION ON CIVIL RIGHTS

Hearing on Allegations of Voting Irregularities in the Presidential Election on November 7, 2000

AGENCY: Commission on Civil Rights.

ACTION: Notice of hearings.

SUMMARY: Notice is hereby given pursuant to the provisions of the Civil Rights Commission Amendments Act of 1994, Section 3, Public Law 103–419, 108 Stat. 4338, as amended, and 45 CFR 702.3., that public hearings before the U.S. Commission on Civil Rights will commence on Thursday, January 11, 2001, beginning at 9:00 a.m., in the morning in Tallahassee, FL, and on subsequent days in Miami, FL, Jacksonville, FL, and Tampa, FL. The purpose of these hearings is to collect information within the jurisdiction of the Commission, under Public Law 98–183, Section 5(a)(1) and Section 5(a)(5), related particularly to allegations that eligible persons in Florida were denied the right to vote or to have their votes properly counted in the election of the Presidential electors on November 7, 2000.

The Commission is authorized to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses pursuant to 45 CFR 701.2. The Commission is an independent bipartisan, fact finding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice. The Commission has broad authority to investigate allegations of voting irregularities even when alleged abuses do not involve discrimination.

Hearing impaired persons who will attend the hearings and require the services of a sign language interpreter, should contact Pamela Dunston, Administrative Services and Clearinghouse Division at (202) 376–8105 (TDD (202) 376–8116), at least five (5) working days before the scheduled date of the hearings.

FOR FURTHER INFORMATION CONTACT: Les Jin, Office of the Staff Director (202) 376–7700.

Dated: December 11, 2000.

Edward A. Hailes, Jr.,

Acting General Counsel.

[FR Doc. 00–31904 Filed 12–11–00; 2:52 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 68–2000]

Foreign-Trade Zone 64—Jacksonville, FL; Application for Subzone Status; Atlantic Marine, Inc. (Shipbuilding and Repair)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Jacksonville Port Authority, grantee of FTZ 64, requesting special-purpose subzone status for the shipbuilding facility of Atlantic Marine, Inc. (AMI), in Jacksonville, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 5, 2000.

The AMI shipyard (81 acres, 276,000 sq. ft.) is located along the St. Johns River at 8500 Heckscher Drive in Jacksonville. The facility is used for the construction, repair, and conversion of commercial vessels for domestic and international customers. The application indicates that all steel mill products are sourced domestically. Foreign components that may be used at the AMI shipyard (up to 12% of vessel value) include propulsion units, engines and control systems, pumps, air-conditioning systems, hydraulic parts, fire doors, pipes, solenoids, valves, multimeters, gaskets, washers, signaling equipment, davits and lifeboats, electric motors, articles of rubber and chrome, navigation and electronic equipment, propellers, anchors, deck cranes, plumbing fixtures, lighting equipment, carpet, furniture, wall and ceiling panels, and table and kitchen ware (2000 duty rate range: free—29%, *ad valorem*).

FTZ procedures would exempt AMI from Customs duty payments on the foreign components (except steel mill products) used in export activity. On its domestic sales, the company would be able to choose the duty rate that applies to finished oceangoing vessels (duty free) for the foreign-origin components noted above. The manufacturing activity conducted under FTZ procedures would be subject to the ''standard shipyard restriction'' applicable to foreign-origin steel mill products (e.g., angles, pipe, plate), which requires that Customs duties be paid on such items. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 12, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 26, 2001).

A copy of the application will be available for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 2831 Talleyrand Avenue, Jacksonville, FL 32206.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Dated: December 5, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–31755 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1130]

Expansion of Foreign-Trade Zone 94; Laredo, TX

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

Whereas, the City of Laredo, Texas, grantee of Foreign-Trade Zone 94, submitted an application to the Board for authority to expand FTZ 94 to include a site at the Unitec Industrial Center located in Laredo (Site 6), within the Laredo Customs port of entry (FTZ Docket 7–2000; filed 3/3/00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 12970, 3/10/00) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

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

Now, Therefore, the Board hereby orders: The application to expand FTZ 94 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 28th day of November 2000.

Troy H. Cribb,

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

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–31750 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part: Canned Pineapple Fruit From Thailand

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

SUMMARY: On August 8, 2000, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit from Thailand. This review covers nine producers/exporters of the subject merchandise. The period of review (POR) is July 1, 1998, through June 30, 1999. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the ''Final Results of Review'' section. Furthermore, we are not revoking the antidumping duty order with respect to Malee Sampran Public Co., Ltd. (Malee) given that shipments of this company's subject merchandise to the United States have not been made in commercial quantities for each of the three consecutive review periods that formed the basis of the revocation request.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Charles Riggle, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0631 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department regulations are to the regulations codified at 19 CFR Part 351 (1999).

Background

This review covers the following producers/exporters of merchandise subject to the antidumping duty order on canned pineapple fruit from Thailand: Vita Food Factory (1989) Co., Ltd. (Vita); Siam Fruit Canning (1988) Co., Ltd. (SIFCO); Siam Food Products Public Co. Ltd. (SFP); The Thai Pineapple Public Co., Ltd. (TIPCO); Malee; The Prachuab Fruit Canning Company Ltd. (PRAFT); Thai Pineapple Canning Industry (TPC); Tropical Food Industries Co., Ltd. (TROFCO); and Kuiburi Fruit Canning Co. Ltd. (KFC),

On August 8, 2000, the Department published the preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination Not to Revoke Order in Part: Canned Pineapple Fruit From Thailand,* 65 FR 48450 (*Preliminary Results*). On September 7 and 14, 2000, we received case briefs and/or rebuttal briefs, respectively, from the petitioners,[1] SFP, TIPCO, Malee, TPC, and SIFCO.

Scope of Review

The product covered by this review is canned pineapple fruit (CPF). CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.,* juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, dated December 6, 2000, which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding

[1] The petitioners in this case are Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union.

recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Determination Not To Revoke Order

For the reasons outlined in the Decision Memorandum, we have determined not to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Malee, because its sales were not made in commercial quantities in accordance with 19 CFR 351.222(e)(1)(ii).

Fair Value Comparisons

We calculated export price (EP) and normal value (NV) based on the same methodology used in the preliminary results. We corrected clerical errors with respect to Malee and TPC.

Cost of Production

We calculated the COP based on the same methodology used in the preliminary results, with the exception of PRAFT. For PRAFT we used the five-year historical net realizable value ratio for calculating the fruit cost used in the COP. For a further discussion of this issue, *see* the Decision Memorandum, Comment 4. We corrected clerical errors with respect to SFP.

Final Results of Review

As a result of our review, we determine that the following percentage weighted-average margins exist for the period July 1, 1998, through June 30, 1999:

Manufacturer/exporter	Margin (percent)
Siam Food Products Company Ltd	0.37
The Thai Pineapple Public Company, Ltd	1.95
Kuiburi Fruit Canning Co. Ltd	1.63
Thai Pineapple Canning Industry	3.42
Siam Fruit Canning (1988) Co. Ltd	1.31
Vita Food Factory (1989) Co. Ltd	5.19
The Prachuab Fruit Canning Company Ltd	2.16
Tropical Food Industries Co., Ltd	4.02
Malee Sampran Public Co., Ltd	1.04

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the import-specific assessment rate is above *de minimis* we will instruct the Customs Service to assess antidumping duties on that importer's entries of subject merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For the companies named above, the cash deposit rate will be the rate listed above, except where the margins are zero or *de minimis* no cash deposit will be required, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 24.64 percent, the all others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 6, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

Appendix—Issues Covered in Decision Memorandum

I. ISSUES SPECIFIC TO MALEE
- Comment 1: Revocation
- Comment 2: Imputed Credit Expenses
- Comment 3: Export Price (EP) vs. Constructed Export Price (CEP)

II. ISSUES SPECIFIC TO PRAFT
- Comment 4: Fruit Cost Allocation
- Comment 5: Direct vs. Indirect Selling Expenses

III. ISSUES SPECIFIC TO SIFCO
- Comment 6: Correction of Errors in Database
- Comment 7: Calculation of General and Administrative (G&A) Expense Ratio
- Comment 8: Calculation of Interest Expense Ratio

IV. ISSUES SPECIFIC TO TIPCO
- Comment 9: Expenses Related to Compliance with the Antidumping Duty Order
- Comment 10: Foreign Exchange Gains and Losses
- Comment 11: Calculation of Interest Expense Ratio
- Comment 12: Offset to G&A
- Comment 13: Purchase of Input from Affiliated Party
- Comment 14: Offset to Cost of Manufacturing (COM)
- Comment 15: Clerical Error Allegation

V. ISSUES SPECIFIC TO TPC
- Comment 16: Date of Sale
- Comment 17: EP vs. CEP
- Comment 18: Allocation of G&A to Arbitrage Activity
- Comment 19: Allocation of Interest Expense to Arbitrage Activity
- Comment 20: Clerical Error Allegation

VI. ISSUES SPECIFIC TO SFP
- Comment 21: Clerical Error Allegation

[FR Doc. 00–31751 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review and determination to revoke the antidumping duty order in part: Certain pasta from Italy.

SUMMARY: On August 8, 2000, the Department of Commerce (the ''Department'') published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Italy. This review covers the following exporters/producers of subject merchandise: (1) Commercio-Rappresentanze-Export S.r.l. (''Corex''); (2) F.lli De Cecco di Filippo Fara S. Martino S.p.A. (''De Cecco''); (3) La Molisana Industrie Alimentari S.p.A. (''La Molisana''); (4) Pastificio Fratelli Pagani S.p.A. (''Pagani''); (5) Pastificio Antonio Pallante (''Pallante''); (6) P.A.M. S.r.l. (''PAM''); and (7) N. Puglisi & F. Industria Paste Alimentare S.p.A. (''Puglisi''). The period of review (''POR'') is July 1, 1998, through June 30, 1999.

Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section *''Final Results of Review.''* For our final results, we have found that during the POR, La Molisana and PAM sold subject merchandise at less than normal value (''NV''). We have also found that during the POR, Corex, De Cecco, Pallante, Pagani, and Puglisi did not make sales of the subject merchandise at less than NV (i.e., ''zero'' or *de minimis* dumping margins). In addition, we are revoking the antidumping order with respect to De Cecco, based on three years of sales in commercial quantities at not less than NV. See *''Intent to Revoke''* section of this notice.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Geoffrey Craig, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3965, or (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On August 8, 2000, the Department published the preliminary results of administrative review of the antidumping duty order on certain pasta from Italy. *See Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta from Italy,* 65 FR 48467 (August 8, 2000) (''*Preliminary Results*''). The review covers seven manufacturers/exporters. The POR is July 1, 1998, through June 30, 1999. We invited parties to comment on our preliminary results of review. We received case briefs on September 7, 2000, from PAM, De Cecco, and La Molisana.[1] A public hearing was not held with respect to this review.[2] The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, in the case file in the Central Records Unit, main Commerce building, room B–099 (''the CRU'').

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John

[1] On September 28, 2000, we rejected one page of the case brief submitted by PAM, pursuant to 19 CFR 351.301(b)(2) and 19 CFR 351.302(d), because we found that the page contained untimely new factual information. PAM resubmitted the page of the case brief without the new information on October 2, 2000.

[2] Although on September 7, 2000 PAM requested a hearing, that request was subsequently withdrawn on September 18, 2000. No other party requested a hearing.

Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU.

The following scope ruling is pending:

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders,* 65 FR 26179 (May 5, 2000).

Determination to Revoke

On July 28, 1999, De Cecco submitted a request, pursuant to 19 CFR 351.222, that the Department revoke the antidumping duty order with respect to its sales of the subject merchandise. In accordance with 19 CFR 351.222(e), this request was accompanied by a certification that De Cecco had not sold the subject merchandise at less than NV for a period of three consecutive reviews, which included this review period, and that it sold the subject merchandise in commercial quantities to the United States during each of these three years. De Cecco also has stated that it would not sell the subject merchandise at less than NV to the United States in the future, and agreed to the reinstatement of the antidumping order with respect to its merchandise, as long as any exporter or producer is subject to the order, if the Department concludes that De Cecco sold the subject merchandise at less than NV.

In our preliminary results, in accordance with 19 CFR 351.222(f), we stated our intent to revoke in part the order for certain pasta from Italy as it pertains to De Cecco's sales of the subject merchandise. *See Preliminary Results.* No parties submitted comments on De Cecco's request for revocation.

Therefore, because De Cecco has made sales at not less than NV for three consecutive reviews in commercial quantities (*see* Memorandum from Jarrod Goldfeder to File, ''Shipments of Pasta to the United States by De Cecco,'' dated July 31, 2000) and because there is no evidence on the record to indicate the likelihood of resumption of sales at dumped prices, we are revoking the antidumping duty order in part with respect to De Cecco's sales of the subject merchandise. *See Certain Welded Stainless Steel Pipe From Taiwan: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part,* 65 FR 39367 (June 26, 2000).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *''Issues and Decision Memorandum for the Third Antidumping Duty Administrative Review'' (''Decision Memorandum'')* from Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, to Troy H. Cribb, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the CRU, room B–099 (''B–099'') of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Review

As a result of our review, we determine that the following percentage weighted-average margins exist for the period July 1, 1998, through June 30, 1999:

Manufacturer/exporter	Margin (percent)
Corex	zero
De Cecco	0.22 (*de minimis*)
La Molisana	5.26
Pagani	0.49 (*de minimis*)
Pallante	0.08 (*de minimis*)
PAM	5.04
Puglisi	0.07 (*de minimis*)

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where the importer-specific assessment rate is above *de miminis,* we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above, except where the margin is *de minimis* or zero we will instruct Customs not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 38547 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

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

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

Dated: December 6, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

Appendix—List of Comments and Issues in the Decision Memorandum

PAM

Comment 1: Excluding certain sales from the database
Comment 2: Model matching for unenriched pasta
Comment 3: Selection of normal values
Comment 4: Exchange rate conversion
Comment 5: Level of trade methodology
Comment 5A: General level of trade methodology
Comment 5B: Inventory carrying cost
Comment 5C: Freight and delivery
Comment 6: Shape-based methodology
Comment 7: Short-term borrowing rate
Comment 8: Verification
Comment 9: Sampling methodology
Comment 10: Department of Commerce's release of data
Comment 11: Constructed export price language in the margin program
Comment 12: Administrative process
Comment 13: Accuracy of final results
Comment 14: Cost of production and constructed value data
Comment 15: Weight-averaging methodology
Comment 16: Disregarding sales below cost
Comment 17: Misstated cost data
Comment 18: Raw material cost
Comment 19: Home market sales used in below-cost test
Comment 20: Below-cost sales
Comment 21: General and administrative expenses
Comment 22: Financial expense rate

De Cecco

Comment 23: Constructed export price offset and commission offset
Comment 24: U.S. selling expenses
Comment 25: Countervailing duty variable

La Molisana

Comment 26: Treatment of negative net-U.S. prices
Comment 27: Total overall cost of production data for calculation of cost of production and constructed value
Comment 28: Ministerial Error

[FR Doc. 00–31752 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Preliminary Results of New Shipper Antidumping Duty Review

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

ACTION: Notice of preliminary results of new shipper antidumping duty review: Certain pasta from Turkey.

SUMMARY: In response to a request by a pasta producer and its affiliated exporter in Turkey, Beslen Makarna Gida Sanayi ve Ticaret A.S., and Beslen Pazarlarma Gida Sanayi ve Ticaret A.S., respectively (collectively ''Beslen''), the Department of Commerce (''the Department'') is conducting a new shipper review of the antidumping duty order on certain pasta from Turkey. The review covers sales during the period July 1, 1999 through December 31, 1999. We preliminarily determine that Beslen did not sell subject merchandise at less than normal value during the period of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson or James Terpstra, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3797, or 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (1999).

Case History

The Department published the antidumping duty order on certain pasta from Turkey on July 24, 1996 (61 FR 38545). On January 27, 2000, Beslen requested a new shipper review pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214.

On February 17, 2000, the Department initiated the new shipper review of Beslen, and the notice of initiation was published on February 23, 2000 (65 FR 8949).

On February 17, 2000, we issued an antidumping questionnaire [1] to Beslen. Beslen submitted its sections A, B and C questionnaire response on March 27, 2000. The Department issued two supplemental section A through C questionnaires to Beslen on August 25 and September 22, 2000. Beslen submitted its responses to our supplemental questionnaires on September 18 and October 10, 2000, respectively.

On August 8, 2000, the Department published a notice postponing the preliminary results of this review until December 7, 2000 (65 FR 48477).

We verified the sales information submitted by Beslen from November 13 to 17, 2000.

Scope of the Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Turkey that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, or by QC&I International Services.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request comparison market sales listings and U.S. sales listings, respectively.

Scope Rulings

The Department has issued the following scope ruling to date:

On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* ''Memorandum from John Brinkmann to Richard Moreland,'' dated May 24, 1999, in the case file in the Central Records Unit (''the CRU''), main Commerce building, room B–099.

Verification

As provided in section 782(i) of the Act, we verified sales information provided by Beslen. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification report placed in the case file in the CRU.

Product Comparisons

In accordance with section 771(16) of the Act, the Department first attempted to match contemporaneous sales of products sold in the U.S. and comparison markets that were identical with respect to the following characteristics: (1) Pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. Because Beslen sold identical merchandise in the U.S. and comparison markets, when comparing U.S. sales with comparison market sales, it was not necessary to make any adjustments for physical differences in the merchandise as permitted under section 773(a)(6)(C)(ii) of the Act.

Comparisons to Normal Value

To determine whether sales of certain pasta from Turkey were made in the United States at less than normal value (''NV''), we compared the export price (''EP'') to the NV, as described in the ''*Export Price*'' and ''*Normal Value*'' sections of this notice. Because Turkey's economy experienced high inflation during the POR (over 60 percent), as is Department practice, we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred and did not apply our ''90/60 contemporaneity rule'' (*see, e.g.*, *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 64 FR 69493 (December 13, 1999) and *Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 42496, 42503 (August 7, 1997)). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

Export Price

For the price to the United States, we used EP in accordance with section 772(a) of the Act because the merchandise was sold by the producer or exporter outside the United States to the first unaffiliated purchaser in the United States prior to importation and constructed export price was not otherwise warranted based on the facts on the record. We based EP on the packed delivered prices to the first unaffiliated customer in the United States.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant to port of exportation, foreign handling fees, international freight, U.S. brokerage, U.S. duty, and U.S. inland freight. In addition, we increased the EP by the amount of the countervailing duties imposed that were attributable to an export subsidy, in accordance with section 772(c)(1)(C) of the Act.

Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Beslen's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act, because Beslen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for Beslen.

Normal Value

We calculated NV based on ex-works or delivered prices to comparison market customers. We made deductions from the starting price for inland freight, discounts, and rebates according to 773(a)(6)(B)(ii) of the Act. We added U.S. packing costs and deducted comparison market packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. In addition, we made circumstance of sale adjustments for direct expenses, including imputed credit and advertising, in accordance with section 773(a)(6)(C)(iii) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade (''LOT'') as the U.S. EP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customers. If the comparison market sales were at a different LOT and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we made a LOT adjustment under section 773(a)(7)(A) of the Act.

Beslen reported 95 percent of comparison market sales to an unaffiliated distributor (''group 1''). The remaining 5 percent of comparison market sales were made to distributors, end-users, or affiliated customers (collectively, ''group 2''). We found that the two home market groups differed significantly with respect to selling activities for sales process and marketing support. Based on our overall analysis, we found that the two home market groups constituted two different LOTs.

Beslen reported one EP sale to an unaffiliated retailer and, therefore, only had one level of trade for U.S. sales. This EP LOT differed considerably from the home market group 1 with respect to selling activities associated with sales process and marketing support, advertising, and freight and delivery, and from group 2 with respect to freight and delivery, and advertising. Consequently, we could not match EP sales to sales at the same LOT in the home market. In addition, we could not make a LOT adjustment because there was no way to measure whether the differences in the LOTs between the comparison market sales and the U.S. sale affected price comparability since there were no home market sales at the LOT of the export transaction. Therefore, we have matched EP sales to all sales in the home market and made no level of trade adjustment.

Currency Conversion

Because this proceeding involves a high-inflation economy, we limited our comparison of U.S. and home market sales to those occurring in the same month (as described above) and used daily exchange rates. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429 (December 11, 1998).

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the Wall Street Journal.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margin for Beslen is 0.00 percent.

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this new shipper review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent) the Department will issue appraisement instructions directly to the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, in order to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value.

Cash Deposit Requirements

To calculate the cash-deposit rate for each producer and/or exporter included in this new shipper review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following deposit rates will be effective upon publication of the final results of this new shipper review for all shipments of certain pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Beslen will be zero; (2) for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 51.49 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38546 (July 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31753 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review: certain pasta from Turkey.

SUMMARY: We determine that sales of the subject merchandise have not been made below normal value (NV).

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Cindy Lai Robinson, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (1999).

Case History

On August 8, 2000, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on certain pasta from Turkey. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy,* 65 FR 48474 (''*Preliminary Results*''). As discussed in the preliminary results, this review covers shipments by one respondent, Filiz Gida Sanayi ve Ticaret A.S (''Filiz''), during the period of review (''POR'') July 1, 1998 through June 30, 1999. Interested parties did not submit case briefs nor did they request a hearing. There have been no changes since the preliminary results.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope ruling to date:

(1) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* ''Memorandum from John Brinkmann to Richard Moreland,'' dated May 24, 1999, in the case file in the Central Records Unit, main Commerce building, room B–099 (''the CRU'').

Price Comparisons

We calculated export price and normal value (''NV'') based on the same methodology described in the *Preliminary Results.*

Cost of Production

As discussed in the *Preliminary Results,* we conducted an investigation to determine whether the respondent participating in the review made home market sales of the foreign like product during the POR at prices below its cost of production (''COP'') within the meaning of section 773(b)(1) of the Act. We calculated the COP for these final results following the same methodology as in the *Preliminary Results.*

We found 20 percent or more of Filiz's sales of a given product during the six-month reporting period were at prices less than the weighted-average COP for the reporting period and thus determined that these below cost sales were made in ''substantial quantities'' within an extended period of time in accordance with sections 773(b)(2)(B) and (C) of the Act. As discussed in the preliminary results, in our September 1, 1999 letter, we granted Filiz a six-month limited reporting period, and we advised Filiz that if it elected to limit its reporting of home market data to the six-month period, in the sales-below-cost investigation, it would forgo the application of the ''recovery of cost'' test pursuant to section 773(b)(2)(D) of the Act. Filiz agreed to accept this limitation on September 7, 1999. Consequently, without the application of ''recovery of cost'' test, we determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of these final results, we disregarded the below-cost sales and used the remaining sales as the basis for determining NV, pursuant to section 773(b)(1) of the Act. While we disregarded some below-cost sales, sufficient sales remained that passed the cost test in the current review. Therefore, it was unnecessary to calculate constructed value in this case.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the *Preliminary Results.* As noted above, we received no comments from the petitioners or Filiz.

Final Results of Review

As a result of our review, we determine that Filiz had a zero weighted-average margin for the period July 1, 1998 through June 30, 1999.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, in order to calculate the entered value, we subtracted international movement expenses (*e.g.,* international freight) from the gross sales value. Where the importer-specific assessment rate is above *de minimis* we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise.

Cash Deposit Requirements

To calculate the cash-deposit rate for Filiz in this administrative review, we divided the total dumping margins for Filiz by the total net value for Filiz's sales during the review period.

Furthermore, the following cash deposit requirements will be effective for all shipments of the subject merchandise from Turkey entered, or withdrawn from warehouse, for consumption upon publication of these final results of administrative review, as provided by sections 751(a)(2)(A) and (C) of the Act: (1) The cash deposit rate for Filiz will be zero; (2) for other previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 51.49 percent, the ''all others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey,* 61 FR 38545 (July 24, 1996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 USC 1675(a)(1) and 19 USC 1677f(i)(1)).

Dated: December 1, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–31754 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Philippines

December 7, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54872, published on October 8, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 7, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on December 13, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335	160,947 dozen.
338/339	3,153,690 dozen.
340/640	1,271,931 dozen.
341/641	1,048,888 dozen.
347/348	3,168,321 dozen.
635	507,422 dozen.
638/639	2,382,782 dozen.
647/648	1,515,974 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–31720 Filed 12-13-00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

December 7, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 360 is being increased for swing, reducing the limit for Category 369-D to account for the swing being applied. In addition, the donor category for a previous swing to Categories 342/642/842 is being changed from Category 360 to Category 369–D. There is no net effect on the limit for Categories 342/642/842.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70223, published on December 16, 1999.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 7, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on December 13, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
360	2,225,441 numbers.
369–D [2]	459,013 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–31721 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 00–80–NG, et al.]

Koch Energy Trading, Inc., et al.; Orders Granting, Amending, Transferring and Vacating Authority to Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during November 2000, it issued Orders granting, amending, transferring and vacating authority to import and export natural gas. These Orders are summarized in the appendix and may be found on the FE website at *http://www.fe.doe.gov,* or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 4, 2000.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING, AMENDING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1639	11/02/00	Kock Energy Trading, Inc. 00–80–NG.	73 Bef		Import from Canada beginning on November 3, 2000, and extending through November 2, 2002.
1464–A	11/02/00	Powerex Corp. 99–12–NG			Errata to correct order no.
1640	11/03/00	Enron LNG Marketing LLC 00–74–LNG.	300 Bcf		Import LNG from international sources not subject to trading sanctions over a two-year term beginning on the date of first delivery.
1641	11/06/00	Energy West Resources, Inc. 00–83–NG.	30 Bcf		Import and export a combined total from and to Canada over a two-year term beginning on first delivery after November 12, 2000.
1642	11/08/00	Tristar Gas Marketing Company 00–85–NG.	10 Bcf	20 Bcf	Import from Canada and import and export combined total from and to Mexico beginning on April 2, 2000, and extending through March 31, 2002.
1643	11/08/00	Sceptre Energy Inc. 00–70–NG.	50 Bcf		Import from Canada over a two-year term beginning on the date of first delivery.
1644	11/09/00	Cordeca Corporation 00–86–NG.	60 Bcf		Import from Canada beginning on November 13, 2000, and extending through November 12, 2002.
1645	11/09/00	Alliance Canada Marketing L.P. 00–87–NG.	30 Bcf		Import from Canada beginning on November 13, 2000, and extending through November 12, 2002.
1646	11/15/00	Distrigas LLC 00–79–LNG	100 Bcf		Import from various international sources over a two-year term beginning on first delivery after November 30, 2000.
1647	11/15/00	Vector Pipeline L.P. 00–89–NG.		10 Bcf	Export to Canada beginning on November 15, 2000, and extending through November 14, 2002.
1648	11/16/00	Hess Energy Services Company, LLC 00–76–NG.		60 Bcf	Export to Canada beginning on December 22, 2000, and extending through December 21, 2002.
1649	11/16/00	Hess Energy Services Company, LLC 00–77–NG.	60 Bcf		Import from Canada beginning on December 22, 2000, and extending through December 21, 2002.
1650	11/16/00	BC Gas Utility Ltd. 00–82–NG	35 Bcf	35 Bcf	Import and export from and to Canada beginning on December 19, 2000, and extending through December 18, 2002.
991–A	11/17/00	Engage Energy Canada, L.P., (The Successor to Westcoast Gas Services Inc.) 94–73–NG.			Transfer of long-term import authority.

APPENDIX—ORDERS GRANTING, AMENDING, TRANSFERRING AND VACATING IMPORT/EXPORT AUTHORIZATIONS—Continued

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1651	11/17/00	Midland Cogeneration Venture Limited Partnership 00–84–NG.	400 Bcf		Import and export a combined total over a two-year term beginning on the date of first delivery.
1202–B	11/20/00	Engage Energy America Corp. (Succesor to Westcoast Gas Services Delaware (America) Inc.) 96–52–NG.			Transfer of long-term import authority.
1128–B	11/20/00	Engage Energy America Corp. (Successor to Westcoast Gas Services Delaware (America) Inc.) 95–104–NG.			Transfer of long-term import authority.
1332–B	11/20/00	Engage Energy America Corp. (Successor to Westcoast Gas Services Delaware (America) Inc.) 97–48–NG.			Transfer of long-term import authority.
1253–B	11/20/00	Engage Energy America Corp. (Successor to Westcoast Gas Services Delaware (America) Inc. 97–03–NG.			Transfer of long-term import authority.
1282–B	11/20/00	Engage Energy America Corp. (Successor to Westcoast Gas Services Delaware (America) Inc.) 97–37–NG.			Transfer of long-term import authority.
1275–B	11/20/00	Engage Energy America Corp. (Successor to Westcoast Gas Services Delaware (America) Inc.) 97–36–NG.			Transfer of long-term import authority.
1652	11/20/00	Coastal Merchant Energy, L.P. 00–88–NG.	600 Bcf	150 Bcf	Import a combined total from Canada and Mexico, and export a combined total to Canada and Mexico, beginning on October 3, 2000, and extending through October 2, 2002.
1617–A	11/20/00	Engage Energy US, L.P. 00–56–NG.			Vacating blanket import and export authority.
1653	11/21/00	El Paso Merchant Energy—Gas, L.P. 00–90–LNG.	200 Bcf		Import from various international sources over a two-year term beginning on the date of first delivery.
1654	11/29/00	Nexen Marketing U.S.A. Inc. 00–91–NG.	200 Bcf		Import and export a combined total from and to Canada and Mexico, beginning on January 1, 2001, and extending through December 31, 2002.
1655	11/29/00	Berkley Petroleum Corp. 00–92–NG.	20 Bcf		Import from Canada beginning on December 1, 2000, and extending through November 30, 2002.
1622–A	11/30/00	Engage Energy America Corp. (Formerly Westcoast Gas Services Delaware (America) Inc.) 00–58–NG.			Amendment to blanket import authority changing name of company.

[FR Doc. 00–31715 Filed 12–12–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–33–000, et al.]

FPL Group, Inc., et al. Electric Rate and Corporate Regulation Filings

December 5, 2000.

Take notice that the following filings have been made with the Commission:

1. FPL Group, Inc., on behalf of itself and its public utility affiliates, and Entergy Corporation, on behalf of itself and its public utility affiliates

[Docket No. EC01–33–000]

Take notice that on November 30, 2000, FPL Group, Inc. (FPL Group), on behalf of itself and its public utility affiliates, and Entergy Corporation (Entergy), on behalf of itself and its public utility affiliates, filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby FPL Group and Entergy will become wholly-owned subsidiaries of a newly formed holding company (the Merged Company). FPL Group, through its subsidiaries and affiliates, owns and operates facilities for the generation and transmission of electricity throughout most of the east and lower west coasts of Florida. Entergy, through its subsidiaries and affiliates, owns and operates facilities for the generation and transmission of electricity in Arkansas, Louisiana, Mississippi, and Texas. Both FPL Group and Entergy also indirectly own and operate independent power projects throughout the United States.

The proposed merger of FPL Group and Entergy involves the indirect transfer of control over all jurisdictional facilities owned and operated by the FPL Group and Entergy subsidiaries and affiliates. The proposed merger will be accomplished through a merger of FPL Group and Entergy with and into subsidiaries of the Merged Company, with FPL Group and Entergy being the surviving companies. As a result, each share of FPL Group common stock (other than shares held by FPL Group, Entergy, or the Merged Company) will

be converted into the right to receive one share of the Merged Company common stock and each outstanding share of Entergy common stock (other than shares held by FPL Group, Entergy, or the Merged Company) will be converted into the right to receive 0.585 of a share of the Merged Company common stock.

Pursuant to 18 CFR 388.112, Applicants request confidential treatment of the Competitive Analysis Screening model (CASm) submitted by William H. Hieronymus and J. Stephen Henderson, witnesses in support of Applicants. The CASm is a proprietary computer model used by Dr. Hieronymus and Dr. Henderson to conduct their competitive analyses.

Comment date: January 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. PPL Montour, LLC

[Docket No. EG01–36–000]

Take notice that on November 29, 2000, PPL Montour, LLC tendered for filing an Application for New Determination of Exempt Wholesale Generator Status.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Duke Energy Lee, LLC

[Docket No. EG01–37–000]

Take notice that on November 30, 2000, Duke Energy Lee, LLC (Duke Lee) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations. Duke Lee is a Delaware limited liability company that will be engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities to be located in Lee County, Illinois. The eligible facilities will consist of an approximately 640 MW natural gas-fired, simple cycle electric generation plant and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. ISO New England Inc.

[Docket No. EL00–62–014]

Take notice that on December 1, 2000, ISO New England Inc. filed a revised implementation plan for the Congestion Management and Multi-Settlement Systems.

Comment date: January 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER01–522–000]

Take notice that on November 29, 2000, MidAmerican Energy Company (MidAmerican) tendered for filing a Wholesale Market-Based Rate Tariff and a pro forma Service Agreement. In addition, MidAmerican tendered for filing certain modifications to its currently-effective Power Sales Tariff.

MidAmerican seeks an effective date of December 1, 2000 for all of the tariff sheets submitted with this filing.

MidAmerican states that its Wholesale Market Based Rate Tariff and pro forma Service Agreement, are being filed in order to conform to a pro forma tariff prepared by a group of representatives from various segments of the electric industry. MidAmerican states that it does not proposed to eliminate its currently effective Power Sales Tariff which permits sales of power at market based rates. However, MidAmerican proposed to revise the Power Sales Tariff to provide that MidAmerican will offer service under that tariff only to customers that (1) have an existing service agreement under the Power Sales Tariff (until the agreement expires) or (2) wish to purchase power from MidAmerican, but do not wish to sell power to MidAmerican.

Copies of this filing have been sent to the Iowa Utilities Board, Illinois Commerce Commission and South Dakota Public Utility Commission.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Otter Tail Power Company

[Docket No. RT01–63–001]

Take notice that on November 27, 2000, Otter Tail Power Company tendered for filing an Amendment to its Order No. 2000 compliance filing.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Nevada Power Company

[Docket No. ER00–2015–004]

Sierra Pacific Power Company

[Docket No. ER00–2018–004]

Take notice that on December 1, 2000, Nevada Power Company and Sierra Pacific Power Company tendered for filing their compliance filing in the above-captioned dockets.

This filing has been served on all parties on the official service list in this proceeding.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Central Hudson Gas & Electric Corporation

Consolidated Edison Company of New York, Inc.,

Long Island Light Company

New York State Electric & Gas Corporation

Niagara Mohawk Power Corporation

Power Authority of the State of New York

Orange and Rockland Utilities, Inc.

Rochester Gas and Electric Corporation

Docket Nos. ER97–1523–057, OA97–470–053, ER97–4234–051, (not consolidated)

Take notice that on November 28, 2000, the Members of the Transmission Owners Committee of the Energy Association of New York State, formerly know as the Member Systems of the New York Power Pool (Member Systems), tendered for filing a compliance report disclosing TSC refunds made pursuant to the Joint Offer of Settlement of November 17, 1999. The Member Systems state that these refunds have been made in compliance with the Commission's July 31, 2000 letter order in this proceeding.

A copy of this filing was served upon all persons in the Commission's official service list(s) in the captioned proceeding(s), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Williams Generating Company-Hazelton

[Docket No. ER97–4587–002]

Take notice that on November 29, 2000, Williams Generating Company-Hazelton (WGCH) a power marketer selling electric power at wholesale pursuant to market-based rate authority granted to it by the Federal Energy

Regulatory Commission tendered for filing an updated market power analysis in compliance with the Commission's October 23, 1997 letter order in Docket No. ER97–4587.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket Nos. ER98–3594–006]

Take notice that on December 1, 2000, the California Independent System Operator Corporation (ISO), tendered for filing with the Federal Energy Regulatory Commission a report prepared by the ISO's Department of Market Analysis entitled ''The Firm Transmission Rights Market: Review of the First Nine Months of Operation, February 1, 2000—October 31, 2000'' and a document prepared by the ISO's Market Surveillance Committee entitled ''An Assessment of the February through October 2000 California ISO Firm Transmission Rights Market.'' This filing was submitted in compliance with the Commission's May 3, 1999 and August 2, 1999 Orders in the above-captioned proceedings.

The ISO has served these documents upon each person on the official service list in the above-captioned proceeding. These documents are also being posted on the ISO's internet Home Page, *www.caiso.com.*

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. New York Independent System Operator, Inc.

[Docket Nos. ER00–3591–000, ER00–3591–001, ER00–3591–004, ER00–1969–005]

Take notice that on November 30, 2000, the New York Independent System Operator, Inc. (NYISO) tendered for filing a request for leave to submit Alternative Compliance Filing in the above-captioned proceedings. The NYISO was required to submit this compliance filing pursuant to New York Independent System Operator Inc., 93 FERC ¶ 61,142 (2000).

A copy of this filing was served upon all parties in the above-referenced dockets.

Comment date: December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Sierra Pacific Power Company and Nevada Power Company

[Docket No. ER00–3188–002]

Take notice that on November 29, 2000, Sierra Pacific Power Company and Nevada Power Company tendered for filing their compliance filing in the above-captioned docket.

This filing has been served on all parties on the official service list in this proceeding.

Comment date: December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Westmoreland-LG&E Partners (Roanoke Valley I)

[Docket No. ER01–538–000]

Take notice that on November 30, 2000, Westmoreland-LG&E Partners tendered for filing pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, the Third Amendment and Restatement of the Power Purchase and Operating Agreement By and Between Westmoreland-LG&E Partners as Successor in Interest to Beckley Cogeneration Company and Virginia Electric and Power Company for sales from its Roanoke Valley I (ROVA I) facility entitled First Revised Rate Schedule FERC No 1. Westmoreland-LG&E Partners have requested certain waivers of the Commission's regulations.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of New Mexico

[Docket No. ER01–539–000]

Take notice that on November 30, 2000, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement for short-term firm point to point transmission service under the terms of PNM's Open Access Transmission Tariff (OATT) with El Paso Merchant Energy, L.P. (El Paso), dated November 7, 2000. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to El Paso and to the New Mexico Public Regulation Commission.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Public Service Corporation

[Docket No. ER01–540–000]

Take notice that on November 30, 2000, on behalf of WPS Resources Operating Companies (WPSR), Wisconsin Public Service Corporation (WPSC), tendered for filing a service agreement between WPSC and Stratford Water and Electric Utility (STRATFORD). Service Agreement No. 11 provides service to STRATFORD, under WPSC's W–1A full requirements tariff.

The company states that copies of this filing have been served upon STRATFORD and to the State Commissions where WPSC serves at retail.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company

Metropolitan Edison Company

Pennsylvania Electric Company

[Docket No. ER01–541–000]

Take notice that on November 30, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Energy and El Paso Power Services Company (now El Paso Merchant Energy, L.P.), FERC Electric Rate Schedule, Second Revised Volume No. 5, Service Agreement No. 19.

GPU Energy requests that cancellation be effective the 29th day of January 2001.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. STI Capital Company

[Docket No. ER01–542–000]

Take notice that on November 29, 2000, STI Capital Company. (STI), tendered for filing with the Commission an application for acceptance of STI's Tariff FERC Electric No. 1; the granting of certain blanket approvals including authority to sell electricity at market-based rates and the waiver of certain Commission Regulations. STI intends to engage in wholesale electric power sales from the York facility that currently is owned by, and being transferred from, Solar Turbines Incorporated.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power & Light Company and Entergy Services, Inc.

[Docket No. ER01–543–000]

Take notice that on November 30, 2000, Florida Power & Light Company (FPL) and Entergy Services, Inc., on behalf of the Entergy Operating Companies (the Entergy Operating Companies are Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.) (collectively, Applicants) tendered for

filing a System Integration Agreement to take effect upon the consummation of the proposed merger of FPL Group, Inc., parent company of FPL, and Entergy Corporation, parent company of the Entergy Operating Companies.

Applicants state that they have served a copy of the filing on the regulators of FPL and the Entergy Operating Companies.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Cook Inlet Power, LP

[Docket No. ER01–544–000]

Take notice that on November 30, 2000, Cook Inlet Power, LP (Cook Inlet LP) tendered for filing a petition for Commission acceptance of Cook Inlet LP Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Cook Inlet LP intends to engage in wholesale electric power and energy purchases and sales as a marketer. Cook Inlet LP is not in the business of generating or transmitting electric power.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Duke Energy Lee, LLC

[Docket No. ER01–545–000]

Take notice that on November 30, 2000, Duke Energy Lee, LLC (Duke Lee), tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Lee seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Lee also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities.

Duke Lee seeks an effective date sixty (60) days from the date of filing for its proposed rate schedules.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. MidAmerican Energy Company

[Docket No. ER01–548–000]

Take notice that on November 30, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission two (2) Firm Transmission Service Agreement entered into by MidAmerican, as transmission provider, and Ameren Energy Marketing Company, as wholesale merchant. Each Agreement is dated November 9, 2000 and has been entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of November 9, 2000 for each Agreement and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Illinois Power Company

[Docket No. ER01–549–000]

Take notice that on December 1, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, tendered for filing with the Commission a Service Agreement for Non-Firm Point-To-Point Transmission Service with Upper Peninsula Power Company (UPPC) entered into pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of November 3, 2000, for the Agreement and accordingly seeks a waiver of the Commission's notice requirement.

Illinois Power has served a copy of the filing on UPPC.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Entergy Services, Inc.

[Docket No. ER01–550–000]

Take notice that on December 1, 2000, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an Interconnection and Operating Agreement with Cottonwood Energy Company L.P. (Cottonwood), and a Generator Imbalance Agreement with Cottonwood.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Western Systems Power Pool, Inc.

[Docket No. ER01–551–000]

Take notice that on December 1, 2000, the Western Systems Power Pool (WSPP) tendered for filing further updates and correct aspects of the WSPP Agreement.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Virginia Electric and Power Company

[Docket No. ER01–553–000]

Take notice that on December 1, 2000, Virginia Electric and Power Company (Dominion Virginia Power), tendered for filing an amendment, ''Rider SB1286 For Resale Service to Virginia Municipal Electric Association No. 1 under Schedule VMEA–RS'' (the Rider), to the Agreement for the Purchase of Electricity for Resale Between Dominion Virginia Power and Virginia Municipal Electric Association Number 1 (VMEA) dated as of January 12, 1989, First Revised Rate Schedule FERC No. 109. The Rider reflects Senate Bill 1286 passed by the 1999 Virginia General Assembly which provides for the elimination of the gross receipts tax and the imposition of the Virginia state income tax effective January 1, 2001.

Dominion Virginia Power requests that the Rider become effective January 1, 2001.

Dominion Virginia Power states that copies of the filing have been served upon VMEA and the Virginia State Corporation Commission.

Comment date: December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31702 Filed 12–12–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–174–000]

Lighthouse Energy Trading Company, Inc.; Notice of Issuance of Order

December 7, 2000.

Lighthouse Energy Trading Company, Inc. (LETC) submitted for filing a rate schedule under which LETC will engage in wholesale electric power and energy transactions at market-based rates. LETC also requested waiver of various Commission regulations. In particular, LETC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by LETC.

On December 1, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by LETC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, LETC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of LETC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 2, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31691 Filed 12–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–388–000]

WFEC Genco, L.L.P.; Notice of Issuance of Order

December 7, 2000.

WFEC Genco, L.L.P. (WFEC) submitted for filing a rate schedule under which WFEC will engage in wholesale electric power and energy transactions at market-based rates. WFEC also requested waiver of various Commission regulations. In particular, WFEC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by WFEC.

On November 30, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by WFEC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, WFEC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of WFEC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 2, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–31690 Filed 12–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

December 8, 2000.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 15, 2000, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED:

- Docket Nos. EL00–95–000, 002 and 003, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
- Docket Nos. EL00–98–000, 002 and 003, Investigation of Practices of the California Independent System Operator and the California Power Exchange
- Docket No. EL00–107–000, Public Meeting in San Diego, California
- Docket No. EL00–97–000, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc. and Southern Energy California, L.L.C. v. California Independent System Operator Corporation
- Docket No. EL00–104–000, California Electricity Oversight Board v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Power Exchange
- Docket No. EL01–1–000, California Municipal Utilities Association v. All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
- Docket No. EL01–2–000, Californians for Renewable Energy, Inc.

v. Independent Energy Producers, Inc. and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation and California Power Exchange

• Docket No. EL01–10–000, Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western System Power Pool Agreement

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400.

David P. Boergers,

Secretary.

[FR Doc. 00–31883 Filed 12–11–00; 11:44 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00302; FRL–6752–5]

National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances; Proposed AEGL Values

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is developing AEGLs on an ongoing basis to provide Federal, State, and local agencies with information on short-term exposures to hazardous chemicals. This notice provides AEGL values and Executive Summaries for 7 chemicals for public review and comment. Comments are welcome on both the AEGL values in this notice and the Technical Support Documents placed in the public version of the official record for these 7 chemicals.

DATES: Comments, identified by the docket control number OPPTS–00302, must be received by EPA on or before January 12, 2001.

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 OPPTS–00302 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404 and TDD: (202) 554–055; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the general public to provide an opportunity for review and comment on ''Proposed'' AEGL values and their supporting scientific rationale. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State and local agencies and private organizations, may adopt the AEGL values for their programs. 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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or 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 OPPTS–00302. 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 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.

3. *Fax-on-Demand*. You may request to receive a faxed copy of the document(s) by using a faxphone to call (202) 401–0527 and select the item number 4800 for an index of the items available by fax-on-demand in this category, or select the item number for the document related to the chemical(s) identified in this document as listed in the chemical table in Unit III. You may also follow the automated menu.

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 OPPTS–00302 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. (Note: for express delivery, please see ''In person or by courier'' in this unit).

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., 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) 260–7093.

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 above. 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 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control numbers OPPTS–00302. 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 official notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical 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 that 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 this notice.
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. Background

A. Introduction

EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) provided notice on October 31, 1995 (60 FR 55376) (FRL–4987–3) of the establishment of the NAC/AEGL Committee with the stated charter objective as ''the efficient and effective development of Acute Exposure Guideline Levels (AEGLs) and the preparation of supplementary qualitative information on the hazardous substances for federal, state, and local agencies and organizations in the private sector concerned with [chemical] emergency planning, prevention, and response.'' The NAC/AEGL Committee is a discretionary Federal advisory committee formed with the intent to develop AEGLs for chemicals through the combined efforts of stakeholder members from both the public and private sectors in a cost-effective approach that avoids duplication of efforts and provides uniform values, while employing the most scientifically sound methods available. An initial priority list of 85 chemicals for AEGL development was published in the **Federal Register** of May 21, 1997 (62 FR 27734) (FRL–5718–9). This list is intended for expansion and modification as priorities of the stakeholder member organizations are further developed. While the development of AEGLs for chemicals are currently not statutorily based, at lease one rulemaking references their planned adoption. The Clean Air Act and Amendments Section 112(r) Risk Management Program states, ''EPA recognizes potential limitations associated with the Emergency Response Planning Guidelines and Level of Concern and is working with other agencies to develop AEGLs. When these values have been developed and peer-reviewed, EPA intends to adopt them, through rulemaking, as the toxic endpoint for substances under this rule (see 61 FR 31685).'' It is believed that other Federal and State agencies and private organizations will also adopt AEGLs for chemical emergency programs in the future.

B. Characterization of the AEGLs

The AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposure periods ranging from 10 minutes to 8 hours. AEGL-2 and AEGL-3 levels, and AEGL-1 levels as appropriate, will be developed for each of five exposure periods (10 and 30 minutes, 1 hour, 4 hours, and 8 hours) and will be distinguished by varying degrees of severity of toxic effects. It is believed that the recommended exposure levels are applicable to the general population including infants and children, and other individuals who may be sensitive and susceptible. The AEGLs have been defined as follows:

- AEGL-1 is the airborne concentration (expressed as parts per million (ppm) or milligram/meter cube (mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic, non-sensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.
- AEGL-2 is the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects, or an impaired ability to escape.
- AEGL-3 is the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience life-threatening health effects or death.

Airborne concentrations below the AEGL-1 represent exposure levels that could produce mild and progressively increasing odor, taste, and sensory irritation, or certain non-symptomatic, non-sensory effects. With increasing airborne concentrations above each AEGL level, there is a progressive increase in the likelihood of occurrence and the severity of effects described for each corresponding AEGL level. Although the AEGL values represent threshold levels for the general public, including sensitive subpopulations, it is recognized that certain individuals, subject to unique or idiosyncratic responses, could experience the effects described at concentrations below the corresponding AEGL level.

C. Development of the AEGLs

The NAC/AEGL Committee develops the AEGL values on a chemical-by-chemical basis. Relevant data and information are gathered from all known sources including published scientific literature, State and Federal agency publications, private industry, public databases, and individual experts in both the public and private sectors. All key data and information are summarized for the NAC/AEGL

Committee in draft form by Oak Ridge National Laboratories together with ''draft'' AEGL values prepared in conjunction with NAC/AEGL Committee members. Both the ''draft'' AEGLs and ''draft'' technical support documents are reviewed and revised as necessary by the NAC/AEGL Committee members prior to formal committee meetings. Following deliberations on the AEGL values and the relevant data and information for each chemical, the NAC/AEGL Committee attempts to reach a consensus. Once the NAC/AEGL Committee reaches a consensus, the values are considered ''Proposed'' AEGLs. The Proposed AEGL values and the accompanying scientific rationale for their development are the subject of this notice.

In this document, the NAC/AEGL Committee is publishing proposed AEGL values and the accompanying scientific rationale for their development for 7 hazardous substances. These values represent the fourth set of exposure levels proposed and published by the NAC/AEGL Committee. EPA published the first ''Proposed'' AEGLs for 12 chemicals from the initial priority list in the **Federal Register** of October 30, 1997 (62 FR 58840–58851) (FRL–5737–3); for 10 chemicals in the **Federal Register** of March 15, 2000 (65 FR 14186–14196) (FRL–6492–4); and for 14 chemicals in the **Federal Register** of June 23, 2000 (65 FR 39263–39277) (FRL–6591–2) in order to provide an opportunity for public review and comment. In developing the proposed AEGL values, the NAC/AEGL Committee has followed the methodology guidance Guidelines for Developing Community Emergency Exposure Levels for Hazardous Substances, published by the National Research Council of the National Academy of Sciences (NRC/NAS) in 1993. The term Community Emergency Exposure Levels (CELLS) is synonymous with AEGLs in every way. The NAC/AEGL Committee has adopted the term Acute Exposure Guideline Levels to better connote the broad application of the values to the population defined by the NAS and addressed by the NAC/AEGL Committee. The NAC/AEGL Committee invites public comment on the proposed AEGL values and the scientific rationale used as the basis for their development.

Following public review and comment, the NAC/AEGL Committee will reconvene to consider relevant comments, data, and information that may have an impact on the NAC/AEGL Committee's position and will again seek consensus for the establishment of Interim AEGL values. Although the Interim AEGL values will be available to Federal, State, and local agencies and to organizations in the private sector as biological reference values, it is intended to have them reviewed by a subcommittee of the NAS. The NAS subcommittee will serve as a peer review of the Interim AEGLs and as the final arbiter in the resolution of issues regarding the AEGL values, and the data and basic methodology used for setting AEGLs. Following concurrence, ''Final'' AEGL values will be published under the auspices of the NAS.

III. List of Chemicals

On behalf of the NAC/AEGL Committee, EPA is providing an opportunity for public comment on the AEGLs for the 7 chemicals identified in Table 1. Table 1 also provides the fax-on-demand item number for the chemical specific documents, which may be obtained as described in Unit 1.B.

A. Fax-On-Demand Table

TABLE 1.—FAX-ON-DEMAND

CAS No.	Chemical name	Fax-On-Demand item no.
75–44–5	Phosgene	4862
78–82–0	Isobutyronitrile	4869
107–12–0	Propionitrile	4877
126–98–7	Methacrylonitrile	4888
7790– 91–2	Chlorine trifluoride	4922
151–56–4	Ethylenimine	4890
75–55–8	Propylenimine	4863

B. Executive Summaries

The following are executive summaries from the chemical specific Technical Support Documents (which may be obtained as described in Unit 1.B. and III.) that support the NAC/AEGL Committee's development of AEGL values for each chemical substance. This information provides the following information: A general description of each chemical, including its properties and principle uses; a summary of the rationale supporting the AEGL-1, -2, and -3 concentration levels; a summary table of the AEGL values; and a listing of key references that were used to develop the AEGL values. More extensive toxicological information and additional references for each chemical may be found in the complete Technical Support Documents. Risk managers may be interested in reviewing the complete Technical Support Document for a chemical when deciding issues related to use of the AEGL values within various programs.

1. *Phosgene*—i. *Description*. Phosgene is a colorless gas at ambient temperature and pressure. Its odor has been described as similar to new-mown hay. Phosgene is manufactured from a reaction of carbon monoxide and chlorine gas in the presence of activated charcoal. The production of dyestuffs, isocyanates, carbonic acid esters (polycarbonates), acid chlorides, insecticides, and pharmaceutical chemicals requires phosgene.

Appropriate data were not available for deriving AEGL-1 values for phosgene.

AEGL-2 values were based on chemical pneumonia in rats (2 ppm for 90 minutes) (Gross et al., 1965). An uncertainty factor (UF) of 3 was applied for interspecies extrapolation since little species variability is observed both with lethal and non lethal endpoints after exposure to phosgene. An UF of 3 was applied to account for sensitive human subpopulations since the mechanism of phosgene toxicity (binding to macromolecules and irritation) is not expected to vary greatly between individuals (total UF = 10). The 1.5 hour value was then scaled to the 30-minute, 1-hour, 4-hour, and 8-hour AEGL exposure periods, using $C^n \times t = k$, where n = 1 (Haber's Law) since Haber's Law has been shown to be valid for phosgene within certain limits. Haber's Law was originally derived from phosgene data (USEPA, August 1986). The 30-minute value was also adopted as the 10-minute value since extrapolation would yield a 10-minute AEGL-2 value close to concentrations producing alveolar edema in rats exposed for 10-minutes (Diller et al., 1985) and may not be protective.

The 30-minute, 1-hour, 4-hour, and 8-hour AEGL-3 values were based on a 30-minute no-effect-level for death in rats (15 ppm) (Zwart et al., 1990). An UF of 3 was applied for interspecies extrapolation since little species variability is observed both with lethal and non-lethal endpoints after exposure to phosgene. An UF of 3 was applied to account for sensitive-human subpopulations since the mechanism of phosgene toxicity (binding to macromolecules and irritation) is not expected to vary greatly between individuals (total UF = 10). The value was then scaled to the 1-, 4-, and 8-hour AEGL periods, using $C^n \times t = k$, where n = 1 (Haber's Law) since Haber's Law has been shown to be valid for phosgene within certain limits. Haber's Law was originally derived from phosgene data (USEPA, August 1986). The 10-minute AEGL-3 value was based on a 10-minute no-effect-level for death in rats and mice (Zwart et al., 1990). An UF of 3 was applied for interspecies extrapolation since little species variability is

observed both with lethal and non lethal endpoints after exposure to phosgene. An UF of 3 was applied to account for sensitive human subpopulations since the mechanism of phosgene toxicity (binding to macromolecules and irritation) is not expected to vary greatly between individuals (total UF = 10).

The calculated values are listed in Table 2 below:

TABLE 2.—PHOSGENE

Summary of Proposed Aegl Values for Phosgene [ppm (mg/m^3)]						
Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint/Reference
AEGL-1 (Nondisabling)	NA	NA	NA	NA	NA	NA
AEGL-2 (Disabling)	0.60 (2.5)	0.60 (2.5)	0.30 (1.2)	0.080 (0.33)	0.040 (0.16)	Chemical pneumonia rats (Gross et al., 1965)
AEGL-3 (Lethal)	3.6 (15)	1.5 (6.2)	0.75 (3.1)	0.20 (0.82)	0.090 (0.34)	30-minute r 10-minute no-effect-level for death in rats (Zwart et al., 1990)

NA means not applicable

ii. *References*. a. Diller, W. F., Bruch, J., and Dehnen, W. 1985. Pulmonary changes in rats following low phosgene exposure. *Archives of Toxicology*. 57:184–190.

b. Gross, P., Rinehart, W.E., and Hatch, T. 1965. Chronic pneumonitis caused by phosgene. *Archieves of Environmental Health*. 10:768–775.

c. USEPA, August 1986. Health Assessment Document for Phosgene. EPA/600/8-86/022A. p. 1-4 to 1-5.

d. Zwart, A., Arts, J.H.E., Klokman-Houweling, J.M., and Schoen, E.D. 1990. Determination of concentration-time-mortality relationships to replace LC_{50} values. *Inhalation Toxicology*. 2:105–117. November 1977.

2. *Isobutyronitrile*—i. *Description*. Isobutyronitrile is a colorless liquid at ambient temperature and pressure. It has an almond-like odor and may cause irritation or burning of the eyes and skin. It is metabolized to cyanide in the body and signs of exposure may include weakness, headache, confusion, nausea, vomiting, convulsion, dilated pupils, weak pulse, shallow and gasping breathing, and cyanosis (EPA, 1985).

Data were insufficient for derivation of AEGL-1 values for isobutyronitrile.

The AEGL-2 was based on a no-effect-level from a developmental toxicity study in rats (100 ppm, 6 hour/day, days 6–20 of gestation) (Saillenfait et al., 1993). Although no interspecies information concerning isobutyronitrile toxicity was available, data from another nitrile (methacrylonitrile) suggest that the rat is not the most sensitive species. Therefore, an interspecies UF of 10 will be applied. In the absence of chemical-specific data and since much of the acute toxicity of nitriles is due to cyanide, the intraspecies UF will be the same as that used in the derivation of hydrogen cyanide AEGL-2 values (NAC/AEGL Committee, 1997). Thus, an UF of 3 will be applied to account for sensitive individuals since human accidental and occupational exposures suggest little intraindividual variability of hydrogen cyanide toxicity (NAC/AEGL Committee, 1997). Therefore, the total UF is 30. The concentration-time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$ (ten Berge et al., 1986). Since much of the acute toxicity of isobutyronitrile is thought to be due to cyanide, the empirically derived chemical-specific value of n = 2.6 derived from cyanide rat lethality data) (NAC/AEGL Committee, 1997) will be used for scaling the AEGL values for isobutyronitrile across time.

The AEGL-3 was based on a estimated no-effect-level for death in rats (1/3 of the 1-hour LC_{50}: 1,800 ppm ÷ 3 = 600 ppm) (Eastman Kodak Co., 1986a). Although no interspecies information concerning isobutyronitrile toxicity was available, data from another nitrile (methacrylonitrile) suggest that the rat is not the most sensitive species. Therefore, an interspecies UF of 10 will be applied. In the absence of chemical-specific data and since much of the acute toxicity of nitriles is due to cyanide, the intraspecies UF will be the same as that used in the derivation of hydrogen cyanide AEGL-3 values (NAC/AEGL Committee, 1997). Thus, an UF of 3 will be applied to account for sensitive individuals since human accidental and occupational exposures suggest little intraindividual variability of hydrogen cyanide toxicity (NAC/AEGL Committee, 1997). Therefore, the total UF is 30. The concentration-time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$ (ten Berge et al., 1986). Since much of the acute toxicity of isobutyronitrile is thought to be due to cyanide, the empirically derived chemical-specific value of n = 2.6 (derived from cyanide rat lethality data, (NAC/AEGL Committee, 1997) will be used for scaling the AEGL values for isobutyronitrile across time.

The calculated values are listed in Table 3 below:

TABLE 3.—ISOBUTYRONITRILE

Summary of Proposed AEGL Values for Isobutyronitrile [ppm (mg/m^3)]						
Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint/Reference
AEGL-1 (Nondisabling)	ID	ID	ID	ID	ID	Insufficient data to derive AEGL-1 values
AEGL-2 (Disabling)	13 (36)	8.7 (24)	6.6 (18)	3.9 (11)	3.0 (8.4)	No-effect-level in rats (Saillenfait et al., 1993)

TABLE 3.—ISOBUTYRONITRILE—Continued

Summary of Proposed AEGL Values for Isobutyronitrile [ppm (mg/m³)]						
Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint/Reference
AEGL-3 (Lethal)	40 (112)	26 (73)	20 (56)	12 (34)	9.0 (23)	Estimated no-observed-effect level (NOEL) for death in rats (Eastman Kodak, 1986a)

ID Insufficient data.

ii. *References*. a. Eastman Kodak Company. 1986a. Acute inhalation toxicity and one-hour LC_{10} value of isobutyronitrile in the rat. (Study No. TX–86–193) Eastman Kodak Company, Rochester, NY 14650.

b. NAC/AEGL Committee. 1997. Acute Exposure Guideline Levels for Hydrogen Cyanide. NAC Pro Draft 3:11/97.

c. Saillenfait, A. M., Bonnet, P., Gurnier, J. P., and de Ceaurriz, J. 1993. Relative developmental toxicities of inhaled aliphatic mononitriles in rats. *Fundamental Applied Toxicology*. 20:365–375.

d. ten Berge, W.F., Zwart, A. and Appelman, L.M. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal Hazardous Materials*. 13:301–309.

e. USEPA. 1985. Chemical Profile. Isobutyronitrile. Washington, DC. December, 1985.

3. *Propionitrile*—i. *Description*. Propionitrile is a colorless liquid at ambient temperature and pressure. It has a pleasant, ethereal, sweetish odor and may cause irritation or burning of the eyes and skin. It is metabolized to cyanide in the body and signs of exposure may include weakness, headache, confusion, nausea, vomiting, convulsion, dilated pupils, weak pulse, shallow and gasping breathing, and cyanosis (Hazardous Substances Data Bank (HSDB), 1998).

Data were insufficient for derivation of AEGL-1 values for propionitrile.

The AEGL-2 was based on headache, nausea, dizziness, vomiting, confusion, and disorientation in a 34-year-old male worker exposed to approximately 33.8 ppm propionitrile for 2 hours (Scolnick et al., 1993). In the absence of chemical-specific data and since much of the acute toxicity of propionitrile appears to be due to cyanide, an UF of 3 was applied to account for sensitive individuals since human accidental and occupational exposures suggest little intraindividual variability of hydrogen cyanide toxicity (NAC/AEGL Committee, 1997). A modifying factor of 2 was also applied to account for the poor database. Thus, the total uncertainty/modifying factor is 6. The concentration-time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$ (ten Berge et al., 1986). Since much of the acute toxicity of proprionitrile is thought to be due to cyanide, the empirically derived chemical-specific value of n = 2.6 (derived from cyanide rat lethality data, (NAC/AEGL Committee, 1997) was used for scaling the AEGL-2 values for 30-minutes, 1-, 4-, and 8-hours. The 30-minute AEGL-2 value was also adopted as the 10-minute value due to the fact that reliable data are limited to durations ≥2 hours, and it is considered inappropriate to extrapolate back to 10-minutes.

The AEGL-3 was based on a 4-hour no-effect-level for death in rats of 690 ppm (Younger Labs, 1978). An interspecies UF of 10 was applied since toxicity information suggests that the rat is not the most sensitive species. In the absence of chemical-specific data and since much of the acute toxicity of proprionitrile appears to be due to cyanide, an UF of 3 was applied to account for sensitive individuals since human accidental and occupational exposures suggest little intraindividual variability of hydrogen cyanide toxicity (NAC/AEGL Committee, 1997). Thus, the total UF is 30. The concentration-time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$ (ten Berge et al., 1986). Since much of the acute toxicity of propionitrile is thought to be due to cyanide, the empirically derived chemical-specific value of n = 2.6 (derived from cyanide rat lethality data, (NAC/AEGL Committee, 1997) was used for scaling the AEGL values for values for 30-minutes, 1-hour, and 8-hours. The 30-minute AEGL-3 value was also adopted as the 10-minute value due to the fact that the values are derived from a 4 hour exposure, and it is considered inappropriate to extrapolate back to 10-minutes.

The calculated values are listed in the Table 4 below:

TABLE 4.—PROPIONITRILE

Summary of Proposed AEGL Values for Propionitrile [ppm (mg/m³)]						Endpoint/Reference
Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	
AEGL-1 (Nondisabling)	ID	ID	ID	ID	ID	Insufficient data to derive AEGL-1 values
AEGL-2 (Disabling)	9.6 (22)	9.6 (22)	7.4 (17)	4.3 (9.8)	3.3 (7.6)	Headache, nausea, vomiting, dizziness, confusion in a human subject (Scolnick et al., 1993)
AEGL-3 (Lethal)	51 (120)	51 (120)	39 (89)	23 (53)	18 (41)	No-effect-level for death in rats (Younger Labs, 1978)

ID Insufficient data.

ii. *References*. a. HSDB. 1998. Propionitrile. Reviewed 9/24/92. Updated 6/2/98. Retrieved 6/16/98.

b. NAC/AEGL Committee. 1997. Acute Exposure Guideline Levels for Hydrogen Cyanide. NAC Pro Draft 3:11/97.

c. Scolnick, B., Hamel, D., and Woolf, A.D. 1993. Successful treatment of life threatening propionitrile exposure with sodium thiosulfate followed by hyperbaric oxygen. *Journal of Occupational Medicine*. 35:577–580.

d. ten Berge, W.F., Zwart, A. and Appelman, L.M. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials*. 13:301–309.

e. Younger Labs. 1978. Initial Submission: Toxicological Investigation of Propionitrile with Cover Letter Dated 081992. OTS0546148.

4. *Methacrylonitrile*—i. *Description*. Methacrylonitrile is a colorless liquid at ambient temperature and pressure. It has an odor similar to bitter almonds and may cause irritation or burning of the eyes and skin. It is metabolized to cyanide in the body and signs of exposure may include weakness, headache, confusion, nausea, vomiting, convulsion, dilated pupils, weak pulse, shallow and gasping breathing, and cyanosis (HSDB, 1998).

Data were insufficient for derivation of AEGL-1 values for methacrylonitrile.

The AEGL-2 values were set as 1/3 of the AEGL-3 values. The values obtained from this approach are supported by a repeated-exposure study in which dogs were exposed to 13.5 ppm methacrylonitrile, 7 hours/day, 5 days/week for 90 days (Pozzani et al., 1968). Convulsions and loss of motor control of the hindlimbs were observed starting at day 39 of exposure.

The AEGL-3 was based on a no-effect-level for death in mice (19 ppm for 4 hours) (Pozzani et al., 1968). An interspecies UF of 3 will be applied since the mouse is the most sensitive species. In the absence of chemical-specific information on intraspecies variability and since much of the acute toxicity of nitriles is due to cyanide, the intraspecies UF will be the same as that used in the derivation of hydrogen cyanide AEGL-3 values (NAC/AEGL Committee, 1997). Thus, an UF of 3 will be applied to account for sensitive individuals since human accidental and occupational exposures suggest little intraindividual variability of hydrogen cyanide toxicity (NAC/AEGL Committee, 1997). Thus, the total UF is 10. The concentration-time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$ (ten Berge et al., 1986). In the absence of chemical-specific information and since much of the acute toxicity of methacryonitrile is thought to be due to cyanide, the empirically derived chemical-specific value of n = 2.6 (derived from cyanide rat lethality data, (NAC/AEGL Committee, 1997) will be used for scaling the 30-minute, 1-, and 8-hour AEGL values for propionitrile across time. The 30-minute AEGL-3 value was also adopted as the 10-minute value due to the fact that reliable data are limited to durations ≥4 hours, and it is considered inappropriate to extrapolate back to 10-minutes.

The calculated values are listed in Table 5 below:

TABLE 5.—METHACRYLONITRILE

Summary of Proposed AEGL Values for Methacrylonitrile [ppm (mg/m^3)]

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint/Reference
AEGL-1 (Nondisabling)	ID	ID	ID	ID	ID	Insufficient data to derive AEGL-1 values
AEGL-2 (Disabling)	1.5 (4.1)	1.5 (4.1)	1.1 (3.0)	0.70 (1.9)	0.50 (1.4)	1/3 of the AEGL-3 values
AEGL-3 (Lethal)	4.5 (12)	4.5 (12)	3.4 (9.3)	2.0 (5.5)	1.5 (4.1)	4-hr. no-effect-level for death in mice (Pozzani et al., 1968)

ID Insufficient data.

ii. *References*. a. HSDB. 1998. Methacrylonitrile. Reviewed 9/24/92. Updated 6/3/98. Retrieved 6/16/98.

b. NAC/AEGL Committee. 1997. Acute Exposure Guideline Levels for Hydrogen Cyanide. NAC Pro Draft 3: 11/97.

c. Pozzani, U.C., Kinkead, E.R., and King, J.M. 1968. The mammalian toxicity of methacrylonitrile. *American Industrial Hygiene Association Journal*. 29:202–210.

d. ten Berge, W.F., Zwart, A. and Appelman, L.M. 1986. Concentration-time mortality response relationship of irritant and systemically acting vapours and gases. *Journal of Hazardous Materials*. 13:301–309.

5. *Chlorine trifluoride*—i. *Description*. Chlorine trifluoride is an extremely reactive and corrosive oxidizing agent used in nuclear reactor fuel processing, as a fluorinating agent, as an incendiary, igniter and propellant for rockets, and as a pyrolysis inhibitor for fluorocarbon polymers. It is unstable in air and rapidly hydrolyses to hydrogen fluoride (HF) and a number of chlorine-containing compounds including chlorine dioxide (ClO_2). The toxic effects of ClF_3 are likely due to HF and ClO_2.

Chlorine trifluoride is a mucous membrane irritant. Contact with the skin and eyes produces burns and inhalation causes pulmonary irritation and edema. Inhalation studies with the monkey, dog, rat, and mouse for several endpoints and exposure durations were located. Data on irritant effects were available for the dog and rat; data on sublethal and lethal concentrations were available for the monkey, rat, and mouse. Although human exposures have occurred, no data on exposure concentrations were located.

The AEGL-1 was based on the threshold for notable discomfort (lacrimation) that was observed in dogs after 3 hours during a 6-hour exposure to an average concentration of 1.17 ppm (Horn and Weir, 1956). The only other sign of exposure was mild sensory irritation (nasal discharge) that usually occurred within 45 minutes. Nasal discharge in the sensitive nose of the dog was considered below the definition of the AEGL-1. No effects were observed in rats exposed to this concentration for 6 hours. The 1.17 ppm concentration for an exposure duration of 3 hours was divided by a combined interspecies and intraspecies UF of 10 (3 for interspecies differences [the dog was more sensitive than the rat] and 3 for intraspecies differences in sensitivity [the mechanism of toxicity is irritation; response to such a basic chemical effect on tissue is not expected to vary

significantly among individuals]). Scaling across time was based on C^n x t = k where n = 1 (Haber's Law); this concentration-exposure duration relationship was determined from several lethality studies. Because of the long exposure duration of the key study, the 10-minute AEGL-1 was set equal to the 30-minute AEGL-1.

The AEGL-2 was based on signs of strong irritation (salivation, lacrimation, rhinorrhea, and blinking of the eyes) in dogs exposed to a concentration of 5.15 ppm for 6 hours (Horn and Weir, 1955). Although these effects appeared reversible by the end of the day, they may impair the ability to escape. Rats exposed to this concentration for 6 hours appeared unaffected. The 6-hour concentration of 5.15 ppm was divided by a combined interspecies and intraspecies UF of 10 and scaled across time using the same reasons and relationships as for the AEGL-1 in this unit. Because of the long exposure duration of the key study, the 10-minute AEGL-2 was set equal to the 30-minute AEGL-2.

Lethality data (1-hour LC_{50} values) were available for the monkey, rat, and mouse. The AEGL-3 was based on the calculated 1-hour LC_{01} for the mouse, the most sensitive species based on LC_{50} values (MacEwen and Vernot, 1970). This concentration, 135 ppm, was divided by a combined interspecies and intraspecies UF of 10 and scaled across time using the same reasons and relationships as for the AEGL-1 in this unit. Death was due to extreme irritation resulting in massive lung hemorrhaging. Data from another study in which dogs exposed to a concentration of 21 ppm for 6 hours showed extreme signs of irritation but no deaths resulted in essentially the same AEGL-3 values when adjusted by an UF of 10 and scaled across time using Haber's Law.

The calculated values are listed in Table 6 below:

TABLE 6.—CHLORINE TRIFLUORIDE

Summary of Proposed AEGL Values for Chlorine Trifluoride [ppm (mg/m³)]

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint/Reference
AEGL-1 (Nondisabling)	0.70 (2.7)	0.70 (2.7)	0.35 (1.3)	0.090 (0.34)	0.040 (0.15)	Threshold, notable discomfort—dog (Horn and Weir, 1956)
AEGL-2 (Disabling)	6.2 (24)	6.2 (24)	3.1 (12)	0.77 (2.9)	0.39 (1.5)	Strong irritation—dog (Horn and Weir, 1955)
AEGL-3 (Lethal)	81 (308)	27 (103)	14 (53)	3.4 (13)	1.7 (6.5)	Lethality (LC_{01})—mouse (MacEwen and Vernot, 1970)

ii. *References*. a. Horn, H.J. and R.J. Weir. 1955. Inhalation toxicology of chlorine trifluoride. I. Acute and subacute toxicity. *A.M.A. Archives of Industrial Health*. 12:515–521.

b. Horn, H.J. and R.J. Weir. 1956. Inhalation toxicology of chlorine trifluoride. II. Chronic toxicity. *A.M.A. Archives of Industrial Health*. 13:340–345.

c. MacEwen, J.D. and E.H. Vernot. 1970. Toxic Hazards Research Unit Annual Technical Report: 1970. AMRL-TR-70-77, Aerospace Medical Research Laboratory, Wright-Patterson Air Force Base, OH; National Technical Information Service, Springfield,VA

6. *Ethyleneimine*—i. *Description*. Ethylenimine is a volatile, clear, colorless, flammable explosive liquid that has an odor similar to that of ammonia and an odor detection level of 2 ppm. It is a very reactive direct-acting alkylating agent, the activity of which is similar to that of nitrogen mustards. It is also very caustic, attacking numerous substances including plastics, metals, and glass that does not contain carbonate or borax. Estimates of domestic production of ethylenimine range between 3.3 and 4.85 million pounds. Ethylenimine is used in the manufacture of products, such as triethylenemelamine, paper, textile chemicals, adhesive binders, and petroleum refining chemicals. Ethylenimine is stored in 320-pound cylinders, but shipping quantities are unknown.

Relevant data on ethylenimine consisted of only a few case studies in humans and acute inhalation lethality studies in laboratory animals. One individual died after a brief exposure to an unknown concentration of ethylenimine. Death was preceded by eye irritation, salivation, vomiting, respiratory tract irritation, breathlessness, and pulmonary edema; death may have been due to medical treatment. Individuals exposed to ethylenimine at estimated concentrations of 235–353 ppm and *N*-ethylethylenimine at 722 to 1,084 ppm for 1½ to 2 hours suffered severe eye and respiratory tract irritation and vomiting that were delayed for 1 to 5 hours after exposure, followed by hemoglobinemia, eosinophilia, and albuminuria. Effects reported for occupational exposure to ethylenimine included skin sensitization, slow-healing dermatitis, rapidly reversible irritation to the eyes and respiratory tract, and blistering, reddening, and edema of the scrotum. Direct contact of liquid ethylenimine to the tongue caused delayed inflammation and edematous swelling of the oral cavity and inflammation of eyes, and direct contact of liquid with the skin causes necrotizing painless burns. Ethylenimine was genotoxic in all test systems investigated including bacteria, fungi, plants, insects, and mammalian cells *in vitro*. It is clastogenic in cultured human cells. Subcutaneous injection of rats with ethylenimine produced sarcomas at the injection site.

Acute inhalation LC_{50} values were 2,558, 1,407, 545, 268, 259, 58, and 35 ppm for rats exposed to ethylenimine for 5, 10, 15, 60, 120, 240, or 480 minutes, respectively; 2,906, 2,824, 1,283, 364, 235, 158, 45, and 27 ppm for guinea pigs exposed for 5, 10, 15, 30, 60, 120, 240, or 480 minutes, respectively; and 2,236 ppm for mice exposed for 10 minutes. In all studies, death and other signs of toxicity were delayed depending on exposure concentration. Signs of toxicity included eye irritation, respiratory tract irritation, respiratory difficulty, prostration, complete loss of muscular coordination (mouse only), and convulsions (mouse only). Systemic effects included lung damage, congestion in lungs and all internal organs, damage to the kidney tubules, and albuminuria in rats and guinea pigs.

AEGL-1 values were not derived, because ethylenimine is an insidious agent (effects are delayed) that has an odor similar to that of ammonia, and an odor detection limit at 2 ppm; consequently, ethylenimine has no specific warning properties (sensory irritation or odor). The odor detection level is similar to or higher than the

AEGL-2 values for 4-hour and 8-hour exposures; therefore, it is not valid nor would it be a benefit to the public to propose AEGL-1 values.

No animal studies designed specifically to examine nonlethal effects of ethylenimine were located in the literature, and the human study involved exposure to another substance that could have contributed to the observed toxic effects. Therefore, the AEGL-2 values were based on a NOEL for extreme respiratory difficulty in guinea pigs (10 ppm for 240 minutes) in the study by Carpenter et al. (1948). An UF of 3 was applied for intraspecies variability because of the insidious nature of ethylenimine, and effects of exposure may not become apparent before exposure is terminated. Under these conditions; individuals with respiratory or heart diseases are not expected to respond differently from the general population. The very reactive alkylating activity of ethylenimine also suggests that it would be similarly effective in all individuals. A UF of 3 was also applied for interspecies sensitivity because of the reactive alkylating activity of ethylenimine and the similarity of the mode of action in different species. Further, the available evidence suggests that humans may be less sensitive than rodents. The total UF is 10. Scaling across the pertinent time frames was based on the equation $C^{0.91}$ x t = k, where n was derived from the LC_{50} data for guinea pigs. The AEGL-2 values do not take into account the potential carcinogenicity of ethylenimine.

AEGL-3 values were based on the acute inhalation study in rats (Carpenter et al. , 1948). The LC_{01} (lethality threshold) of 15 ppm for the 8-hour exposure duration was estimated by probit analysis. The 8-hour LC_{01} was selected because it had the smallest standard error. A total UF of 10 (3 for intraspecies variability and 3 for interspecies sensitivity) was applied to the LC_{01} value. Scaling across the pertinent time frames was based on the equation $C^{1.1}$ x t = k, where n was derived from LC_{50} data for rats.

The calculated values are listed in Table 7 below:

TABLE 7.—ETHYLENIMINE

Summary of Proposed AEGL Values for Ethylenimine[a,b] [ppm (mg/m³)]

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint/Reference
AEGL-1 (Nondisabling)	No values derived for AEGL-1					
AEGL-2 (Disabling)	33 (59)	9.8 (185)	4.6 (8.2)	1.0 (1.8)	0.47 (0.84)	NOEL for extreme respiratory difficulty (Carpenter et al., 1948)
AEGL-3 (Lethal)	51 (91)	19 (34)	9.9 (18)	2.8 (5.0)	1.5 (2.7)	Threshold for lethality (Carpenter et al., 1948)

a AEGL-2 and -3 values do not take into consideration the potential cancer risk due to exposure to ethylenimine.
b Effects at these concentrations may be delayed until sometime after exposure; toxic levels may be absorbed through the skin.

ii. *Reference*. Carpenter, C. P.; Smyth, H. F., Jr.; Shaffer, C. B. 1948. The acute toxicity ethyleneimine to small animals. *Journal of Industrial Hygiene and Toxicology*. 30:2–6.

7. *Propyleneimine*—i. *Description*. Propylenimine is an aziridine compound used to modify latex surface coating resins to improve adhesion and to modify bonding properties of textiles, paper, and dyes; it is also used in photography, in the pharmaceutical industry, in gelatins, and in organic syntheses. Propylenimine is a colorless oily liquid that has an odor similar to that of ammonia. It is flammable and is an explosion hazard. Propylenimine is similar in structure and toxicity to ethylenimine.

No data were found in the literature concerning toxicity or the odor detection threshold for exposure to propylenimine in humans. A time-response study conducted in rats and guinea pigs showed that 1/6 guinea pigs died after exposure to 500 ppm for 60 minutes and 0/6 died after exposure to the same concentration for 30 minutes (Carpenter et al., 1948). In rats, 5/6 died after exposure to 500 ppm for 240 minutes and 0/6 died after exposure to the same concentration for 120 minutes. No concentration-response data were available for deriving AEGL values from animal studies. Therefore, a relative potency approach was used to derive AEGL-2 values, because the toxicity of propylenimine is considered to be qualitatively similar to that of ethylenimine. The study of Carpenter et al. (1948) showed that propylenimine is 4 to 8 times less toxic than ethylenimine depending on the species: 4 or 5 times less toxic to the guinea pig and 8 times less toxic to the rat. Tumors developed at multiple sites in rats treated orally with propylenimine for 28 or 60 weeks; therefore, International Agency for Research on Cancer (IARC) has classified propylenimine as Group 2B (possibly carcinogenic to human). Propylenimine is mutagenic in *salmonella and drosophila*.

No AEGL-1 values were proposed for ethylenimine, and no values are proposed for propylenimine. Propylenimine has an odor similar to that of ammonia, the odor detection and irritation thresholds are not known, and propylenimine is probably an insidious agent similar to ethylenimine. It would not be valid nor beneficial to propose AEGL-1 values for propylenimine.

The derivation of AEGL-2 values is based on the relative toxicity approach. The AEGL values proposed for ethylenimine based on a no-effect-level for extreme respiratory difficulty were as follows: 33, 9.8, 4.6, 1.0, and 0.47 ppm for 10 minutes, 30 minutes, 1 hour, 4 hours, and 8 hours, respectively. The NAC/AEGL Committee selected 5 as the appropriate relative toxicity value for deriving AEGL-2 values for propylenimine. The NAC/AEGL Committee also proposed that a modifying factor of 2 should be applied to account for a deficient database. Therefore, the resulting values for propylenimine based on a relative toxicity value of 5 and a modifying factor of 2 are 83, 25, 12, 2.5, and 1.2 ppm for exposure durations of 10 minutes, 30 minutes, 1 hour, 4 hours, and 8 hours, respectively.

It was the consensus of the NAC/AEGL Committee to consider a 500 ppm exposure for 30 minutes as the no-effect-level for lethality and to use this concentration to derive AEGL-3 values. An UF of 10 (3 for intraspecies sensitivity and 3 for interspecies sensitivity) was applied to the no-effect-levels for lethality. Propylenimine is an insidious agent and signs of toxicity may not become apparent until after exposure. Propylenimine a very reactive direct-acting alkylating agent, and its mode of action is not expected to vary

considerably across species or within the population. Time extrapolation was based on the equation, $C^n \times t = k$, where n = 0.91 derived by probit analysis of LC_{50} data for guinea pigs exposed to ethylenimine.

The calculated values are listed in Table 8 below:

TABLE 8.—PROPYLENIMINE

Summary of Proposed AEGL Values for Propylenimine[a,b] [ppm (mg/m³)]						
Classification	ppm (mg/m³)					Endpoint/Reference
	10-minutes	30-minutes	1-hour	4-hours	8-hours	
AEGL-1	No values derived for AEGL-1					
AEGL-2[c]	83 (200)	25 (58)	12 (28)	2.5 (5.8)	1.2 (2.8)	NOEL for extreme respiratory difficulty (Carpenter et al., 1948)
AEGL-3	167 (390)	50 (120)	23 (54)	5.1 (12)	2.4 (5.6)	Lethality threshold (Carpenter et al., 1948)

a AEGL-2 and -3 values do not take into consideration the potential cancer risk due to inhalation exposure to propylenimine.
b Effects including lethality, irritation to eyes, and irritation to the respiratory tract may be delayed until after exposure; toxic levels of propylenimine may be absorbed through the skin.
c AEGL values for propylenimine = AEGL for ethylenimine x 5 (relative potency factor) ÷ 2 (modifying factor).

ii. *Reference*. Carpenter, C.P., Smyth, H.F., Jr., Shaffer, C.B. 1948. The acute toxicity of ethylenimine to small animals. *Journal of Industrial Hygiene and Toxicology*. 30:2–6.

IV. Next Steps

The NAC/AEGL Committee plans to publish ''Proposed'' AEGL values for five-exposure periods for other chemicals on the priority list in groups of approximately 10 to 20 chemicals in future **Federal Register** notices during the calendar year 2001.

The NAC/AEGL Committee will review and consider all public comments received on this notice, with revisions to the ''Proposed'' AEGL values as appropriate. The resulting AEGL values will be established as ''Interim'' AEGLs and will be forwarded to the NRC/NAS, for review and comment. The ''Final'' AEGLs will be published under the auspices of the NRC/NAS following concurrence on the values and the scientific rationale used in their development.

List of Subjects

Environmental protection, Hazardous substances.

Dated: December 6, 2000.

Stephen L. Johnson,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–31730 Filed 12–12–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30503; FRL–6749–2]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications 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–30503, must be received on or before January 12, 2001.

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–30503 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in the table below:

Regulatory action leader	Office address/telephone no.	E-mail address
Andrew C. Bryceland	USEPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Mail Code: 7511C, (703) 305–6928	bryceland.andrew@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–30503. 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 (CM #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–30503 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, CM #2, 1921 Jefferson Davis Highway, 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–30503. 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 notcontain 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 identified 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 applications 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 these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

File Symbol: 52991–RL. Applicant: Bedoukian Research, Inc., 21 Finance Drive, Danbury, CT 06810–4192. Product Name: Bedoukian z-11-Hexadecenyl Acetate Technical Pheromone. The proposed product is a new active ingredient that has not been previously registered. Proposed classification: None. For manufacturing use only. For use in the incorporation into end–use products intended for agricultural application. Not for direct treatment of pests.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 30, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–31621 Filed 12–12–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100164; FRL–6760–1]

Versar, Inc.; 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 tranferred to Versar, Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Versar, Inc. has been awarded a contract to perform work for OPP, and access to this information will enable Versar, Inc. to fulfill the obligations of the contract.

DATES: Versar, Inc. will be given access to this information on or before December 18, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. 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 number 68–W0–0130, the contractor will perform the following:

The Contractor shall perform technical reviews of studies containing pesticide exposure and related data in support of registration, reregistration, and special review activities of the Health Effects Division (HED). These studies may include: (1) Re-entry or post application exposure studies; (2) exposure monitoring data on the subject chemical submitted by registrants on pesticide handling operations; (3) exposure studies from the open scientific literature; and (4) exposure studies using data from aggregate pesticide chemicals (e.g., Pesticide Handlers Exposure Database).

For each assigned study, a draft written report shall be submitted by the Contractor to the EPA Work Assignment Manager. Draft reports shall: (1) Document the contents of the studies; (2) note any discrepancies, inadequacies, and unresolved issues; (3) provide appropriate exposure calculations, correlations, and plots; and (4) provide a summary discussion and conclusions resulting from the review.

This contract involves no subcontractors.

The OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

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)(3), the contract with Versar, Inc., 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. is 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. until the requirements in this document have been fully satisfied. Records of information provided to Versar, Inc. will be maintained by EPA Project Officers for the contract. All information supplied to Versar, Inc. by EPA for use in connection with the contract will be returned to EPA when Versar, Inc. has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: December 7, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–31729 Filed 12–12–00; 8:45 am]

[BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6916–1]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for Public Comment.

SUMMARY: Notice is hereby given of a proposed Prospective Purchaser Agreement and Covenant Not To Sue, executed between the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), and Medure Development LLC (''Purchaser'') in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601–9675, as amended (''CERCLA''). The proposed agreement will allow reuse of an abandoned industrial facility associated with the Metcoa Radiation Superfund Site (''Site'') in Pulaski, Lawrence County, Pennsylvania, and will resolve certain

potential EPA claims under Section 107 of CERCLA, 42 U.S.C. 9607, against the Purchaser. The proposed agreement is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or circumstances indicating that the proposed agreement is inappropriate, improper or inadequate.

The proposed agreement would allow the Purchasers to take title to a 21.74 acre property (''the Property'') located within the approximately 22.5 acre Site. The Property is located on Route 551 and Metallurgical Way, approximately one-half mile north of the center of the village of Pulaski, and Route 208 in Pulaski, Lawrence County, Pennsylvania. The Property formerly was occupied by the Metallurgical Corporation of America, which conducted a metal reclamation business there between 1976 and 1983. Response actions and long term remedial actions have been conducted or overseen by EPA, the Nuclear Regulatory Commission (''NRC'') and the Commonwealth of Pennsylvania at the Site since 1985. In 1997, EPA entered a Consent Decree with 187 parties, requiring them to conduct certain response actions to clean up the Site. In March 2000, EPA issued a notice of completion to the parties stating that the required response actions had been performed satisfactorily. Under the terms of the proposed agreement, the Purchaser is required to cooperate with and provide access to EPA for any response activities on the Property, and is subject to certain property use restrictions.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed agreement. Comments should be submitted to Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103, or by e-mail to *canning.suzanne@epa.gov*, and should refer to the ''Metcoa Radiation Superfund Site Prospective Purchaser Agreement'' and ''EPA Docket No. CERC–PPA–2000–0008.'' The proposed agreement and additional background information relating to it may be examined and/or copied at the above EPA office. A copy of the proposed agreement may be obtained by mail from Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Humane L. Zia (3RC41), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; phone: (215) 814–3454.

Dated: November 30, 2000.

Bradley M. Campbell,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 00–31725 Filed 12–12–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6915–9]

Proposed Administrative Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource, Conservation and Recovery Act; The Doe Run Resources Corporation, Herculaneum, Missouri, Docket Nos. CERCLA–7–2000–0029 and RCRA–7–2000–0018

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), and Section 7003(d) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973(d) notification is hereby given of a proposed administrative agreement concerning The Doe Run Resources Corporation (''Respondent''), at 881 Main Street in Herculaneum, Missouri. Under the Agreement, the Respondent agrees to perform response actions to abate an imminent and substantial endangerment to the public health, welfare, or the environment that may be presented by (i) the actual or threatened release of hazardous substances at or from the facility, and/or (ii) the past or present handling, storage, treatment, transportation or deposition by Respondent of any solid waste or hazardous waste. This agreement also concerns the (1) performance and oversight of a Human Health and Ecological Risk Assessment; (2) reimbursement by Respondent of costs incurred by the United States and the Missouri Department of Natural Resources (''MDNR'') in connection with this Order; and (3) collection of sufficient data, samples and other information, in conjunction with the MDNR and U.S. Fish and Wildlife Service (''USFWS''), in their capacity as Natural Resource Trustees to enable the completion of an injury determination and other appropriate natural resource damage assessment activities in accordance with 43 CFR Part 11. Respondent will clean up soil contamination caused by its smelter operations, including contaminated soil in residential areas in the vicinity of the smelter. Respondent will conduct a blood lead study and public education program on health effects of lead exposure through the air and soil, mine wastes, smelting activity and lead paint to citizens of Herculaneum and the surrounding area. Respondent will install air emission controls. Respondent will study and implement short-term and long-term measures to control runoff of pollutants from its 24-acre slag pile and will ensure that the slag pile is operated in a way that prevents loss of slag into the environment. Respondent will develop and conduct a groundwater monitoring program. Respondent will investigate other potential areas affected by its smelter operations. The Respondent agrees to pay oversight costs incurred by the United States and MDNR pursuant to an Administrative Order on Consent (''Order'') dated October 11, 2000. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a) for recovery of past response costs or future response costs incurred by the United States or MDNR in connection with this response action or this Order. This covenant not to sue shall take effect upon receipt by EPA and MDNR of the payments required by the Order and is conditioned upon the complete and satisfactory performance by Respondent of its obligations under the Order. Under the agreement, Respondent pays $25,013.04 for reimbursement of past costs incurred by the United States. Respondent also pays $3,569.20 for reimbursement of past natural resource damage assessment costs incurred by MDNR.

For thirty (30) days following the date of publication of this notice, the EPA will receive written comments relating to the settlement. The EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received from the public during this comment period or at the public meeting disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The public meeting is on Thursday, December 14, 2000, 7:00 P.M., at the Herculaneum United Methodist Church, 672 Main, Herculaneum, Missouri. The EPA's response to any comments received will be available for public inspection at the

Herculaneum Public Library, 1 Parkwood Court, Herculaneum, Missouri, and from Kathy Robinson, Regional Hearing Clerk, EPA, 901 North 5th Street, Kansas City, Kansas 66101.

DATES: Comments must be submitted on or before January 12, 2001.

ADDRESSES: A copy of the proposed settlement and the Administrative Record are available for public inspection at the Office of the Regional Hearing Clerk and at the Herculaneum Public Library, at the addresses referenced above. A copy of the proposed settlement may be obtained from Kathy Robinson, the Regional Hearing Clerk, telephone: (913) 551–7567. Comments should reference The Doe Run Resources Corporation, at 881 Main Street in Herculaneum, Missouri, Docket No. CERCLA 7–2000–0029 and Docket No. RCRA–7–2000–0018 and should be addressed to Regional Hearing Clerk, EPA, 901 N. 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Julie Murray, Assistant Regional Counsel, EPA, 901 N. 5th Street, Kansas City, Kansas 66101, telephone: (913) 551–7448, or Shelley Woods, Assistant Attorney General, 221 W. High, P.O. Box 899, Jefferson City, Missouri 65102, telephone: (573) 751–0660.

Dated: December 5, 2000.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 00–31726 Filed 12–12–00; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 14, 2000, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

1. Approval of Minutes

—November 9, 2000 (Open and Closed)

2. Reports

—FCS Building Association's Quarterly Report

—Report on Corporate Approvals

—Report on National Charters

*** Closed Session**

Report

—Bank Request for Approval

Dated: December 8, 2000.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

[FR Doc. 00–31884 Filed 12–11–00; 11:43 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

December 6, 2000.

Deletion of Agenda Items From the December 7th Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the December 7, 2000, Open Meeting and previously listed in the Commission Notice of November 30, 2000.

Item No.	Bureau	Subject
1	Mass Media	Title: Applications of Anderson Broadcasting Company (Assignor) and Cumulus Licensing Corp. (Assignee); For Consent to the Assignment of the Licenses of KBMR(AM), Bismark, ND, KXMR(AM), Bismarck, ND, KSSS(FM), Bismarck, ND, KAVG(FM), Beulah, ND, and KBKU(FM), Hettinger, ND. (File Nos. BAL/BALH/BAP–19991004AAY–ABC Summary: The Commission will consider a Hearing Designation Order concerning applications for the assignment of licenses from Anderson Broadcasting Company to Cumulus Licensing Corp.
2	Mass Media	Title: Definition of Radio Markets Summary: The Commission will consider a Notice of Proposed Rule Making concerning its methodology for defining radio markets, and other related policies for applying the radio multiple ownership rules.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31761 Filed 12–8–00; 4:08 pm]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2454]

Petitions for Reconsideration of Action in Rulemaking Proceedings

December 5, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by (Insert date of 15 days after Publication in **Federal Register**). See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Urbana, Il) (MM Docket No. 00–76, RM–9809).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations (Sparta and Buckhead, GA) (MM Docket No. 00–101, RM–9885).

Number of Petitions Filed: 1.

Subject: The Establishment of Policies and Service Rules for the Mobile-

Satellite Service in the 2 GHz Band (IB Docket No. 99–81).

Number of Petitions Filed: 3.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31663 Filed 12–12–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 00–12]

Revocation of Licenses, Provisional Licenses and Order To Discontinue Operations in U.S.-Foreign Trades for Failure To Comply With the New Licensing Requirements of the Ocean Shipping Reform Act of 1998; Notice of Issuance of Order To Show Cause

Notice is given that on December 7, 2000, the Federal Maritime Commission (''Commission'') served an Order directing 81 ocean transportation intermediaries (''OTIs'') (''Respondents'') to show cause both why their ocean transportation intermediary licenses (permanent and/or provisional) should not be revoked and why they should not be directed to discontinue their operations in the foreign trades of the United States for failure to comply with the requirements of the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902 (''OSRA''). The Commission took this action because the Respondents still have not met new requirements effective May 1, 1999 prescribed by OSRA and the Commission's implementing rules thereunder, notwithstanding extensive efforts by the Commission to bring them into compliance.

Specifically, Respondents have been directed pursuant to sections 11 and 14 of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app 1710 and 1713, to submit affidavits of fact and memoranda of law to show cause why: the Commission should not revoke their licenses for failure to comply with section 19 of the 1984 Act and 46 CFR Part 515; and why the Commission should not order each of them to cease and desist from operating as an OTI, including publication of any tariff, in the foreign trade of the United States.

The Order requires that affidavits of fact and memoranda of law filed by Respondents and any intervenors in support of Respondents be filed no later than January 12, 2001.

The full text of the Order may be viewed on the Commission's home page at *http://www.fmc.gov,* or at the Office of the Secretary, room 1046, 800 N. Capitol Street, NW., Washington, DC.

Petitions for leave to intervene may be filed in accordance with 46 CFR 502.72.

The Order to Show Cause was served on the following ocean transportation intermediaries, which have been designated Respondents in this proceeding:

A.I.F. Services, Inc. dba Agency International Forwarding, Inc.
Advante Customs Broker and Freight Forwarders Inc.
Agency International Forwarding, Inc.
Air & Sea Inc.
Airlift Container Lines, Inc.
Albatross Shipping Inc.
Allied International N.A., Inc.
Almcorp Project Transport, Inc.
Alrod International, Inc. dba Alrod Ocean Company
Andreani Corporation
Auto Export Services North America, Inc.
Auto Overseas Ltd.
Blackbird Line, Inc.
Bulkmatic Transport Company
C & F Worldwide Agency Corp.
Calico Equipment Corp. dba Global Equipment Transport
Cargo Maritime Services, Inc.
Cargo Transport, Inc.
Centra Worldwide Inc dba Cwi Container Line
Century Express, Inc.
Chin, Johnnie C. F. dba J C Express
Con-Way Intermodal, Inc.
Continental Shipping & Trading Import—Export, Inc.
Continental Van Lines, Inc. dba Continental International
Denali International, Inc.
Deugro Ocean Transport, Inc.
Dukes Systems Corp.
Excel Shipping Corp.
Exploit Express Freight Inc.
Federal Warehouse Company
Feith, Cornelis J. dba Tiger Express
Formerica Consolidation Service, Inc.
Frontier International Forwarders, Inc.
Gulf South Forest Products, Inc.
Hemisphere International Shipping, Inc.
Hopkins, James E. dba Hopkins Services
Intermare Agency Services, Inc.
Inter-American Freight Consolidators, Inc.
International Distribution, Inc.
International Trade and Logistics, Inc.
International Transport Agency dba I.T.A.
Iris Enterprises Corp. dba Iris Cargo
J.C. Express of Miami, Corp.
Johnson Storage & Moving Co.
Landstar Ranger, Inc.
Loa Int'l (USA) Transport Co. Inc.
Manna Freight Systems, Inc.
Maurice Pincoffs Company, Inc.
Millenium Logistics Services, Inc.
Nador Shipping Corporation
Naviera Mundial Inc.
Oceanic Freights, Inc.
Ocean Pacific Lines, Inc.
Og International (USA) Co., Inc.
P. H. Petry, Company
Pagoda Container Line Corp.
Poseidon Freight Forwarders, Inc. dba Poseidon Line
Professional Cargo Services Int'l Inc.
Roberto Bucci (USA) Inc.
Rolines Shipping Corp.
S.h.r. Enterprises, Inc.
S.t.s. International, Inc.
Sanchez, Carlos B. dba R & S Trading
Sea Expo Freight Services, Inc.
Sea-Land Logistics, Inc.
Seajet Express Container Line Ltd. dba Gateway Container Line
Seamax, Inc.
Sunmar Shipping, Inc. dba Sunmar Alaska Service
Taiun Company (U.S.A.) Inc.
Time Definite Services, Inc.
Trans-Alliance Int'l Fwdg. Co. dba Nova Ocean Line
Transbridge International, Inc.
Transneftegazstroy America, Inc.
Transpo Service, Ltd.
Treset Corporation
Unitrans Shipping & Air Cargo Limited
Universe Freight Brokers, Inc. dba Seacarriers
Victory Van Corporation dba Victory Van International
World Marine Services Dominicana, LLC
World Wide Cargo Logistics, Inc.
Yellow Freight System, Inc.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–31666 Filed 12–12–00; 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. 19817 (j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 27, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Tubbs-Ohnward Limited Partnership, Maquoketa, Iowa, General Partners, Edward L. Tubbs, Maquoketa, Iowa, Alan R. Tubbs, Maquoketa, Iowa; Steven E. Tubbs, Delmar, Iowa, AMBA Limited Partnership, Maquoketa, Iowa, General Partners, Alan R. Tubbs, Maquoketa, Iowa, Myrna J. Tubbs, DeWitt, Iowa, Brigham L. Tubbs, Clinton, Iowa, Abram A. Tubbs, Anamosa, Iowa, J.F. Limited Partnership, Maquoketa, Iowa, General Partners, John W. Fagerland, Maquoketa, Iowa; Evelyn L. Fagerland, Maquoketa, Iowa; Karen L. Slattery, Maquoketa, Iowa; Kendra L. Beck, Maquoketa, Iowa, and Krista L. Grant, Preston, Iowa, E.F. Limited Partnership, Maquoketa, Iowa, General Partners, John W. Fagerland, Maquoketa, Iowa, Evelyn L. Fagerland, Maquoketa, Iowa, Karen L. Slattery, Maquoketa, Iowa, Kendra L. Beck, Maquoketa, Iowa, and Krista L. Grant, Preston, Iowa; all to acquire voting shares of Ohnward Bancshares, Inc., Maquoketa, Iowa, and thereby indirectly acquire voting shares of Maquoketa State Bank, Maquoketa, Iowa, 1st Central State Bank, De Witt, Iowa, Tri-County Bank & Trust, Cascade, Iowa, and Gateway State Bank, Clinton, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. David Gunter Hodo, Amory, Mississippi, to retain voting shares of Security Bancshares, Inc., Amory, Mississippi, and thereby indirectly retain voting shares of Security Bank of Amory, Amory, Mississippi.

Board of Governors of the Federal Reserve System, December 7, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–31668 Filed 12–12–00; 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 January 5, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Bedwell Investments, Inc., Jackson, Alabama; to become a bank holding company by acquiring 35 percent of the voting shares of Merchants Trust, Inc., Jackson, Alabama; and thereby indirectly acquire Merchants Bank, Jackson, Alabama.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Capital Bankshares, Inc., Peoria, Illinois; to acquire 20 percent of the voting shares of Community Bank of Lemont (in organization), Lemont, Illinois.

Board of Governors of the Federal Reserve System, December 7, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–31667 Filed 12–12–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

Agency Holding the Meeting: Board of Governors of the Federal Reserve System

TIME AND DATE: 12:00 noon, Monday, December 18, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, DC 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to Federal Reserve System benefits. (This item was originally announced for a closed meeting on December 4, 2000.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–31760 Filed 12–8–00; 4:08 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of Labor is cancelling the following Standard Form because of low usage: SF 99, Notice of Award of Contract.

DATES: Effective December 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: November 13, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–31670 Filed 12–12–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow a proposed information collection project: ''Medical Expenditure Panel Survey Household Component (MEPS–HC)–2001 through 2004''. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on October 3, 2000 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 12, 2001.

ADDRESSES: Written comments should be submitted to: OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, DC 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project: ''Medical Expenditure Panel Survey Household Component (MEPS–HC)–2001 through 2004''.

The AHRQ intends to conduct an annual panel survey of U.S. households to collect information on a variety of measures related to health status, health insurance coverage, health care use and expenditures, and sources of payment for health services. Each panel consists of a nationally representative sample of U.S. households who remain in MEPS for two consecutive years of data collection. The first panel of MEPS began in 1996 and has continued annually thereafter. The MEPS–HC is jointly sponsored by the AHRQ and the National Center for Health Statistics (NCHS).

It will be conducted using a sample of households selected from households which responded to the National Health Interview Survey (NHIS) sponsored by NCHS. The NHIS is a household survey which collects health related data from approximately 50,000 households and 110,000 people. The NHIS is used as the sampling frame for the MEPS and several other surveys as part of efforts by the Department of Health and Human Services (HHS) to integrate survey data collection activities.

Data to be collected from each household include detailed information on demographics, health conditions, current health status, utilization of health care providers, charges and payments for health care services, quality of care received, medications, employment and health insurance.

In accordance with AHRQ and NCHS confidentiality statutes, statistical and nonidentifying data will be made available through publications, articles in major journals as well as public use data files. The data are intended to be used for purposes such as:

- Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the availability, costs and scope of private health insurance benefits among Americans;
- Examining the effects of changes in how chronic care and disability are managed and financed;
- Evaluating the growing impact of managed care and of enrollment in different types of managed care plans; and,
- Examining access to and costs of health care for common diseases and conditions, health care quality, prescription drug use, and other health issues.

Statisticians and researchers will use these data to make important generalizations on the civilian non-institutionalized population of the United States, as well as to conduct research in which the family is the unit of analysis.

Method of Collection: The data will be collected using a combination of modes. For example, the AHRQ intends to introduce study participants to the survey through advance mailings. The first contact will provide the household with information regarding the importance and uses of the information obtained. The AHRQ will then conduct five (in-person) interviews with each household to obtain health care use and expense data. Data will be collected using a computer-assisted personal interviewing method (CAPI). In certain cases, AHRQ will conduct interviews over the telephone, if necessary. Burden estimates follow:

Estimated Annual Respondent Burden Per Year: Each MEPS participant is asked to complete 5 interviews over two and one half years. Each interview averages 1.8 hours in length. Total burden is estimated in the following chart:

Survey period	Number of completes	Burden per complete (hours)	Total burden (hours)
Feb–July 2001	19,380	1.8	34,884
Aug–Dec 2001	13,280	1.8	23,904
Feb–July 2002	21,248	1.8	38,246
Aug–Dec 2002	16,239	1.8	29,230
Feb–July 2003	24,187	1.8	43,537
Total			148,291

Dated: December 6, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–31671 Filed 12–12–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Guidance for the Tribal Temporary Assistance for Needy Families Program.

OMB No. 0970–0157.

Description: The subject document provides program information, plan guidance, and a suggested plan outline for an application for direct funding and administration by federally recognized Indian Tribes of a Temporary Assistance for Needy Families program (Tribal TANF).

Respondents: Federally recognized Indian Tribes or consortia thereof.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Plan and revisions	18	3	100	5,400
Estimated Total Annual Burden Hours:				5,400

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 7, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–31665 Filed 12–12–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS FY 2000–04]

Early Head Start Longitudinal Research Partnerships: Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice.

Statutory Authority: The Head Start Act, as amended 42 U.S.C. 9801 *et seq.*) CFDA: 93.600.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF) announces the availability of funds for universities, in partnership with the original 17 Early Head Start Research sites, to conduct the local and cross-site longitudinal research until entry into kindergarten on children and families who were participants in the original National Early Head Start Research Study.

DATES: The closing date for receipt of applications is 5:00 P.M. EDT January 29, 2001.

Note: Applications should be submitted to the ACYF Operations Center at 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209. However, prior to preparing and submitting an application, in order to satisfactorily compete under this announcement it will be necessary for potential applicants to read the full announcement which is available through the addresses listed below.

ADDRESSES: The full announcement and applications, including all necessary forms can be downloaded from the Head Start web site at *www.acf.dhhs.gov/programs/hsb.* The web site also contains a listing of the 17 Early Head Start programs that were part of the original study. Hard copies of the application may be obtained by writing or calling the Operations Center or sending an email to *hsr@cgnet.com*

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209 or (1–800) 351–2293.

SUPPLEMENTARY INFORMATION:

Eligible Applicants: Universities and four-year colleges on behalf of a faculty member who holds a doctorate degree or equivalent in their respective field and have formed partnerships with an original Early Head Start Research site.

Project Duration: The announcement for Early Head Start Longitudinal Research is soliciting applications for project periods of four years. Awards, on a competitive basis, will be for the first one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the established project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government. An additional competitive grant for one year may be considered for recipients of grants under this announcement if it is deemed necessary for the completion of the data analysis and report writing.

Federal Share of Project Costs: The maximum Federal share is $190,000 per Early Head Start research site for the first 12-month budget period based on the number of children to be tracked

and tested and their distance from the original site. The Federal share for subsequent years shall be up to $200,000 per year per Early Head Start research site for each year of the project period depending on the number of children still to be tracked and tested and the analysis and report writing to be completed. The Federal share is *inclusive* of indirect costs.

Matching Requirements: There are no matching requirements.

Anticipated Number of Projects To Be Funded: It is anticipated that a maximum of 17 projects will be funded.

Criteria

Reviewers will consider the following factors when assigning points.

1. Results or Benefits Expected—25 points

- The research questions are clearly stated.
- The extent to which the questions are of importance and relevance for low-income children's development and welfare.
- The extent to which the research study makes a significant contribution to the knowledge base.
- The extent to which the literature review is current and comprehensive and supports the need for the study, the questions to be addressed or the hypotheses to be tested.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.
- The extent to which the results build on the results of the first study.

2. Approach—40 points

- The extent to which the research design is appropriate and sufficient for addressing the questions of the study.
- The extent to which child outcomes are the major focus of the study.
- The extent to which the planned research specifies the measures to be used and the analyses to be conducted.
- The extent to which the planned measures are appropriate and sufficient for the questions of the study.
- The extent to which the planned measures and analysis incorporate the measures and analyses completed under the original study.
- The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state-of-the-art.
- The extent to which the analytic techniques are appropriate for the question under consideration.
- The extent to which the proposed sample size is sufficient for the study.
- The scope of the project is reasonable for the funds available for these grants.
- The extent to which the planned approach reflects sufficient input from and partnership with the Early Head Start program.

3. Staff and Position Data—35 points

- The extent to which the principal investigator and other key research staff possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.
- The principal investigator(s) has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
- The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Early Head Start program staff and parents.
- The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention.

Required Notification of the Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and American Samoa have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule.

When comments are submitted directly to ACF, they should be addressed to: William Wilson, Head Start Bureau, 330 C Street SW., Washington, DC 20447, Attn: Head-Start University Partnerships or Graduate Student Head Start Research. A list of the Single Points of Contact for each State and Territory can be found on the web site *http://www.whitehouse.gov/omb/grants/spoc.html.*

Dated: December 6, 2000.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–31664 Filed 12–12–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of January 2001.

Name: National Advisory Council on Nurse Education and Practice (NACNEP).

Date and Time: January 11, 2001; 8:30 a.m.–5:00 p.m., January 12, 2001; 8:30 a.m.–3:00 p.m.

Place: Washington Monarch Hotel, 2401 M Street, N.W., Washington, DC 20037.

The meeting is open to the public.

Agenda: Updates and discussion of Department, Agency, Bureau and Division activities, and the legislative and budget status of programs; status of COGME/NACNEP joint report on ''Collaborative Education to Ensure Patient Safety''; discussion of the National Sample Survey 2000 report; presentation and panel discussion of national and regional nursing

workforce issues; status of funding allocation methodology contract; and Council strategic planning workgroups on Workforce and Practice.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5786.

Dated: December 7, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–31701 Filed 12–12–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: November 2000

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, City, State	Effective date
Civil Monetary Penalty	
Valiente, Jose G., Miami, FL	11/06/2000
Program-Related Convictions	
Aquino, Nilvio R., Eglin AFB, FL	12/20/2000
Bassett, Douglas Allen, Fort Wayne, IN	12/20/2000
Camacho, Raul, Hialeah, FL	12/20/2000
Chromey, Paul Anthony, W. Pittson, PA	12/20/2000
Costanzo, Patricia A., Palm Bay, FL	12/20/2000
Curtis, Lorraine Edith, Bloomington, CA	12/20/2000
Faddock, William, Peachtree City, GA	12/20/2000
Favela, Ricardo, Whittier, CA	12/20/2000
Giller, Leonid, Edison, NJ	12/20/2000
Gray, Robert Bruce, Ft. Lauderdale, FL	12/20/2000
Gray, Leslie Kenney, Richmond, VA	12/20/2000
Harrington, William, Coleman, FL	12/20/2000
Harris, Gloria A., East Point, GA	12/20/2000
Hollander, Alexander, Flushing, NY	12/20/2000
Isaacson, Yoram, Tehachapi, CA	12/20/2000
Isaacson, Joseph, Los Angeles, CA	12/20/2000
Johnson, Jeffrey, Rochester, NY	12/20/2000
Johnson, Linda, Vero Beach, FL	12/20/2000
Karu, Ron, Avenal, CA	12/20/2000
Lamar, Magaline Eddings, Fresno, CA	12/20/2000
Lewis, Terry Lamond, Rialto, CA	12/20/2000
Lopez, Gloria E., Coleman, FL	12/20/2000
Mack, Cedric Lamar, College Park, GA	12/20/2000
Mason, Paula J., Richmond, VA	12/20/2000
Mikhaylova, Alla, Flushing, NY	12/20/2000
Molina, David Jr., Brooklyn, NY	12/20/2000
Olmos, Leonardo, Miami, FL	12/20/2000
Pichardo, Juan A., New York, NY	12/20/2000
Pinkney, Brandi Raquel, Rowland Hgts, CA	12/20/2000
Poli, Catherine E., Delray Beach, FL	12/20/2000
Rampersad, Lakshminarine, Landing, NJ	12/20/2000
Rizzo, Anthony T., Batavia, NY	12/20/2000
Rome, Stanford B., Valdosta, GA	12/20/2000
Rubenich, Ervand Doganian, Long Beach, CA	12/20/2000
Schwartz, Edward, Redlands, CA	12/20/2000
Stallings, Allen J., Wallace, NC	12/20/2000
Stan, Joseph N., Beverly Hills, CA	12/20/2000
Weiselberg, Alan, Miami, FL	12/20/2000
Williams, Sandra Lynette, Ontario, CA	12/20/2000
Zak, Felix, Brooklyn, NY	12/20/2000
Zarza, Jose, Blounstown, FL	12/20/2000
Felony Control Substance Conviction	
Walters, Darlene Danielle, Tupelo, MS	12/20/2000
Patient Abuse/Neglect Convictions	
Adams, Yolanda M., Magee, MS	12/20/2000
Anderson, Margaret B., Columbia, SC	12/20/2000
Ducksworth, Coquetties, Taylorsville, MS	12/20/2000
Feliciano, Aja K., Hartsville, SC	12/20/2000
Fisher, Frederick Antonio, Corcoran, CA	12/20/2000
Gray, Dewayne, Jackson, MS	12/20/2000
Hopkins, Judith, Jackson, MS	12/20/2000
Johnson, Bertha, Kansas City, MO	12/20/2000
Larow, Mark L., Rome, NY	12/20/2000
Mitchell, Charlene, Camden, SC	12/20/2000
Moore, Larry Earl, Chattanooga, TN	12/20/2000
Motley, Mary Frances, Wesson, MS	12/20/2000
Naker, George Walter, Spokane, WA	12/20/2000
Nearing, Darrell W., Columbia, SC	12/20/2000
Scott, Altovise L., Jackson, TN	12/20/2000
Willis, Chester Lovell, Jackson, MS	12/20/2000
Wilson, Shirley, Jackson, MS	12/20/2000
Conviction for Health Care Fraud	
Ingram, Coltina E., Santee, SC	12/20/2000
License Revocation/Suspension/Surrendered	
Alexander, Kristine R., Bethel, CT	12/20/2000
Altman, Karen R. Taylor, Blackshear, GA	12/20/2000
Anderson, Tim Glenn, Spokane, WA	12/20/2000
Anderson, Cassandra Michelle, Houston, TX	12/20/2000
Armando, Brenda Denise Wells, Stone Mountain, GA	12/20/2000
Armistead, Cedric, San Pablo, CA	12/20/2000
Bailey, Lawrence Ray Jr., Aurora, IN	12/20/2000
Balmer, Ruth Ann, Bethalto, IL	12/20/2000
Batish, Rajesh, Frazer, PA	12/20/2000
Baxter, Kimberly, Newtown, CT	12/20/2000
Beringer, Vicki L., Mentor, OH	12/20/2000
Bondoc, Dominga Rivera, Bronx, NY	12/20/2000
Borland, Richard K., Kennerdell, PA	12/20/2000
Borum, Curtis Tyrone, Fremont, CA	12/20/2000
Bryan, Karen Gean Byrd, Macon, GA	12/20/2000
Brydon, Cathy A., Pocatello, ID	12/20/2000
Buckner-Hunter, Francis, Los Angeles, CA	12/20/2000
Burke, Marianne Cunningham, Glendale, CA	12/20/2000
Cash, Lisa, Midlothian, VA	12/20/2000
Chenard, Paul Michael, Erie, PA	12/20/2000

Subject, City, State	Effective date
Choi, Jimmy W., Glen Cove, NY	12/20/2000
Church, Susan E., Walford, IA	12/20/2000
Courtney, Lara Skye, Hinton, OK	12/20/2000
Dailey, Douglas O., Grass Valley, CA	12/20/2000
Darling, Elizabeth Ann, Minneapolis, MN	12/20/2000
Davis, Larry Duane, Ontario, OR	12/20/2000
Dowling, Joanna Kathleen, Little Rock, AR	12/20/2000
Duffield, Cami R., Lawrenceville, NJ	12/20/2000
Erickson, Bernadette, Des Moines, IA	12/20/2000
Fleisher, Paul R., New London, CT	12/20/2000
Frasier, Shirley A., Waterville, ME	12/20/2000
Frazer, Cheryl, Lebanon, TN	12/20/2000
Gelpi, Angelo, Bronx, NY	12/20/2000
German, Mark L., Chino Valley, AZ	12/20/2000
Givens, Angela M., Richmond, VA	12/20/2000
Glynn, Tara, Yehm, WA	12/20/2000
Guerrero-Ramirez, Luis E., Houston, TX	12/20/2000
Haase, Steven, Scottsdale, AZ	12/20/2000
Harrington, William H., Colchester, CT	12/20/2000
Harrison, Jeffrey D., Phoenix, AZ	12/20/2000
Hendriksen, Rebecca Anne, Las Vegas, NV	12/20/2000
Henry, Jo Anne S., Cleveland, GA	12/20/2000
Hickman, Cynthia Marie Rathgeb, Chesapeake, VA	12/20/2000
Hoeppner, Michelle D., Urbandale, IA	12/20/2000
Holbrook, Robert Walter, El Paso, TX	12/20/2000
Hollobaugh, Samuel Lee, Ozark, Al	12/20/2000
Howe, Tammy L., Burlington, IA	12/20/2000
Hughes, Stephanie Nola, Fayetteville, GA	12/20/2000
Inorio, Nancy S., Hamden, CT	12/20/2000
Isaacs, Joy Rosemary S., St. Paul, MN	12/20/2000
Jacob, Lisa Rothrauff, Braddock, PA	12/20/2000
Jones, Patrick Stephen, Roanoke, VA	12/20/2000
Jordan, Paul Lawrence, Chowchilla, CA	12/20/2000
Kelly, Warren Roger, Wasco, CA	12/20/2000
Kocer, Abdul Khaliq, Ft. Oglethorpe, GA	12/20/2000
Kotajarvi, Cherie Lyn, Krueger Alpharetta, GA	12/20/2000
Kottler, Barry M., Butner, NC	12/20/2000
Lake, Cicely C., Richmond, VA	12/20/2000
Land, Timothy David, Chicago Ridge, IL	12/20/2000
Landrum, Kurt McKinley, Chicago, IL	12/20/2000
Langford, Sheshalla M., Mundelein, IL	12/20/2000
Lara, Susan G., Chicago, IL	12/20/2000
Lawrence, Gregory Scott, Edwardsville, IL	12/20/2000
Lee, Jerry Clayton, Chico, CA	12/20/2000
Liebman, William M., San Rafael, CA	12/20/2000
Lin, Paul Pao-Shan, Los Angeles, CA	12/20/2000
Lockridge, Pamela, Robeline, LA	12/20/2000
Lucas, Stephanie Andre, San Bernardino, CA	12/20/2000
Lukken, Nickie S., Sioux City, IA	12/20/2000
Lynch, Gloria J., E. Hartland, CT	12/20/2000
Madison, Shirley A., Aiken, SC	12/20/2000
Madison, Antoine Catrele, Joliet, IL	12/20/2000
Maugle, Barbara Lynn, Springfield, NJ	12/20/2000
McCall, Randy Allen, Sylva, NC	12/20/2000
McFarland, Dawn M., S. Portland, ME	12/20/2000
McGlynn, Megan T., Roslyn, PA	12/20/2000
McMath, Pamela Lynn, Southgate, MI	12/20/2000
Millard, Ann Clark, Mocanaqua, PA	12/20/2000
Minor, Jenny B., Staunton, VA	12/20/2000
Miranda-Solari, Artemio, Baltimore, MD	12/20/2000
Mitsui, Masao, Jersey City, NJ	12/20/2000
Moore, Lebrondia F., East Ridge, TN	12/20/2000
Naseeruddin, Khaja, Middletown, NY	12/20/2000
Newman, Robert Edwin II, Fortuna, CA	12/20/2000
Nunez, Denis A., Lawrenceville, GA	12/20/2000
Oddo, Stephen Anthony, San Diego, CA	12/20/2000
Papp, Mary Yvonne, Clyde, TX	12/20/2000
Paul, Jeremy Jay, Mesa, AZ	12/20/2000
Perron, L. Andre, Manchester, NH	12/20/2000
Perry, Michael Paul, San Antonio, TX	12/20/2000
Perry, Christopher J., E. Providence, RI	12/20/2000
Peterson, Robert F., Reno, NV	12/20/2000
Reniff, Betsy Christine, Baldwinsville, NY	12/20/2000
Rizzo-Collins, Theresa Marie, La Puente, CA	12/20/2000
Roberts, Amber S., Charlotte, VT	12/20/2000
Rodriguez, Ricardo, Los Angeles, CA	12/20/2000
Rogowski, Jerzy Miroslaw, Gouverneur, NY	12/20/2000
Sandhu, Susan Jane, Hercules, CA	12/20/2000
Schnur, Lois M., Colo, IA	12/20/2000
Skipping, Amy K., Dallas, TX	12/20/2000
Smith Wells, Deborah, Fort Worth, TX	12/20/2000
Starr, Amy Cathleene, Waco, TX	12/20/2000
Stiffler, Keith Monroe, Chapel Hill, NC	12/20/2000
Storks, Janet L., Danville, IA	12/20/2000
Streetman, Scott J., Destin, FL	12/20/2000
Struwe, Franklin J. JR., Brooklyn, WI	12/20/2000
Sunga, Isaias D., Palos Hills, IL	12/20/2000
Swenson, Shelley Allayne, Buffalo, MN	12/20/2000
Tartaglia, Tracy Christine, San Francisco, CA	12/20/2000
Tavey, Bertha, Riverside, CA	12/20/2000
Terrell, Bernita, Richmond, VA	12/20/2000
Thomas, Patricia Mary, Rochester, MN	12/20/2000
Tisdale, Kristen Elizabeth, Lakeville, MN	12/20/2000
Towery, David B., Newnan, GA	12/20/2000
Turner-Johnson, Jane, San Francisco, CA	12/20/2000
Tyler, Etta Mae, Redwood City, CA	12/20/2000
Valenzuela-Hawkins, Linda Jean, Santa Barbara, CA	12/20/2000
Vaughan, Thomas Karlton, Midland, GA	12/20/2000
Velasco, Barbara A., Memphis, TN	12/20/2000
Wagler, Mistie M., Sigourney, IA	12/20/2000
Walley, Bruce E., Lac Du Flambeau, WI	12/20/2000
Warren, John Marcus, Minneapolis, MN	12/20/2000
Weathers, Joan C., E Hartford, CT	12/20/2000
Willingham, Debra Kay, Lubbock, TX	12/20/2000
Wilson, Jane Ellen, Beggs, OK	12/20/2000
Wilson, Vickie Gay, Mulkeytown, IL	12/20/2000
Wise, Ronald Eugene, Charlottesville, VA	12/20/2000
Federal/State Exclusion/Suspension	
Economy Medical Supply, Burbank, CA	12/20/2000
Fraud/Kickbacks	
Dashiell-Ernst, Celeste, Point Pleasant, PA	09/20/2000
Owned/Controlled by Convicted Excluded	
Central Nutrition Svcs, Inc., Miami, FL	12/20/2000
Chicchetti Chiropractic Ctr., Palm Bch Gardens, FL	12/20/2000
Family Dentistry, Sun Valley, CA	12/20/2000
H & D Home Health Services, Sun Valley, CA	12/20/2000
Joseph N. Stan, D.D.S., Inc., Beverly Hills, CA	12/20/2000
Kaiser Chiropractic Life Ctr., McConnellsburg, PA	12/20/2000
Lee Family Dentistry, PC, New York, NY	12/20/2000
Towery Chiropractic Clinic, Newnan, GA	12/20/2000

Subject, City, State	Effective date
Default on Heal Loan	
Bailey, David W., Chicago, IL	11/06/2000
Bath-Barry, Susan M., Gardneerville, NV	11/01/2000
Benjamin, Roxanne L., Rose City, MI	12/20/2000
Berk, Richard I., Ann Arbor, MI	11/07/2000
Bucklar, Charles Jr., Saint Clair, PA	12/20/2000
Caporaso, Nicholas G., W. Liberty, OH	12/20/2000
Crews, Marvin, Washington, DC	12/20/2000
Green, Stephen K., Sr., Kennesaw, GA	12/20/2000
Green, Edwin Alfred Jr., Brownwood, TX	12/20/2000
Haderxhanaj, Kujtim I., Anahuac, TX	12/20/2000
Horner, Cynthia E., Greenville, SC	12/20/2000
Jeffrey, Pamela Marie, Plano, TX	12/20/2000
Keck, Julie N., Costa Mesa, CA	10/17/2000
Kennedy, Michael D., Conroe, TX	09/18/2000
Kober, Philip M., Madison, WI	12/20/2000
Krystosik, James D., Mantua, OH	12/20/2000
Lemons, Warren C., Los Angeles, CA	12/20/2000
Litten-Ferree, Laura L., Pleasant Grove, UT	12/20/2000
Louis, Robert P., Brooklyn, NY	12/20/2000
Mikaelian, Michelle, Bronx, NY	12/20/2000
Mizell, William L., Franlington, LA	12/20/2000
Moulds, Dan R. Jr., Chattanooga, TN	12/20/2000
Moulds, Lora Crystle, Chattanooga, TN	12/20/2000
Nyquist, Julia R., San Anselmo, CA	12/20/2000
O'Brien, Robert J., Clementon, NJ	11/16/2000
Pelmore, Janet C., Louisville, KY	10/04/2000
Preston, Richard G., Mitchells, VA	12/20/2000
Richards, Terence J., San Francisco, CA	12/20/2000
Selman, Alon Duane, Arlington, TX	12/20/2000

Dated: December 7, 2000.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 00–31672 Filed 12–12–00; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Protection and Advocacy for Individuals with Mental Illness (PAIMI) Final Rule, 42 CFR Part 51 (OMB No. 0930–0172; Extension, no change)—These regulations meet the directive under 42 U.S.C. 10826(b) requiring the Secretary to promulgate final regulations to carry out the PAIMI Act. The regulations contain information collection requirements.

The Act authorized funds to support activities on behalf of individuals with mental illness. Recipients of this formula grant program are required by law to annually report their activities and accomplishments to include the number of individuals served, types of facilities involved, types of activities undertaken and accomplishments resulting from such activities. This summary must also include a separate report prepared by the PAIMI Advisory Council descriptive of its activities and assessment of the operations of the protection and advocacy system. The annual burden estimate for the reporting requirements for these regulations is shown in the following table.

42 CFR Citation	Number of respondents	Responses per respondent	Burden per response (Hrs.)	Total annual burden
51.(8)(a)(2) Program Performance Report [1]	56	1	26.0	1,456
51.8(8)(a)(8) Advisory Council Report [1]	56	1	10.0	560
51.10 Remedial Actions:.				
Corrective Action Plan	6	1	8.0	48
Implementation Status Report	6	3	2.0	36
51.23(c) Reports, materials and fiscal data provided to Advisory Council	56	1	1.0	56
51.25(b)(2) Grievance Procedure	56	1	.5	28
51.43 Written denial of access by P&A system [2]	.....	.....	.....	.....
Total	56			2,184

[1] Responses and burden hours associated with these reports are approved under OMB Control No. 0930–0169.

[2] There is no burden estimate associated with this program provision because State P&A systems report that they attempt to resolve such situations through other means.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 6, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–31695 Filed 12–12–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4548–FA–02]

Announcement of Funding Awards for the Indian Community Development Block Grant Program for Fiscal Year 2000

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2000 Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) Program. This announcement contains the consolidated names and addresses of the award recipients under the ICDBG.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Indian Community Development Block Grant Program awards, contact the Area Office of Native American Programs serving your area or Jackie Kruszek, Office of Native Programs, Denver Program Office, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The ICDBG Program assistance made available in this notice is authorized by Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301, *et seq.*); 24 CFR part 1003; Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Public Law 106–74 113 Stat. 1047, approved October 20, 1999); and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105–276, 112 Stat. 2461, approved October 21, 1998).

The FY 2000 awards announced in this Notice were selected for funding in a competition announced in a NOFA published in the **Federal Register** on March 10, 2000 (65 FR 13192). Applications were scored and selected for funding based on the selection criteria in that NOFA and Area Office of Native American Programs (ONAPs) geographic jurisdictional competitions.

The amount appropriated in FY 2000 to fund the ICDBG was $67 million. Two million dollars of this amount was retained to fund imminent threat grants in FY 2000. Including $338,300 in unused funds from the amount reserved by the Assistant Secretary in FY 1999 for imminent threat grants, a total to $65,338,300 were available to fund single purpose ICDBG grants. The allocations for the Area ONAP geographic jurisdictions are as follows:

Eastern/Woodlands—$5,169,533

Southern Plains—12,233,734

Northern Plains—10,318,714

Southwest—28,148,676

Northwest—3,942,513

Alaska—5,525,130

Total—65,338,300

(The Catalog of Federal Domestic Assistance number for the ICDBG Program is 14.862.)

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 105 awards made under the various regional competitions in Appendix A to this document.

Dated: December 6, 2000.

Milan Ordinec,

Acting General Deputy Assistant, Secretary for Public and Indian Housing.

Appendix A—Fiscal Year 2000 Indian Community Development Block Grant Recipients of Funding Decisions

Funding recipient	Amount approved
EASTERN/WOODLANDS ONAP	
Aroostook Band of Micmac Indians, P.O. Box 772, Presque Isle, ME 04769	$120,000
Bad River Band of Lake Superior Tribe of Chippewa Indians, P.O. Box 39, Odanah, WI 54861	500,000
Bois Forte Reservation, P.O. Box 16, Nett Lake, MN 55772	500,000
Eastern Band of Cherokee Indians, P.O. Box 455, Cherokee, NC 28719	500,000
Ho-Chunk Nation, Wisconsin Winnebago, W9814 Airport Road, P.O. Box 667, Black River Falls, WI 54615	500,000
Keweenaw Bay Indian Community, 107 Beartown Road, Baraga, MI 49908	438,478
Little River Band of Ottawa, 1762 S. US 31, Minstee, MI 49660	500,000
Mille Lacs Band of Ojibwe, Minnesota Chippewa Tribe, HCR 67, Box 194, Onamia, MN 56359	500,000
Penobscot Indian Nation, 6 River Road, Indian Island, Old Town, ME 04468	500,000
St Regis Mohawk Tribe, 412 State Route 37, Hogansburg, NY 13655	500,000
Upper Sioux Indian Community, P.O. Box 147, Granite Falls, MN 56241	475,000
SOUTHERN PLAINS ONAP	
Absentee-Shawnee Tribe of Oklahoma, 2025 South Gordon Cooper Drive, Shawnee, OK 74801	750,000
Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, OK 74465	750,000
Chickasaw Nation, P.O. Box 1548, Ada, OK 74821	750,000
Choctaw Nation of Oklahoma, Drawer 1210, Durant, OK 74702	750,000
Citizen Potawatomi Nation, 1601 S. Gordon Cooper Drive, Shawnee, OK 74801	688,910
Comanche Indian Tribe, P.O. Box 908, Lawton, OK 73502	652,277
Coushatta Tribe of Louisiana, P.O. Box 818, Elton, LA 70532	750,000
Delaware Tribe of Western Oklahoma, P.O. Box 825, Anadarko, OK 73005	722,826
Iowa Tribe of Kansas and Nebraska, RR1, Box 58A, White Cloud, KS 66094	375,000
Iowa Tribe of Oklahoma, RR 1 Box 721, Perkins, OK 74059	750,000
Kaw Nation, Drawer 50, Kaw City, OK 74641	525,625
Miami Tribe of Oklahoma, P.O. Box 1326, Miami, OK 74355	750,000
Osage Nation of Oklahoma, 627 Grandview, Pawhuska, OK 74056	137,500
Pawnee Nation of Oklahoma, P.O. Box 470, Pawnee, OK 74058	750,000
Sac and Fox Nation of Oklahoma, Route 2, Box 246, Stround, OK 74079	750,000
Seminole Nation, P.O. Box 1498, Wewoka, OK 74884	750,000

Funding recipient	Amount approved
United Keetoowah Band of Cherokee Indians, P.O. Box 746, Tahlequah, OK 74465–0746	749,998
Wichita and Affiliated Tribes, P.O. Box 729, Anadarko, OK 73005	732,420
Northern Plains ONAP	
Chippewa Cree Tribe, P.O. Box 544, Box Elder, MT 59521	800,000
Crow Creek Sioux Tribe, P.O. Box 50, Fort Thompson, SD 57339	800,000
Eastern Shoshone Tribe, P.O. Box 538, Fort Washakia, WY 82514	800,000
Northwest Band of Shoshoni Nation, 108 East Forest, Brigham City, UT 84302	650,000
Northern Arapaho Tribe, P.O. Box 396, Fort Washakie, WY 82514	800,000
Oglala Lakota Sioux Tribe, P.O. Box H, Pine Ridge, SD 57770	800,000
Ponca Tribe of Nebraska, 2602 J Street, Omaha, NE 68107	350,000
Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570	800,000
Confederated Salish & Kootenai Tribes, P.O. Box 278, Pablo, MT 59855	800,000
Sisseton-Wahpeton Sioux Tribe, P.O. Box 509, Agency Village, SD 57262	800,000
Three Affiliated Tribes of the Fort Berthoid Reservation, HC 3, Box 2, New Town, ND 58763	800,000
Turtle Mountain Band of Chippewa Tribe, P.O. Box 900, Belcourt, ND 58316	500,000
Ute Mountain Ute Tribe, P.O. Box 248, Towaoc, CO 81334	800,000
Yankton Sioux Tribe, P.O. Box 248, Marty, SD 57361	800,000
Southwest ONAP	
k-Chin Indian Reservation, 42507 E. Peters & Nall Rd, Maricopa, AZ 852391	550,000
Big Valley Rancheria, 2726 Mission Rancheria Dr., Lakeport, CA 95455	550,000
Chemehuevi Indian Tribe, P.O. Box 1976, Chemehuevi Valley, CA 92363	550,000
Cloverdale Rancheria, 555 S. Cloverdale Blvd. Ste 1, Cloverdale, CA 95425	550,000
Cold Springs Rancheria, PO Box 209, Tollhouse, CA 93667	550,000
Colusa Rancheria, 50 Wintun Roads, Ste. D, Colusa, CA 95932	550,000
Coyote Valley Rancheria, PO Box 39, Redwood Valley, CA 95470	135,000
Dry Creek Ranhcheria, PO Box 607, Geyserville, CA 95441	550,000
Duckwater Shoshone Paiute, PO Box 140068, Duckwater, NV 89314–0068	493,489
Fort Bidwell Indian Reservation, PO Box 129, Fort Bidwell, CA 96112	258,560
Fort Independence Indian Reservation, PO Box 67, Independence, CA 93526	550,000
Fort Mojave Indian Reservation, 500 Merriman Avenue, Needles, CA 92363	550,000
Guidiville Rancheria, PO Box 339, Talmage, CA 95481	550,000
Havasupai Indian Tribe, PO Box 10, Supai, AZ 86435	550,000
Haulapai Indian Tribe, PO Box 179, Peach Springs, AZ 86434	750,000
Kaibab-Paiute Tribe, H.C. 65, Box #2, Fredonia, AZ 86022	550,000
Karuk Indian Tribe, PO Box 1016, Happy Camp, CA 96039	550,000
Laytonville Rancheria, P.O. Box 1239, Laytonville, CA 95454	325,761
Los Coyotes Indian Reservation, P.O. Box 189, Warner Springs, CA 92086	550,000
Lytton Rancheria, 1250 Coddington Center, #1, Santa Rosa, CA 95401	550,000
Nambe Pueblo Reservation, Rt. 1 Box 117–BB, Santa Fe, NM 87501	550,000
Navajo Nation, PO Box 9000, Window Rock, AZ 86515	550,000
Pauma Band of Mission Indian, PO Box 369, Pauma Valley, CA 92061	524,960
Pit River Indian Tribe, 37014 Main Street, Burney, CA 96013	473,947
Pojoaque Pueblo, Route 22, Box 71 Santa Fe, NM 87501	550,000
Potter Valley Rancheria, 915 S. Dora Street, Ukiah, CA 95482	511,195
Pueblo of Zuni, P.O. Box 339, Zuni, NM 87327	2,000,000
Quartz Valley Rancheria, P.O. Box 24, Fort Jones, CA 96032	550,000
Redding Rancheria, 2000 Rancheria Road, Redding, CA 96001	550,000
Redwood Valley Rancheria, 3250 Road I, Redwood Valley, CA 95470	498,328
Robinson Rancheria, 1545 E. Highway 20, Nice, CA 95464	549,905
Rohnerville Rancheria, 32 Bear River Drive, Loleta, CA 95551	549,968
Round Valley Indian Reservation, P.O. Box 448, Covelo, CA 95428	550,000
Salt River Indian Community, 10005 E. Osborn, Scottsdale, AZ 85256	1,997,135
Shingle Springs Rancheria, P.O. Box 1340, Shingle Springs, CA 95682	502,960
Stewarts Point Rancheria, 1410–C Guerneville Rd, Ste 4, Santa Rosa, CA 95403–4107	550,000
Torres-Martinez Indian Reservation, P.O. Box 1160, Thermal, CA 92274	550,000
Tule River Indian Reservation, P.O. Box 589, Porterville, CA 93258	550,000
Yavapai Apache Nation, P.O. Box 1188, Camp Verde, AZ 86322	550,000
Yomba Shoshone Tribe, HC 61, Box 6275, Austin, NV 89310–9301	549,904
Yurok Tribal Council, 1034 Sixth Street, Eureka, CA 95501	550,000
Northwest ONAP	
Coeur D'Alene, P.O. Box 408, Plummer, ID 83851	350,000
Coquille Tribe, P.O. Box 783, Coos Bay, OR 97420	348,818
Fort Hall, P.O. Box 306, Fort Hall, ID 83203	350,000
Jamestown S'Klallam Tribe, 1033 Old Blyn Highway, Sequim, WA 98382	348,055
Lummi Tribe, 2828 Kwina Road, Bellingham, WA 98226	350,000
Nez Perce Tribe of Idaho, P.O. Box 365, Lapwai, ID 83540	230,372
Nisqually, 4820 She-Nah-Num Drive, SE, Olympia, WA 98503	267,000
Shoalwater Bay Tribe, P.O. Box 130, Tokeland, WA 98590	299,000
Siletz, P.O. Box 549, Siletz, OR 97380	350,000
Skokomish, N. 80 Tribal Center Road, Shelton, WA 98584	350,000
Spokane, P.O. Box 100, Wellpinit, WA 99040	350,000
Umatilla, P.O. Box 638, Pendleton, OR 97801	350,000
Alaska ONAP	
Akiachak Native Community, P.O. Box 70, Akiachak, AK 99551	500,000

Funding recipient	Amount approved
Native Village of Kongiganak, P.O. Box 5069, Kongiganak, AK 99559	500,000
Native Village of Kotlik, P.O. Box 20210, Kotlik, AK 99620	500,000
Nenana native Association, P.O. Box 356, Nenana, AK 99760	494,928
Native Village of Nightmute, P.O. Box 90021, Nightmute, AK 99690	499,487
Nikolai Village Council, P.O. Box 9145, Nikolai, AK 99691	500,000
Orutsaramuit Native Council, P.O. Box 927, Bethel, AK 99559	495,619
Native Village of Port Graham, P.O. Box 5510, Port Graham, AK 99603	479,236
Native Village of St. Michael, P.O. Box 50, St. Michael, AK 99659	500,000
Native Village of Stevens Village, P.O. Box 74016, Stevens Village, AK 99774	500,000
Tuluksak Native Community (IRA), P.O. Box 195, Tuluksak, AK 99679	500,000

[FR Doc. 00–31686 Filed 12–12–00; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group; Renewal of Charter

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with 41 CFR Part 101–6, section 101–6.1015(a), Committee establishment, reestablishment, or renewal. Following the recommendation and approval of the Exxon Valdez Oil Spill Trustee Council, the Secretary of the Interior hereby renews the Exxon Valdez Oil Spill Public Advisory Group Charter to continue for approximately 2 years, to September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: On March 24, 1989, the T/V *Exxon Valdez* ran aground on Bligh Reef in Prince William Sound in Alaska spilling approximately 11 million gallons of North Slope crude oil. Oil moved into the Gulf of Alaska, along the Kenai coast to Kodiak Island and the Alaska Peninsula—some 600 miles from Bligh Reef. Massive clean-up and containment efforts were initiated and continued to 1992. On October 8, 1991, an agreement was approved by the United States District Court for the District of Alaska that settled claims of the United States and the State of Alaska against the Exxon Corporation and the Exxon Shipping Company for various criminal and civil violations. Under the civil settlement, Exxon agreed to pay to the governments $900 million over a period of 10 years.

The Exxon Valdez Oil Spill Trustee Council was established to manage the funds obtained from the civil settlement of the Exxon Valdez Oil Spill. The Trustee Council is composed of three State of Alaska trustees (Attorney General; Commissioner, Department of Environmental Conservation; and Commissioner, Department of Fish and Game) and three Federal representatives appointed by the Federal Trustees (Secretary, U.S. Department of Agriculture; the Administrator of the National Oceanic and Atmospheric Administration; and the Secretary, U.S. Department of the Interior).

The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991 and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The Public Advisory Group was chartered by the Secretary of the Interior on October 23, 1992, and functions solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. (1988)).

The Public Advisory Group was established to advise the Trustee Council, and began functioning in October 1992. The Public Advisory Group consists of 17 members representing the following principal interests: sport hunting and fishing, environmental, public-at-large (5), recreation users, local government, science/academic, conservation, subsistence, commercial fishing, aquaculture, commercial tourism, forest products, and Native landowners. Members are appointed to serve a 2-year term.

To carry out its advisory role, the Public Advisory Group makes recommendations to, and advises, the Trustee Council in Alaska on the following matters:

All decisions related to injury assessment, restoration activities, or other use of natural resource damage recovery monies obtained by the governments, including all decisions regarding:

a. Planning, evaluation and allocation of available funds;

b. Planning, evaluation and conduct of injury assessment; and

c. Planning, evaluation and conduct of restoration activities.

Trustee Council intentions regarding the importance of obtaining a diversity of viewpoints is stated in the *Public Advisory Group Background and Guidelines* (March 1993, updated June 1994 and August 1996): ''The Trustee Council intends that the Public Advisory Group be established as an important component of the Council's public involvement process.'' The Council continues, stating their desire that ''* * * a wide spectrum of views and interest are available for the Council to consider as it evaluates, develops, and implements restoration activities. It is the Council's intent that the diversity of interests and views held by the Public Advisory Group members contribute to wide ranging discussions that will be of benefit to the Trustee Council.''

In order to ensure that a broad range of public viewpoints continues to be available to the Trustee Council, and in keeping with the settlement agreement, the continuation of the Public Advisory Group for another 2-year period is necessary.

Dated: November 29, 2000.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 00–31677 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–RC–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number 001206343–0343–01 and I.D. 120400E]

Solicitation of Public Comments on a Proposed Policy for Review of Mandatory Conditions Developed by the Departments of the Interior and Commerce in the Context of Hydropower Licensing

AGENCIES: Office of the Secretary, Interior; National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), Commerce.

ACTION: Notice of solicitation of public comments on proposed agency policy.

SUMMARY: The Department of the Interior and the Department of Commerce (Departments) are proposing a new process for public review of and comment on mandatory conditions and prescriptions the Departments develop as part of the Federal Energy Regulatory Commission's (Commission's) hydropower licensing proceedings under part I of the Federal Power Act (Act). This policy would offer an opportunity for public comment on the Departments' mandatory conditions and prescriptions for both the traditional licensing process and the alternative licensing process.

DATES: Submit written comments on the proposed policy to be received by the Departments on or before January 3, 2001.

ADDRESSES: Submit written comments to Kathryn Conant, National Marine Fisheries Service, Office of Habitat Conservation, 1315 East West Highway, Building 3, Room 15206, Silver Spring, Maryland 20910 or fax: 301–713–1043.

FOR FURTHER INFORMATION CONTACT: Tom Iseman, U.S. Department of the Interior, 202–208–6291, or Kathryn Conant, U.S. Department of Commerce, 301–713–2325, extension 205.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Part I of the Federal Power Act, 16 U.S.C. 791a *et seq.* (Act), the Department of the Interior and the Department of Commerce (Departments) possess certain authorities in the process for licensing non-federal hydroelectric generating facilities. Although the final licensing decision lies with the Federal Energy Regulatory Commission (Commission), the Departments, and Bureaus within the Department of the Interior, provide input to the Commission on a number of issues related to the license application. Among others, the Departments' authorities include the U.S. Fish and Wildlife Service's and National Marine Fisheries Service's authority to prescribe fishways under section 18 of the Act, 16 U.S.C. 811, and the Secretary of the Interior's authority under section 4(e) of the Act, 16 U.S.C. 797(e), to establish conditions ''necessary for the adequate protection and utilization'' of land ''reservations'' that may contain non-federal hydropower project works. The affected reservations may include lands managed principally by the U.S. Fish and Wildlife Service, the National Park Service, the Bureau of Land Management, the Bureau of Reclamation, or the Bureau of Indian Affairs.

The Act requires that both section 18 prescriptions and section 4(e) conditions be included in any license issued by the Commission. The mandatory nature of these prescriptions and conditions has been upheld by Federal courts, including the Supreme Court. *Escondido Mutual Water Co.* v. *La Jolla Band of Mission Indians,* 466 U.S. 765 (1984); *Bangor Hydroelectric Company* v. *FERC,* 78 F.3d 659 (DC Cir.1996); *American Rivers* v. *FERC,* 129 F.3d 99 (2d Cir. 1997); *American Rivers* v. *FERC,* 201 F.3d 1186 (9th Cir. 1999). After incorporation into a license, the prescriptions and conditions are subject to judicial review under the Act's appeal procedures, which place exclusive jurisdiction in the Federal courts of appeals, 16 U.S.C. 8251(b).

The Departments' practice has been to try to work closely with license applicants in developing mandatory conditions and prescriptions. However, licensees and others have expressed interest in having the Departments consider outside input and comments on these conditions and prescriptions through a standardized process. Such a standardized mechanism would provide an opportunity for interested parties to provide comment on the conditions and prescriptions. On May 26, 2000, the Departments published a **Federal Register** notice soliciting public comments on the possibility of the Departments' establishing a review process for their mandatory conditions and prescriptions, and asking six specific questions regarding such a possible review process. (65 FR 34151, May 26, 2000).

The Departments received 25 sets of comments representing a broad range of parties interested in hydropower licensing. All the commenters supported the idea of establishing a review process, and they expressed a broad range of views regarding the potential timing and substance of the process. After careful review and consideration of the comments received and the constraints of the existing hydropower licensing process the Departments are proposing to provide a two part process for review of mandatory conditions and prescriptions under the traditional licensing process of the Act and the Commission's regulations. In addition, the Departments are proposing a more limited process for review of conditions and prescriptions developed through the Commission's alternative licensing process.

The review process proposed today will be limited to section 4(e) and 18 conditions and prescriptions. The recommendations filed by the Departments under sections 10(a) and 10(j) of the Act are subject to further review by the Commission and may be addressed under existing Commission procedures. In all cases, the review of conditions and prescriptions would occur at an appropriate level within the relevant agency.

This process would be adopted as an agency policy to be become effective six months after adoption, in order to provide time for field implementation.

The proposed review procedures are briefly summarized below. (Please refer to the detailed description of the policy for more specific information.)

A. Review Process—Traditional Licensing

The Departments are proposing a two-part process for review of license conditions and prescriptions in the traditional licensing process. This process would provide participating parties an opportunity both before and after license issuance to comment on conditions and prescriptions.

First, the Departments propose to consider comments through the Commission's traditional hydropower licensing process, prior to issuance of the license. In most situations, the Departments file preliminary conditions and prescriptions in response to the Commission's Ready for Environmental Analysis (REA) notice. Under this process, parties will have the opportunity to comment on the preliminary conditions and prescriptions to the appropriate Departments within a 45-day time period. In most cases, this will be concurrent with the Commission's allowed time to reply to REA submissions. Although the Departments intend for this 45-day response period to be the primary mechanism for receiving comments from participants in the licensing process, they will also seek comments in response to the Commission's draft National Environmental Policy Act (NEPA) document, to ensure that the public at-large has the opportunity to participate in the review process. The Departments will consider information developed through the draft NEPA document and all comments on the conditions and prescriptions, and then issue modified conditions and prescriptions to the Commission for inclusion in its final NEPA document.

In addition, the Departments propose to consider any issues raised regarding the Departments' conditions and

prescriptions, submitted through the Commission's request for rehearing process after license issuance. If an intervener [1] submits a request for rehearing, pursuant to 18 CFR 385.713, that clearly addresses the Departments' conditions and prescriptions, the Departments will review those comments. The Departments will submit a written response to issues raised regarding its mandatory conditions and prescriptions, including any necessary changes to the conditions and prescriptions, within 30 days if possible. In those infrequent situations when more than 30 days is required for response because of substantive and new information or other unexpected circumstances, the Departments will, within 30 days, submit a description of the reason for additional review and a reasonable time line for the written response.

B. Review Process—Alternative Licensing Procedure.

The Commission's alternative licensing procedure raises unique concerns regarding the adoption of a review process for the Departments' mandatory conditions and prescriptions, particularly when parties negotiate delicately balanced license terms in a settlement agreement. If the Departments submit conditions and prescriptions that are not included in a settlement agreement, the Departments propose to apply to that proceeding the review process described above for the traditional licensing process.

If the Departments submit conditions and prescriptions that are included in the settlement agreement, then the Departments propose to apply a modified version of the review process described above. The Departments will review specific comments on conditions and prescriptions in response to the Commission-issued notice calling for comment on the settlement agreement and/or license application pursuant to 18 CFR 4.34(b). If comments raise substantive issues that may require amendment of the negotiated agreement, the Departments will discuss appropriate resolution with the settling parties. After conferring with the settling parties, the Departments will respond to the comments. The Departments will include any changes or adjustments made to the agreed-upon conditions and prescriptions as a result of the comments received and collaboration with the settling parties when the conditions and prescriptions are formally submitted to the Commission.

II. Response to Comments

In response to the **Federal Register** notice (May 26, 2000), the Departments received comments from a variety of stakeholders who participate in hydropower licensing, including: the Commission; the United States Department of Agriculture, Forest Service; National Hydropower Association; Western Urban Water Coalition; the Hydroelectric Licensing Reform Task Force; Alcoa Power Generating, Inc.; Duke Power; the American Public Power Association; Pacific Gas and Electric Company; Alabama Power Company; Public Utility District No. 1 Chelan County; Public Utility District No. 1 of Douglas District and Public Utility District of Grant County; Idaho Power; Petersburg Municipal Power & Light; Orion Power of New York; Southern California Edison; New York Power Authority; Senator Coppola of the State of New York; Edison Electric Institute; Allegheny Energy Supply; Northwestern University; Kleinschmidt Associates Consulting Engineers; Trout Unlimited; American Rivers; New York Rivers United; and Defenders of Wildlife.

By their **Federal Register** notice, the Departments sought public comment on six questions. After consideration of all of the comments received, and giving consideration to the issues raised as discussed in the preamble, these specific questions are answered in Section I—Response to Specific Questions. Some commenters raised issues not directly related to the specific questions. These general issues, and expansion of some issues raised in the specific questions, are addressed in Section II—Response to General Issues.

A. Section I—Response to Specific Questions

Question 1. Should a review process be adopted and, if so, what kind of process should be established?

Answer. The Departments agree with the unanimous comments received that a review process should be adopted. Through this notice, the Departments are proposing to establish a Mandatory Conditions Review Process (MCRP). Commenters provided a wide range of options regarding the kind of process—from a process that includes an appeal component to a process that includes full evidentiary hearings with administrative law judges [2] to a process that involves some form for notice and comment upon preliminary conditions and prescriptions.[3] All options suggested by commenters were considered by the Departments in the development of this procedure.

Question 2. If so, how could such a process be integrated into the Commission's current licensing procedures in a timely and efficient manner? To meet the constraints of timeliness and resource limitations, are changes needed in the timing or implementation of various steps in the agencies'—including the Commission's—existing regulations or procedures? If not, then when should the review process take place?

Answer. Most commenters suggested that any review process designed by the Departments should not impede or delay the Commission's licensing process.[4] The Departments agree. In designing the proposed MCRP, the Departments gave predominant consideration to establishing a seamless process which would provide the desired opportunities for meaningful review, without undermining, impeding or delaying the Commission's licensing process in any fundamental way. The Departments' proposed MCRP, in fact, employs the Commission's existing licensing process and requires only minor adjustments. If the Departments foresee that review of comments may require more time than is allotted in the Commission's licensing process, the Departments propose submitting target letters to the Commission, with schedules for completion of review of public comments and modification of conditions and prescriptions. The Departments anticipate only minor delays and expect that target letters will be required rarely, in instances when new and substantive information is provided in comments, if coordination between the Departments or bureaus with the Department of Interior requires additional time, or other unexpected situations.

Question 3. If, under any review process mechanism, it were not possible to avoid delaying the overall licensing process, would it still be worth establishing such a process?

[1] The request for rehearing is available only to interveners, as described by FERC regulations.

[2] Alabama Power Company; American Public Power Association; the Hydropower Licensing Reform Task Force; Southern California Electric; Public Utility Districts of Chelan, Douglas and Grant Counties; National Hydropower Association; Idaho Power Company; Duke Energy; Orion Power of NY; and Edison Electric Institute.

[3] Senator Coppola; Federal Energy Regulatory Commission; Defenders of Wildlife; New York Rivers United; Alcoa Power Generating Inc.; Trout Unlimited; American Rivers.

[4] Coppola; New York Rivers United; Western Urban Water Coalition; Alcoa Power Generating Inc.; Edison Electric Institute; Public Utility Districts of Chelan, Douglas and Grant Counties.

Answer. While most commenters did not want the Departments' review process to cause significant delay to the licensing process,[5] most commenters also responded that in order to achieve meaningful review of the Departments' mandatory conditions and prescriptions, some delay was justifiable.[6] However, while the Departments agree, the Departments have developed a process that provides meaningful review without significant delay to the licensing process.

Question 4. Should the review process for section 4(e) and section 18 be the same?

Answer. All commenters who addressed this issue commented that the review process for mandatory conditions under section 4(e) and mandatory prescriptions under section 18 should be the same.[7] The Departments agree.[8] The proposed MCRP is generally the same whether the mandatory condition is submitted under section 4(e) or under section 18. However, it should be noted that the Departments also designed the proposed MCRP to be used by both Departments, including the different bureaus within the Department of the Interior. Thus, flexibility was necessary to accommodate the different chain of command, signature authority and other administrative functions within and between Departments and the bureaus within the Department of the Interior.

Question 5. Who should be allowed to initiate and/or participate in the review process? Should it be limited to the license applicant? Should it be limited to formal parties (i.e. interveners) to the Commission's licensing process (note that, depending upon when the review process takes place, there may not yet be interveners before the Commission)? Should the opportunity be available to anyone with an interest in the project?

Answer. There was some divergence in comments on this issue. Some commenters asserted the process should apply only to the license applicant.[9] Other commenters asserted that any review process should be open to any participant.[10] The Departments agree that participants in the process in addition to the license applicant have a significant interest in these proceedings, and that all participants in the licensing process may be included in the review process without creating either a cumbersome or time-consuming process. Consequently, the Departments have proposed that the MCRP should include review opportunity for the license applicant, any participants in the licensing process, and the general public. The Departments have designed the MCRP to be available to the participants in the licensing process on the Commission's Service List when the Departments submit preliminary conditions and prescriptions in response to the Commission's Ready for Environmental Analysis (REA) Notice and to any members of the general public when the Commission includes the preliminary conditions and prescriptions in the publication of the Commission's Draft National Environmental Policy Act (NEPA) document. All of these comments will be considered in the Departments' review and in their submission of modified conditions and prescriptions after the Draft NEPA document is published. In order to merge time frames with the Commission regulations, participants in the licensing process should submit comments in response to the submission of preliminary conditions and prescriptions after the REA Notice. The comment period after public notice in the Draft NEPA document publication is provided to allow members of the public who may have an interest, but were not previously involved in the licensing process, the opportunity to comment as well. In this way, both participants in the licensing process and members of the general public who have an interest, but were not previously involved, will have an opportunity to provide comments. Those who have intervened in accordance with Commission regulations will be provided further review through the Commission's request for rehearing.

Question 6. Should the new process be available for prescriptions and conditions agreed upon pursuant to the Commission's streamlined alternative licensing procedure—a process that already provides considerable opportunity for communication and negotiation among the Departments and other interested parties?

Answer. Many commented that the review process should be applicable to the alternative licensing process (ALP).[11] Some commenters asserted that the review process was not necessary in the alternative licensing process, given the extensive amount of consultation and coordination which is embodied in the process itself.[12] The Departments find merit in both of these comments. In considering this issue, the Departments had several concerns: most of the alternative licensing process takes place before a license application is filed or an administrative record of the proceeding is established, precluding the preparation of conditions and prescriptions; the process is new and unique to each project, so clear hallmarks and procedures do not exist; and, most importantly, review and alteration of carefully crafted license conditions could undermine settlement agreements negotiated through the ALP. For these reasons, designing a practical process was difficult. However, the Departments propose to provide an opportunity for comment on mandatory conditions and prescriptions negotiated through alternative licensing proceedings and included in the settlement agreement.

B. Section II—Response to General Comments

1. Public Input to Process Development

Some commenters suggested the possibility of the Departments' holding a technical conference to discuss options for the proposed review process.[13] The Departments considered this possibility, but decided that an opportunity to seek written comments would give the public more time to comment on a proposed process and provide better documentation of concerns raised with the proposed process. Further, the Departments intend to revisit the process after two years, allowing refinement based on experience to date. Therefore, this proposed policy has been developed based on the public response to **Federal**

[5] See Footnote 4 herein.

[6] Northwestern University; Idaho Power Company, Federal Energy Regulatory Commission; Defenders of Wildlife; Petersburg Municipal Power and Light; Kleindschmidt Associates; National Hydropower Association; and Trout Unlimited.

[7] Senator Coppola; Idaho Power Company; Federal Energy Regulatory Commission; Defenders of Wildlife; Orion Power of NY; New York Rivers United; Kleindschmidt Associates; Western Water Coalition; American Public Power Association; Trout Unlimited; Public Utility Districts of Chelan, Douglas and Grant Counties.

[8] The U.S. Forest Service already has a public review process, through its Forest Planning/NEPA guidelines, for its 4(e) conditions.

[9] Senator Coppola; Western Urban Water Coalition; Edison Electric Institute.

[10] Northwestern University; Idaho Power Company; Federal Energy Regulatory Commission; Defenders of Wildlife; Orion Power; Petersburg Municipal Power & Light; New York Rivers United; Kleinschmidt Associates; Duke Power; Trout Unlimited; National Hydropower Association; American Rivers; Public Utility Districts of Chelan, Douglas and Grant Counties.

[11] Idaho Power Company; Federal Energy Regulatory Commission; Defenders of Wildlife; Petersburg Municipal Power & Light; Kleinschmidt; Duke Power; National Hydropower Association; Public Utility Districts of Chelan, Douglas & Grant Counties; American Rivers; Trout Unlimited; New York Rivers United.

[12] Western Urban Water Coalition; Edison Electric Institute.

[13] Orion Power of New York; Kleindschmidt Associates; Duke Power; National Hydropower Association; Public Utility Districts of Chelan, Douglas and Grant Counties.

Register notice (May 26, 2000), staff experience with the licensing process, and consultation with Commission staff.

2. Form of Review Process

Some commenters suggested that the review process should be established through binding regulations.[14] Others recommended that the review process should start immediately with policy and move toward regulation, or that new regulations were not necessary.[15] In considering all comments, the Departments propose that the best way to implement the proposed MCRP is through the publication of a policy. In addition, the Departments recognize that meaningful evaluation of this process may best take place after a trial period of implementation. The Departments intend to revisit the process after two years, allowing refinement based on experience to date.

3. Timing

The Departments found that timing was a principal consideration in determining whether and how to establish a review procedure for the Departments' conditions and prescriptions. Several comments suggested that the Departments should write conditions and prescriptions and provide a review period before a hydropower license application is submitted,[16] but the Departments found that unworkable. While the Departments will continue to work with licensees to coordinate development of conditions and prescriptions together with project design, license applications still may change significantly between drafts circulated to interested parties and final applications submitted to the Commission. Many of the studies identified by the parties as necessary would not have been completed, again undermining the ability to formulate preliminary conditions and prescriptions. Moreover, the publication of preliminary conditions and prescriptions before there is a proceeding, or a license application on the record that identifies a specific project, project operations, and probable project impacts for which mitigation may be needed, is not consistent with the legal requirements for substantial evidence in the record before the Commission, set forth in *Bangor Hydroelectric Co., Inc.* v. *FERC*, 78 F.3d 659 (DC Cir. 1996).

Once an application is submitted to the Commission, the timing of the issuance of mandatory conditions and prescriptions and any review process is necessarily intertwined with the Commission's procedures for processing the application. The length of time required for hydropower licensing has been a continuing concern for the Commission, the Departments, licensees and other members of the interested public. While the Departments and the Commission may disagree over the extent to which the Commission may affect the Departments' authorities through its procedural regulations, the Departments wish to work with the Commission and within the Commission's existing process to the extent possible, in order to avoid creating any new delays in the licensing process. Thus, the timing of the Departments' proposed review process takes into account the timing contemplated by the Commission's regulations.

The Departments have found, however, that it is not always possible to act within the time period contemplated by the Commission's regulations. Since the Commission's REA notice is based upon the Commission's own requirements for information to perform its NEPA analysis, it does not necessarily take into account the question of whether the Departments have sufficient information to form the basis of the conditions that meet the Departments' statutory responsibilities and to provide substantial evidence for the Departments' administrative record. See *Bangor Hydroelectric* v. *FERC*, 78 F.3d 659 (DC Cir. 1996). In addition, the Departments propose to file modified conditions and prescriptions 90 days after the close of the comment period on the Commission's draft NEPA document, in order to respond to public comments addressing the preliminary conditions and prescriptions. Currently, Commission practice anticipates that the modified conditions and prescriptions would be filed within the public comment period. Another conflict could arise with the Departments' proposal to file a response following requests for rehearing that raise issues with the Departments' conditions and prescriptions. Current Commission regulations provide discretion for the Commission to allow filings in response to a request for rehearing, and the Commission generally does not reject or exclude from the record such filings. However, the Departments' proposal would standardize that practice. By proposing to notify the Commission regarding the anticipated timing for the Departments' filings, the Departments seek to improve agency coordination and reduce delays in the process.

4. Appeal Mechanism

Many of the commenters wanted an appeal component, some including full evidentiary hearings before administrative law judges.[17] Other commenters recommended notice and comment.[18] The Departments have given this issue careful consideration. The Departments propose not to provide full evidentiary hearings for two primary reasons: (1) no appropriate forum is available that has jurisdiction over the Departments' decision under the FPA; and (2) full evidentiary hearings would prevent the Departments from meeting the most common request of all commenters, that the review process fit within the Commission's existing licensing process and not cause extended delay. However, the Departments propose to meet the request for an appeal component by answering specific issues raised on its modified conditions and prescriptions that are included in a party's request for rehearing.

5. Level of Review

Some commenters[19] specifically requested that the review process be conducted at a different and/or higher level than the staff responsible for preparing the conditions and prescriptions. These comments may, in part, be based on a misconception regarding the level at which the Departments submit conditions; in most cases, conditions and prescriptions are submitted at the regional level or higher. Nonetheless, the Departments considered this issue in developing this process. The initial signature level of the conditions and prescription is different between the Departments of Commerce and Interior, and also within the bureaus of the Department of the Interior. The level of review of modified conditions and prescriptions will vary depending upon the Department and the bureau. In all cases, the Departments propose that the review will occur at least at the State or regional level.

[14] Southern California Edison; Idaho Power Company; Alabama Power Company; Duke Power; Public Utility Districts of Chelan, Douglas and Grant Counties; New York Rivers United; Western Urban Water Coalition.

[15] National Hydropower Association; American Rivers; Orion Power; Federal Energy Regulatory Commission.

[16] Senator Coppola, Southern California Edison, Idaho Power Company, Federal Energy Regulatory Commission, Western Urban Water Coalition, Alcoa Power Generating Inc.

[17] See Footnote 2 herein.

[18] See Footnote 3 herein.

[19] Pacific Gas & Electric Co.; American Public Power Association; Duke Power; Hydropower Licensing Reform Task Force.

6. Review of Non-Exercise or Reservation of Authority

Some commenters suggested that any review process should be applicable to situations in which a stakeholder challenges the Departments' failure to exercise mandatory authority.[20] In certain cases when the Commission issues the REA notice, the Departments already participating in the licensing process may respond by exercising their section 4(e) or 18 statutory authority by reserving that authority. In these cases, that submission would be subject to the review process proposed here. When the Department(s) are not participating in a licensing process, the review process is not applicable.

7. Review of Economic Impacts

Some commenters suggested that the review process provide a review of the economic impacts of the conditions and prescriptions on the project.[21] It is not necessary, or appropriate, to address here what substantive issues may be raised by participants in requesting review. Commenters may raise whatever concerns they consider relevant at the appropriate time in each licensing proceeding.

III. Procedural Requirements

A. Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that the action proposed (implementation of a policy) is not a ''significant regulatory action''. This proposed policy describes an opportunity for public review of and comment on conditions and prescriptions that the Departments develop as part of the Commission's existing hydropower licensing process. Thus, the policy would not impose a compliance burden on the economy generally.

B. Administrative Procedures Act

This policy is not subject to prior notice and an opportunity to comment because it is a general statement of policy (5 U.S.C. 553(b)(A)).

C. Regulatory Flexibility Act

This policy is not subject to notice and comment under the Administrative Procedures Act, and therefore not subject to the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Furthermore, the Departments have determined that this policy will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed policy is guidance and does not compel any party to conduct any action. This policy would provide a standardized opportunity for public comment on the Departments' mandatory conditions and prescriptions. Therefore, the Departments believe that no economic effects on small entities will result from compliance to the criteria in this policy.

D. Small Business Regulatory Enforcement Fairness Act

This policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This policy:

1. Will not have an annual effect on the economy of $100 million or more and is expected to have no significant economic impacts.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and will impose no additional regulatory restraints in addition to those already in operation.

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The intent of the policy is to provide a standardized opportunity for public comment on the Departments' mandatory conditions and prescriptions. It will impose no additional regulatory restraints to those already in operation. The Departments have, therefore, determined that the policy will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

E. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

1. This policy will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The policy does not require any additional management responsibilities. The Departments expect that this proposed policy will not result in any significant additional expenditures by entities that participate in the Commission's hydropower licensing process.

2. This proposed policy will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. This rule is not expected to have significant economic impacts nor will it impose any unfunded mandates on other Federal, State, or local governments agencies to carry out specific activities.

F. Federalism

In accordance with Executive Order 13132, this proposed policy does not have significant Federalism effects; therefore, a Federalism assessment is not required. This policy will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially directly affected. Therefore, the policy does not have significant effects or implications on Federalism.

G. Paperwork Reduction Act

This policy does not require an information collection under the Paperwork Reduction Act. Therefore, this proposed policy does not constitute a new information collection requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

H. National Environmental Policy Act

The Departments have analyzed this policy in accordance with the criteria of the National Environmental Policy Act (NEPA). This proposed policy does not constitute a major Federal action significantly affecting the quality of the human environment because it only provides notice and comment on conditions and prescriptions. Issuance of the proposed policy is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10. The National Oceanic and Atmospheric Administration (NOAA) has determined that the issuance of this policy qualifies for a categorical exclusion as defined by NOAA 216–6 Administrative Order, Environmental Review Procedure.

I. Essential Fish Habitat

We have analyzed this policy in accordance with section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and determined that issuance of this policy may not adversely affect the essential fish habitat of federally managed species, and, therefore, an essential fish

[20] New York Rivers United; American Rivers.

[21] Western Urban Water Coalition' American Public Power Association; Hydropower Licensing Reform Task Force.

habitat consultation on this policy is not required.

J. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, the Departments have assessed the impact of this proposed policy on tribal trust resources and have determined that it does not directly affect Tribal resources. Because the policy will standardize a review process of section 4(e) conditions, which do directly affect tribal resources, the Departments will consult with tribal governments when reviewing and responding to comments or requests for rehearing that directly relate to conditions that affect tribal resources.

IV. Commission Coordination

The Departments have begun discussions with the Commission regarding the integration of the proposed MCRP with the Commission's existing licensing process. Timing issues require coordination with the Commission, and the Departments will continue to work with the Commission to determine how best to minimize timing conflicts while providing meaningful review of the Departments' conditions and prescriptions.

V. Mandatory Conditions Review Process—Narrative

A. Traditional Licensing Process

The following process describes a proposal for the Departments to receive and respond to comments regarding the mandatory conditions and prescriptions submitted to the Commission through the traditional licensing process. The Departments already have informal policies and practices for maintaining communications with licensees and others throughout the development of conditions and prescriptions. The Departments view this as an iterative, cooperative process. However, the Departments have not until now had a standardized process for reviewing public comments on the conditions and prescriptions developed during the licensing process. This proposed policy is designed to work within the Commission's licensing process to efficiently allow meaningful public input without unduly delaying licensing.

1. Part A: Notice and Comment on Preliminary Conditions and Prescriptions

a. Ready for Environmental Analysis. The Departments' proposed Mandatory Conditions Review Process (MCRP) is triggered when the Commission determines that a hydropower license application is complete and it has issued a notice indicating the license application is Ready for Environmental Analysis (REA). Comments, recommendations, terms and conditions, and prescriptions concerning the license application are typically to be filed with the Commission within 60 days from the date of the REA notice. The MCRP relates only to the mandatory conditions and prescriptions (not comments or recommendations). The information that is filed in response to the REA notice is generally incorporated into the Commission's National Environmental Policy Act (NEPA) analysis that establishes the framework for license conditions the Commission may include in any issued license.

b. Filing of Preliminary Conditions and Prescriptions. The Departments will file preliminary conditions and prescriptions within the Commission's 60-day REA comment period. In those infrequent cases when the Departments' administrative record is insufficient, the Departments need more time to coordinate, or other circumstances arise and the Departments are unable to issue preliminary conditions and prescriptions during this period, the Departments will follow the procedures described below.

When the Departments are unable to provide some or all preliminary prescriptions and conditions to the Commission within the 60-day REA notice period, the Departments will, in a letter to the Commission and its service list, exercise their statutory authorities by reserving authority. The Departments will include in this letter: (1) the reasons why preliminary prescriptions and conditions are not being filed at this time; and (2) a schedule, including a target date, for submitting the preliminary prescriptions and conditions. When the preliminary prescriptions and conditions are completed, they will be provided to the Commission and its service list. The Departments intend that preliminary conditions and prescriptions will be filed for inclusion in the draft NEPA document and that both comment periods will be completed as discussed below.

If the Departments make the determination that their administrative record does not support the filing of conditions and prescriptions at the time of licensing, but may support such a filing during the license term, the Departments will exercise statutory authority by reserving that authority until a later date when the Departments' administrative record supports such an exercise. The participating Departments will provide the reservation of authority during the 60-day REA comment period.

The level of signature for preliminary conditions and prescriptions will vary depending on the signature authority within each Department and within the bureaus of the Department of the Interior. The Departments will file an original and eight copies of the preliminary conditions and prescriptions with the Commission and an index to the Departments' administrative record that supports the preliminary conditions and prescriptions. These materials will also be provided to the Commission's service list. The Departments will file an original and three copies of the Departments' administrative record with the Commission either concurrently or within a time period specified in the preliminary submission. The administrative record will also be provided to the applicant and, for section 4(e) conditions mandated for the protection and utilization of an Indian Reservation, to the Indian Tribe of that Reservation. The Departments' administrative record will be available at the Departmental office from which it originates, but will not be automatically served upon the service list. Any party may request copies of the record, in whole or in part, from the conditioning Department, according to procedures described in the issuing document.

c. Comment Opportunity. The proposed MCRP would provide two very specific opportunities for notice and comment targeted to two separate audiences. The Departments will respond to comments and modify conditions and prescriptions as necessary after the end of the second comment opportunity.

The first opportunity is provided to participants in the licensing process who receive the Departments' preliminary conditions and prescriptions in response to the Commission's REA notice. The preliminary submission, which is served on the Commission's Service List, will invite comments and new supporting evidence on the preliminary conditions and prescriptions within a 45 day time period. Commission regulations call for submissions within 60 days of the REA notice, and provide for reply to those submissions to be filed

within 105 days of the REA notice See 18 CFR 4.34(b). Thus, the comment period on the preliminary conditions and prescriptions will usually be concurrent with the Commission's allowed time to reply to REA submissions. All comments on the Departments' preliminary conditions and prescriptions should be specifically identified and include supporting evidence. The Departments will begin reviewing comments when received; however, no response will be made until after review of the draft NEPA document.

To be responsive to the fact that there may be persons with an interest in the Departments' preliminary conditions and prescriptions who have not been previously involved in the licensing process, the Departments are providing a second opportunity to the public to provide comments. With publication of the draft NEPA document for comment, which will include the Departments' preliminary conditions and prescriptions, the Commission will inform the public that, if they want to comment, they must provide a copy of specific comments and supporting evidence to the Departments within the comment period for the draft NEPA document. In order to have adequate time to thoroughly review comments and to efficiently provide the Commission with the modified conditions and prescriptions, the Departments strongly encourage participants in the licensing process to submit comments during the first notice and comment period, rather than wait until the NEPA comment period. While it is neither necessary nor recommended for participants in the licensing process to re-submit comments already submitted, to the extent that participants in the process resubmit comments in the NEPA comment period, any changes or new comments should be specifically and expressly identified in the submission. The Departments will consider all comments received.

d. Filing Modified Conditions and Prescriptions. The Departments will review the draft NEPA document and all comments received on the preliminary conditions and prescriptions. Based on this review, the Departments will modify the conditions and prescriptions, as needed, and respond to comments. Within 90 days of the close of the draft NEPA comment period, the Departments will submit modified conditions and prescriptions, unless substantial and new information was provided during the NEPA comment period requiring additional review time, or coordination between the Departments or Department of Interior's bureaus or other unexpected circumstances arise that reasonably require additional time. In those infrequent situations where additional time is needed, the Departments will submit to the Commission and its service list, and all commenters, a letter providing an explanation of the need for additional time and a schedule for preparing the modified conditions and prescriptions.

The process of comment and review itself modifies the conditions and prescriptions by modifying the record underlying them, even if the actual language of the conditions and prescriptions does not change. The Departments will coordinate the review and response to comments. The format of the response to comments will be commensurate with the nature, substance and extent of the comments received, the inter-agency and intra-bureau involvement, time frame, staff availability and the Departments' practice. Signature authority will vary between the Departments and among the bureaus of the Department of the Interior; however, this submission will be signed at the state or regional level.

The result of this process will be the Departments' submission to the Commission of an original and eight copies of the modified conditions and prescriptions, a response to comments, and an index to the Departments' supplemental administrative record generated as a result of the review process, as needed. These materials will also be provided to the Commission's service list and to commenters. The Departments will file an original and three copies of the Departments' supplemental administrative record with the Commission. The supplemental administrative record will also be provided to the applicant and, for section 4(e) conditions mandated for the protection and utilization of an Indian Reservation, to the Indian Tribe of that Reservation. Any party may again request copies of the supplemental record, in whole or in part. The Departments intend that modified conditions and prescriptions will be provided to the Commission in advance of issuance of the final NEPA document.

2. Part B: Comments on Modified Conditions and Prescriptions

a. Request for Rehearing. After the Commission issues the license, if any intervener submits a request for rehearing, pursuant to Commission regulations at 18 CFR 385.713, that clearly identifies issues with the Departments' modified conditions and prescriptions, and includes supporting evidence, the Departments will review those concerns. Assuming the Commission grants rehearing for further consideration, as is its custom, the Departments will review all information and coordinate their response to all issues raised within 30 days of the formal filing with the Commission of a timely request for rehearing. The Departments may choose to file consolidated responses to more than one request for rehearing. The Departments will either file the response pursuant to 18 CFR 385.713(d)(2) or, in the unexpected situation that substantive or new issues are raised, the Departments will notify the Commission of the issues raised, that additional time is necessary to review issues, and provide a time line for response. The content of the response will vary depending on whether the issue is one that has been raised previously, or presents new issues that require a new response or supplementation of the record. The Departments will file the response with the Commission and its Service List.

B. Alternative Licensing Process

The following process describes a proposed opportunity for the Departments to receive and respond to comments regarding the mandatory conditions and prescriptions submitted to the Commission through the alternative licensing process. The form of the review process will depend on whether the Departments submit conditions and prescriptions as part of a settlement agreement. If the Departments submit conditions and prescriptions that are not part of a settlement agreement, then the process described for the traditional licensing process applies, as detailed herein.

If negotiations in the alternative licensing process result in an agreement as to the Departments' mandatory conditions and prescriptions, then a modified review process applies. Under the alternative licensing process, the license applicant files a license application, including any settlement offer, which may include the Departments' agreement as to their preliminary mandatory conditions and prescriptions, and a Draft Applicant Prepared NEPA document with the Commission. The Commission then publishes a notice calling for comments on the license application, including the settlement offer and any agreed-upon preliminary conditions and prescriptions included in the settlement offer. In response to the Commission's notice, interested parties, including parties that are not signatories to the

settlement, are provided an opportunity to provide comments regarding the license application, the settlement offer, and the Departments' agreed-upon preliminary conditions and prescriptions.

If a non-settling party submits comments directly addressing the Departments' agreed-upon conditions and prescriptions, including the evidence in support thereof, then the Departments will review the comments pertaining to the mandatory conditions and prescriptions. If comments do not necessitate changes to the mandatory conditions and prescriptions that would render them inconsistent with the settlement agreement, the Departments will address the comments without returning to the settling parties. If comments are substantive and raise issues not previously identified, the Departments will discuss the comments and their appropriate resolution with the settling parties. If the Departments determine, after discussion with the settling parties, that the comments warrant a change in the conditions and prescriptions, the Departments will submit modified conditions and prescriptions. This process will be the only review of the Departments' agreed-upon conditions and prescriptions submitted through the alternative licensing process.

As part of the alternative licensing process, the Commission also publishes a notice indicating that it is proceeding with the environmental review. In response to this Notice, the Departments, pursuant to their statutory authority under sections 4(e) and 18, will submit to the Commission, as a separate filing, their agreed-upon conditions and prescriptions, so that, regardless of Commission action on the settlement agreement, the Departments' agreed-upon conditions and prescriptions will become mandatory license conditions. Any changes that may have been made to the settlement conditions and prescriptions as a result of comments received will be included in this submission.

VI. Mandatory Conditions Review Process—Step-by-Step

A. Traditional Licensing Process

1. Notice and Comment on Preliminary Conditions and Prescriptions:

a. The Commission issues a notice stating that the license application is Ready for Environmental Analysis (REA).

b. In most cases, the Departments will submit to the Commission some or all preliminary conditions and prescriptions within 60 days of the REA notice. Signature authority will vary between the Departments and within the bureaus of the Department of the Interior.

To the extent that the Departments' conditions and prescriptions are based on materials not already included in the Commission's administrative record, a copy of the materials submitted by the Departments in support of conditions and prescriptions will be maintained at the originating office

Additions to the administrative record will be filed with the preliminary conditions and prescriptions or within a specified time period thereafter.

Submission to the Commission will include:

- An original and eight copies of the preliminary conditions and prescriptions; and
- The index to the Departments' administrative record that includes documents not already included in the Commission's administrative record and appropriate citations for documents already included in the Commission's record; and
- An original and three copies of the Departments' administrative record.

Submission to the applicant and, for section 4(e) conditions mandated for the protection and utilization of an Indian Reservation, to the Indian Tribe of that Reservation, will include:

- A copy of the preliminary conditions and prescriptions; and
- The index to the Departments' administrative record that includes documents not already included in the Commission's administrative record and appropriate citations for documents already included in the Commission's record; and
- A copy of the Departments' administrative record

Submission to the Commission's service list will include:

- A copy of the preliminary conditions and prescriptions; and
- The index to the Departments' administrative record that includes documents not already included in the Commission's administrative record and appropriate citations for documents already included in the Commission's record.

A party may request copies of the record, in whole or in part, according to procedures described in the issuing document.

c. If the Departments determine that the evidence in the Commission's administrative record and information generally available is not sufficient or if other circumstances arise and the Departments cannot file preliminary conditions and prescriptions within 60 days of the REA notice, the Departments will include a reservation of authority. The submission will also include:

- An explanation for the delay; and
- A schedule and date for submitting preliminary conditions and prescriptions.

d. The preliminary conditions and prescriptions submission will include an invitation for interested persons to submit comments.

The comment period will be 45 days. This is concurrent with the time allowed by Commission regulation to reply to REA submissions.

The Departments will consider comments if they:

- Are identified as raising issues pertaining to the mandatory conditions and prescriptions;
- Include supporting evidence.

The Departments will begin reviewing comments; however, no response will be made until after review of the NEPA document.

e. The Commission will issue the draft NEPA document for public comment, which will include the Departments' preliminary conditions and prescriptions.

The Commission's notice will inform the public that they may submit comments on the preliminary conditions and prescriptions.

The Departments will consider comments if they:

- Are identified as raising issues pertaining to the mandatory conditions and prescriptions;
- Are copied to the conditioning Department(s); and
- Include supporting evidence.

f. The Departments will review all comments received and the draft NEPA document within 90 days of the close of the Draft NEPA comment period, the Departments will either

- Submit the modified conditions and prescriptions; or
- Send the Commission a letter (an original and eight copies) with an explanation of why additional time is required and an anticipated target date for submitting the modified conditions and prescriptions. The letter will also be served on the Commission's Service List.

The Departments will coordinate the review and submission of modified conditions and prescriptions, when appropriate.

The response to comment will be commensurate with the nature, substance and extent of the comments received, the inter-agency and intra-bureau involvement, the time frame, staff availability and the Departments' practice.

Signature authority will vary between the Departments and within the bureaus

of the Department of the Interior; however this submission will be signed at the state or regional level or higher.

The Departments intend to submit the modified conditions and prescriptions in advance of issuance of the Commission's final NEPA document.

A copy of the Departments' supplemental administrative record, as needed, will be maintained at the originating office.

The Departments' administrative record will be filed with the modified conditions or within a time period specified in the submission.

Submission to Commission will include:

- An original and eight copies of the modified conditions and prescriptions;
- An index of the Departments' supplemental administrative record formed as part of the review process and not yet included in the Commission's administrative record and appropriate citations for documents already included in the Commission's record;
- An original and three copies of the Departments' supplemental administrative record; and
- Response to comments.

Submission to the applicant and, for section 4(e) conditions mandated for the protection and utilization of an Indian Reservation, the Indian Tribe of that Reservation, will include:

- A copy of the modified conditions and prescriptions;
- An index of the Departments' supplemental administrative record formed as part of the review process and not yet included in the Commission's administrative record and appropriate citations for documents already included in the Commission's record;
- A copy of the Departments' supplemental administrative record; and,
- Response to comments.

Submission to the Commission's service list and all other commenters will include:

- A copy of the modified conditions and prescriptions;
- An index to the Departments' supplemental administrative record, as needed. A party may request copies of the record, in whole or in part, according to procedures described in the issuing document; and
- Response to comments

2. Comments on Modified Conditions and Prescriptions:

a. After the license is issued, an intervener may submit a request for rehearing pursuant to 18 CFR 385.713.

The request for rehearing is available only to interveners, as described by the Commission's regulations.

b. The Departments will consider those issues raised in requests for rehearing: that pertain to the mandatory conditions and prescriptions; are clearly identified as issues relating to the Departments' mandatory conditions and prescriptions; and include supporting evidence or citation to the supporting evidence in the administrative record.

c. Within 30 days of the filing of the request for rehearing, the Departments will either submit a response relating only to those issues directed to the Department's conditions and prescriptions, with any changes to the conditions and prescriptions, if needed; or send the Commission a letter (an original and eight copies), in those infrequent cases where significant and/or new issues relating to the Departments' mandatory conditions and prescriptions are raised in the request, with an explanation of why additional time is required and an anticipated date for submitting the response and any changes to the modified conditions and prescriptions, if needed. The letter will also be served on the Commission's Service List.

d. The Departments may coordinate this submission, but may submit their responses separately.

e. The response will be commensurate with the nature, substance and extent of the comments received, the inter-agency and intra-bureau involvement, the time frame, staff availability and the Departments' practice.

For issues addressed earlier in the licensing process, the response will include the appropriate citations to the administrative record.

f. The response will be sent to the Commission (an original and eight copies) and be served on the Commission's Service List.

g. The Departments intend to submit the response prior to issuance of the Commission's decision on the requests for rehearing.

B. Alternative Licensing Process

1. If the Departments submit conditions and prescriptions that are not part of a settlement agreement resulting from an alternative licensing process, then the review process described for the traditional licensing process applies.

2. If the Departments submit mandatory conditions and prescriptions that are included in the license application and settlement offer, then the following process applies.

a. The license applicant will file a license application, including the settlement offer, which may include any agreed-upon preliminary mandatory conditions and prescriptions, and Draft Applicant Prepared Environmental Assessment to the Commission.

b. The Commission will publish a Notice calling for comments on the license application (including the settlement offer and any agreed-upon conditions and prescriptions).

c. If a non-settling party submits comments that raise issues on the Departments' agreed-upon preliminary conditions and prescriptions, then the Departments will review the comments pertaining to the mandatory conditions and prescriptions.

Comments should include specific comments on the mandatory conditions and prescriptions and supporting evidence.

d. If comments do not necessitate changes to the mandatory conditions and prescriptions that would render them inconsistent with the settlement agreement, the Departments will address the comments without returning to the settling parties.

e. To the extent that the comments are substantive and raise issues not previously identified, the Departments will discuss the comments and their appropriate resolution with the settling parties.

f. The Commission issues Notice stating the application is ready for final analysis.

g. The resource agencies will formally file those agreed-upon preliminary conditions and prescriptions as modified by the Departments in response to comments and after consultation with the settling parties.

Dated: December 5, 2000.

David J. Hayes,

Deputy Secretary, U.S. Department of the Interior.

Dated: December 7, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–31758 Filed 12–12–00; 8:45 am]

BILLING CODE 3510–22–P; 4310–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval under the Paperwork Reduction Act (PRA)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: New information collection approval—the federal aid grant application booklet.

SUMMARY: The U.S. Fish and Wildlife Service (Service) submitted the collection of information requirement described below to the Office of

Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (PRA). You may obtain copies of the collection requirement and related forms and explanatory material by contacting the Service's Information Collection Clearance Officer at the phone number listed below. The Service is soliciting comment and suggestions on the requirement as described below.

DATES: Consideration will be given to all comments received on or before January 12, 2001. OMB has up to 60 days to approve or disapprove information collections but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by the above referenced date.

ADDRESSES: Interested parties should send comments and suggestions on the requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Interior Desk Officer (1018–XXXX), New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 and they should send a copy of the comments to: Rebecca A. Mullin, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203, (703) 358–2278 or *Rebecca__Mullin@fws.gov* E-mail.

FOR FURTHER INFORMATION CONTACT: Jack Hicks, (703) 358–1851, fax (703) 358–1837, or *Jack@Hicks fws.gov* E-mail.

SUPPLEMENTARY INFORMATION:

Title of Forms: Federal Aid Grant Application Booklet.

OMB Approval Number: OMB has not issued an approval number, the Service has applied for and will obtain approval prior to any information collection request described in this notice.

The Service has submitted to OMB a request to approve the information collection described in this notice for the Federal Aid Program. The Service is requesting a three year term of approval for this information collection. A previous 60 day notice was published on September 5, 2000 (FR Vol. 65, No. 172, 53737) requesting comment. That period expired on November 6, 2000.

Comments received included the following:

Comment 1. Limiting outreach and communications to activities for RBFF seems overly restrictive.

Response—We have redrafted that portion limiting outreach and communications to only RBFF, Federal Aid grant programs authorize outreach and communication activities by grantees.

Comment 2. The hourly burden for completing an Amendment to Grant Agreement is overstated, it should be two hours.

Response—We spoke with several Federal Aid managers who agreed with this comment so we changed the burden and lowered the total burden to reflect that change.

Comment 3. House Bill 3671 eliminated any outreach and communication activities.

Response—Changes required by The Fish and Wildlife Programs Improvement and National Wildlife Refuges System Centennial Act of 2000 have been incorporated in this notice and in the Federal Aid Grant Application Booklet.

Comment 4. Add ''and related components such as habitat, harvest, or use.'' to end of sentence on Surveys and Inventories to clarify.

Response—We added it.

Comment 5. Correct or clarify definition of RBFF outreach at the end of section 3.

Response—Changed to ''Supports improved communication with anglers, boaters, and the general public.''

Comment 6. Wrong use of Grant Amendment form on page 13.

Response—Changed to ''An Amendment to Grant Agreement (3–1591) is only required when changes in grant costs, period, or scope of work must be made.''

Comment 7. In-Kind match and volunteer services area is confusing.

Response—Changed to ''In-kind match is an agency noncash contribution such as volunteer services, land, equipment, supplies * * * etc.''

Comment 7. Add ''X'' to land acquisition and operations and maintenance on the matrix for Section 7 work.

Response—Added the X's to the matrix.

Comment 8. Key personnel section under research grants is hard to understand.

Response—Re-drafted in plain language.

Comment 9. Suggested some wording changes to our program descriptions and eligible activities.

Response—Redrafted these portions of the booklet to accommodate plain language.

This notice provides another 30 day period in which to comment on the information collection described.

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 number for this information collection has not been issued yet.

Description and Use: The Service administers several grant programs authorized by the Federal Aid in Wildlife Restoration Act, the Federal Aid in Sport Fish Restoration Act, the Anadromous Fish Conservation Act, the Endangered Species Act, the Clean Vessel Act, the Sportfishing and Boating Safety Act, the Coastal Wetlands Planning, Protection and Restoration Act, and others. The Service uses the information collected to make grant awards to States and others within these grant programs. This includes determining if the proposed work and cost is reasonable, the cost sharing is consistent with the applicable program statutes, and other vital information collected through proposals submitted by grant applicants. The State or other grantee uses the booklet as a guide for writing complete proposals including; work proposed, providing specific budget information, identifying proposed cost sharing, addressing any compliance issues, and identifying partners if any. The information collected through this document also satisfy special requirements for various approvals for National Environment Policy Act, National Historic Preservation Act, and other Acts pertaining to grants management in the Federal government. Grant applicants provide the information requested in the Federal Aid Grant Application booklet in order to receive benefits in the form of grants for purposes outlined in the applicable law. The Service uses the Federal Aid Grant Application Booklet to request complete information needed to determine the eligibility, cost, scope, and appropriateness of the grant applied for. This information collection is intended to apply to both single grants and grants issued under the planning options outlined in the applicable Acts. This booklet is designed to cause the minimum impact in the form of hourly burden on grant applicants and still get all the required information.

Supplemental Information: The service has submitted the following information collection requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of

collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Frequency: Generally annually.

Description of Respondents: State Government, territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), local governments, and others receiving grant funds.

Completion Time and Annual Response and Burden Estimate:

Form name	Completion time per application [hours]	Annual response in narrative format	Annual burden [hours]
Grant application booklet	80	3,500	280,000
Amendment to grant agreement	2	1,750	3,500
Totals		5,250	283,500

Federal Aid Grant Application Booklet

OMB Control Number 1018–XXXX
Expires xx/xx/xxxx

Part 1—(Cover)

Department of the Interior
U.S. Fish and Wildlife Service
Division of Federal Aid
Grant Programs

Authorized under the following Acts:

Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–7771)
Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i)
Partnerships for Wildlife Act (16 U.S.C. 3741)
Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954)
Endangered Species Act, Sec 6 (h) (16 U.S.C. 1361)
Clean Vessel Act of 1992 (16 U.S.C. 777)

Covering the following types of projects and grants:

Sport Fish Restoration Projects
Wildlife Restoration Projects
Coastal Wetland Restoration
Clean Vessel Pumpout Projects
Boating Infrastructure
Partnerships for Wildlife
Endangered Species, Sec 6 (h)
Land Acquisition
Coordination
Strategic Planning
Comprehensive Management
Surveys and Inventories
Training and Education
Facilities Development
Construction
Operations and Maintenance
Development
Research
Single and Multi-Project
Habitat and Population Management
Hunter and Aquatic Education
Outreach and Communications

Part 2—(inside front cover)

Draft Information Collection Statement

Information Collection Statement: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501) please note the following information. This information collection is authorized by the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–7771), Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), Partnerships for Wildlife Act (16 U.S.C. 3741), and the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954). This information collection covers the following types of grant programs: Sport Fish Restoration, Wildlife Restoration, Coastal Wetland Restoration, Clean Vessel, Boating Infrastructure, Partnerships for Wildlife and Endangered Species [See 6(h)]. We are collecting this information relevant to the eligibility, substantially, relative value, and budget information from applicants in order to make awards of grants under these programs. We are collecting financial and performance information to track cost and accomplishments of these grant programs. Completion of these application and reporting requirements will involve a paperwork burden of approximately 80 hours per grant proposal and two hours per grant amendment, this does not include any burden hours previously approved by OMB for standard or Fish and Wildlife Service forms. Your response to this information collection is voluntary, but necessary to receive benefits in the form of a Grant, and does not carry any premise of confidentiality. 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. This information collection has been approved by OMB and assigned control number 1018–XXXX. The public is invited to submit comments on the accuracy of the estimated average burden hours for application preparation, and to suggest ways in which the burden may be reduced. Comments may be submitted to: Information Collection Clearance Officer, Mail Stop 222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240.

Part 3

Who is eligible to participate in these grant programs and for what purpose? We work with several programs, they are listed below, along with their individual purpose and eligible recipients.

Federal Aid in Wildlife Restoration Programs: Any State fish and wildlife agency of the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Island, and the American Samoa. The purpose of the Wildlife Restoration grants must be for restoration, conservation, management, and enhancement of wild birds and wild mammals, and providing for public use and benefit from these resources. Eligible activities include: educating responsible hunters, shooters and archers in skills, knowledge, and attitudes regarding the safety in firearms, public target ranges development, operations and maintenance either archery of firearm.

The Sport Fish Restoration Program: Any State fish and wildlife agency of the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa. Grants must be for the restoration, conservation, management, and enhancement of sport fish, and provision for public use of and benefits from these resources, such as boating access. Sport fish, by definition, are limited to aquatic, gill breathing, vertebrate animals bearing paired fins, and having material value for sport or recreation. Also eligible are grants which address the enhancement of the public's understanding of water resources and aquatic life forms, and the development of responsible attitudes and ethics towards the aquatic environment.

Coastal Wetland Restoration projects: Any State agency designated by the Governor of a coastal State to participate on behalf of the State is eligible. A coastal State is any State bordering on the Atlantic, the Pacific, or the Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and American Samoa are also eligible. Coastal wetlands conservation grants must be for the long-term conservation of lands and waters, hydrology, water quality and fish and wildlife that depend upon these lands and waters. For the Coastal Wetlands Conservation Program, grant work must be in the first tier of counties along the coast of any State except Louisiana.

Clean Vessel projects: Any State fish and wildlife agency of the fifty States and the Districts of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa. Grants must be for the surveying and

planning for installing pumpout/dump stations, and to fund the construction and renovation or maintenance of pumpout/dump stations to be used by recreational vessels, for the purpose of preventing recreational boat sewage from entering U.S. waters. Educational activities are also eligible for funding.

Boating Infrastructure: Any State fish and wildlife agency of the 50 States as designated by the State government and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa. The purpose of the Boating Infrastructure Grant Program is to provide funds to States for the development and maintenance of facilities for transient nontrailerable recreational vessels.

Partnerships for Wildlife: Any State fish and wildlife agency of the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa in partnership with third parties. The purpose of these projects must be to: Inventory fish and wildlife species; determine and monitor the size, range, and distribution of populations of fish and wildlife species, identify the extent, condition, and location of the significant habitats of fish and wildlife species; identify the significant problems that may adversely affect fish and wildlife species and their significant habitats; take actions to conserve fish and wildlife species and their habitats; or take action which the principal purpose is to provide opportunities for the public to use and enjoy fish and wildlife through nonconsumptive activities. This program applies to any wild members of the animal kingdom that are in an unconfined state, except animals that are: (1) taken for recreation, fur, or food; (2) Federally listed as endangered or threatened species under the Endangered Species Act; or (3) marine mammals defined by the Marine Mammal Protection Act.

Endangered Species Section 6 Grants: Any State agency that has a cooperative agreement with the Secretary of the Interior, as well as the Commonwealth of Puerto Rico; the Commonwealth of the Northern Mariana Islands; Guam; the United States Virgin Islands; and American Samoa. The purpose of the Endangered Species Section 6 Grants program is to provide Federal financial assistance to any State, through its appropriate agency, which has entered into a cooperative agreement to assist in the development of programs for the conservation of endangered and threatened species. Currently, all 50 States, DC and some insular territories have such an agreement. Eligible activities include all types of projects (including land acquisition) with the potential of restoring a threatened or endangered species, monitoring or a candidate species or monitoring of a recovered species.

Grant Programs

Wildlife Restoration Act

- Restore and manage wild birds and wild mammals
- Provide for public use of and access to wild birds and wild mammals
- Provide hunter education
- Funded by hunters and recreational shooters

Sport Fish Restoration Act

- Restore and manage sport fish
- Provide for public use of and access to sport fish
- Provide aquatic education
- Funded by anglers and recreational boaters

Coastal Wetlands Planning, Protection and Restoration Act

- Acquire coastal wetlands
- Restore or enhance coastal wetlands' ecosystems
- Provide long-term conservation of coastal lands and waters
- Funded by Sport Fish Restoration account

Endangered Species Act

- Acquisition, enhancement and protection of habitat
- Recovery and conservation of species
- Surveys and research
- Funded under Section 6 of the Act through Congressional appropriation

Partnerships for Wildlife Act

- Inventory and conserve nongame species
- Provide watchable wildlife recreational and educational opportunities
- Identify and manage species and their habitats
- Funded by Congressional appropriations and State and private partners

Clean Vessel Act

- Survey needs and make plans
- Construct and maintain pumpouts and dump stations
- Educate boaters on use of facilities and impacts of overboard discharge
- Funded by Sport Fish Restoration account

Grant Types Eligible for Funding

- *Coordination*—supports administrative activities of Federal Aid Program
- *Strategic Plans and Comprehensive Management Systems (CMS)*

—permits implementation of grant funding under either of two funding options:

(1) strategic plan for sport fish and/or wildlife resource management or

(2) CMS for all or part of a State agency's resource management

—allows for funding a grant to develop either of the two funding options above

- *Land Acquisition*—The acquisition of real property for

—protecting or maintaining habitat conditions for fish or wildlife species;
—developing or improving habitat conditions to enhance carrying capacity;
—providing public access for the use of fish and wildlife resources; and
—constructing buildings or other structures needed by the State to meet program needs.

- *Motorboat Access Facilities*—Activities necessary for the purpose of accommodating sport anglers using motor boats propelled by internal combustion engines including:

—acquisition, development, renovation and improvement projects;
—multipurpose projects designed to provide benefits for sport anglers using motor boats and other compatible recreation to the extent of the prorated share of the facility cost attributable to each purpose;
—undertakings to compensate for or mitigate recreational or resource losses caused by the boating access improvement, and that are necessary to secure permits or approval of the boating facility;
—research, surveys, planning, appraisals, permits, public involvement or other preliminary requirements to evaluate, design, program, or schedule future boating access improvements are allowable as an on-going development or access planning project;
—operation and maintenance of facilities acquired or constructed with Federal Aid funds or by other funds is eligible when such facilities are necessary for carrying out an approved Federal Aid project; or
—channel improvements, vegetation clearance, navigation aids and other modifications to expedite boating to open water from launching facilities.

- *Clean Vessel Act Facilities*—Activities necessary for activities addressing the need for facilities enabling recreational boaters to dispose of boater sewage in an environmentally sound manner, including:

—identification of recreational boater sewage disposal needs and plans for addressing identified needs;
—construction, renovation and maintenance of pumpout facilities, and;
—education plans to increase boater awareness of related opportunities and environmental impacts.

- *Operations and Maintenance*—Activities necessary for the functioning of a facility to produce desired results, and for the upkeep of a facility to allow the facility to function including routine recurring custodial maintenance such as housekeeping and minor repairs as well as the supplies, materials, and tools necessary to carry out the work.
- *Development Grants for:*

—Population Management—supports restoration and management of sport fish and wildlife populations through stocking or transplant efforts
—Habitat Management—supports creation and improvement of habitat for sport fish and wildlife populations
—Facilities Construction—supports activities providing public access to or enhancing public use of wildlife or sport fish resources; and supports development of facilities for educational or administrative purposes that further federal aid objectives

- *Research*—Activities necessary for:

—providing solutions to problems involving fish or wildlife resources; or
—determining factors affecting the demands or needs for fish and wildlife resources.

- *Surveys and Inventories*—Activities necessary for:

—determining the abundance, characteristics, or condition of fish or wildlife populations;
—determining the status or condition of habitats;

—determining current use or demands for fish or wildlife resources and information about the resource users; or
—monitoring environmental conditions relating to wildlife and sport fish.

• *Hunter and Aquatic Education*
—educates hunters to be responsible
—provides education or training on fishing skills and aquatic resources
—supports construction of education facilities
—supports construction of shooting ranges

• *Technical Guidance*—Activities necessary for
—improving environmental conditions affecting fish or wildlife resources;
—protecting and/or creating fish or wildlife habitat; or
—managing fish and wildlife populations, areas, and habitats for increased production or for public benefits from fish or wildlife resources.

• *Outreach and Communications (Recreational Boating and Fishing Foundation RBFF)*—improve communications with anglers, boaters, and the general public regarding angling and boating opportunities, to reduce barriers to participation in these activities, to advance adoption of sound fishing and boating practices, to promote conservation and the responsible use of the Nation's aquatic resources, and to further safety in fishing and boating.

• *Outreach*—State efforts to increase public awareness and understanding of Federal Aid Programs, accomplishments, and the user-pay/user-benefit approach. The Service encourages outreach activities that provide opportunities for public use, understanding, and awareness of fish and wildlife restoration.

Part 4

A. Instructions

(1) Agencies shall use the following standard application forms when applying for Federal Aid Grants. These forms, in PDF fillable/printable format, can be found at the Federal Aid Training Program webpage at *http://www.nctc.fws.gov/fedaid/toolkit/toolkit.pdf.* At your request, the Regional Office will mail a diskette or CD with fillable forms in PDF format for your use on any personal computer and printer.

Application

SF–424 Face Sheet, and as appropriate:
SF–424A Budget Information (Non-Construction)
SF–424B Standard Assurances (Non-Construction)
SF–424C Budget Information (Construction)
SF–424D Standard Assurances (Construction)

Financial

SF–269 Financial Status Report
SF–270 Request for Reimbursement

Lobbying

SF–LLL Disclosure for Lobbying Activities

Other Assurances

DI–2010 Department of Interior Assurances form
National Environmental Policy Act Compliance (NEPA)
Endangered Species Act Section 7 Compliance (ESA)
National Historic Preservation Act Compliance (NHPA)
Suspension and Debarment Certification
Drug Free Environment Certification
E.O. 11988, Floodplain Management
E.O. 11990, Protection of Wetlands
E.O. 12898, Federal Actions to Protect Environmental Justice in Minority Populations and Low Income Population (Environmental Justice)
American with Disabilities Act (ADA) and the following U.S. Fish and Wildlife Service forms as applicable:
3–1552 Grant Agreement (OMB Approval 1018–0049)
3–1591 Amendment to Grant Agreement (OMB Approval 1018–0049)

Complete the SF–424 face sheet and the appropriate parts A or C and SF–424B assurances for nonconstruction projects or SF–424D assurances for construction projects.

A Grant Agreement (3–1552) form is required for all grants. Complete and have it signed by an Agency Official authorized to do so and include it with all grant proposal submissions. An Amendment to Grant Agreement (3–1591) is only required when changes in grant cost, period, or scope of work must be made.

In-kind match is an agency noncash contribution such as volunteer services, land, equipment, supplies * * * etc. There are specific requirements to document the value of this on the SF–424, in budget/cost info, and in performance reports. See 43 CFR 12.64 for specific guidance on in-kind match, especially how to calculate the value of volunteer services used as in-kind. There are also specific requirements in 43 CFR 12.64 for time accounting and documentation of volunteer time.

Part 5

A preapplication shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds $100,000, unless the Federal agency determines that a preapplication is not needed. A preapplication is used to:

(a) Establish communication between the agency and the applicant,

(b) Determine the applicant's eligibility,

(c) Determine how well the project can compete with similar projects from others, and

(d) Discourage any proposals that have little or no change for Federal funding before applicants incur significant costs in preparing detailed applications.

Budgets

Applicants shall use the appropriate Budget Information and Standard Assurances on the SF–424 for either construction or non-construction projects. They shall use the construction version when the major purpose of the project or program is construction, land acquisition or land development.

Budgets shall provide an estimated total by project objective and should match the objectives described in the proposal (see instructions for proposals below). Budget estimates are entered on the Grant Agreement 3–1552 or the Amendment to Grant Agreement 3–1591, the obligating documents.

Attach a schedule listing projects and dollar amounts within a grant. The total from the schedule should match the total on the Grant Agreement or Amendment to Grant Agreement.

Example:

(Name of Grant) Grant XX FY–XX
Grant Number XX
Start Date_____
End Date_____

Project	Estimated cost
A O&M (WR)	600,000
B Habitat Improvement (SFR)	250,000
C Construction (BA)	20,000
Total	[1] 870,000

[1] This total goes to Grant Agreement or Amendment.

WR = Regular Wildlife Restoration.
SFR = Regular Sport Fish Restoration.
BA = SFR, Boating Access.

Grant Proposals

Applicants should include a program narrative statement for each separate project under a grant proposal which is based on the following instructions:

(a) *Objectives and need for assistance.* Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and any subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included, footnoted, or referenced.

(b) *Results or benefits expected.* Identify costs and benefits to be derived. For example, show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public. For all projects list benefits and to whom or what resource, and quantify them in a standard measure such as dollars, acres, miles * * * etc.

(c) *Approach.* Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each assistance program. Cite factors which might accelerate or decelerate the work and reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved and target dates for completion, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and target expected completion dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are

being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

(d) *Geographic location.* Give a precise location of project and area to be served by the proposed project. Maps or other graphic aids may be attached. Add latitude and longitude where possible, this is required for all site specific development, such as boating access, construction, or land acquisition projects.

(e) *If applicable, provide the following information.*

(1) For research and demonstration assistance requests list the name, training and background for key personnel engaged in the project.

(2) Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance.

(3) Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify.

(4) For other requests for changes, or amendments, explain the reason for the change(s). If the scope of objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if the individual budget items have changes more than the prescribed limits, explain and justify the change and its effect on the project.

(f) *For the following types of programs, the Regional Office may request the following additional information:*

Additionally for:

1. Federal Aid in Wildlife Restoration: For Hunter Education grants, If the work includes the construction of training facilities such as ranges, provide a description of each facility by type, capacity, and cost.

2. Boating Infrastructure Projects: How does this project benefit the public and how is that benefit measured, the BIG programs requires that applicants submit a Schedule of Fees, providing the fees for public use of facilities constructed with BIG funds; proposals will need to respond to the ranking criteria in § 50 CFR 86.60.

3. Partnerships for Wildlife Projects: Describe the partnership involved in this project and what their relative contribution to the partnership is;

4. All lands acquisition projects, regardless of program must include:

In ''Approach,'' describe the present ownership and habitat type of the real property to be acquired, and how the area will be managed. Include a listing of the lands, estimated costs, and the legal rights to be acquired (i.e. fee title, easements, or other long-term acquisition.) Also provide:

—a legal description of the real property to be acquired;
—an Appraisal prepared by a State-certified appraiser;
—a Review Appraisal prepared by a State-certified appraiser;
—a Purchase Option or Agreement; and
—a Statement of Just Compensation.

5. Section 6 of the Endangered Species Act: Prerequisites for participation in grants under Sec. 6 are that the State establishes and maintains an adequate and active program for conservation of endangered and threatened species [50 CFR 81.2], and has entered into a Cooperative Agreement with the Secretary of the Interior [50 CFR 81.3] which must be renewed annually. Federal payments shall not exceed 75 percent of the program costs, except when two or more states having a common interest in one or more endangered or threatened species and may enter jointly into an agreement with the Secretary, and thereby increase the Federal share to 90% [50 CFR 81.8].

6. Surveys and Inventory: Address each of the following factors.

a. Adequacy: Are the data answering the decision-makers' questions? The review should evaluate whether the data acquired from the survey are actually meeting the stated purpose. Analysis of trend data will identify whether data being collected are sufficient in answering the agency's management questions or whether data gaps exist. Timeliness of data collection, analysis and availability is important.

b. Necessity: Are the data used by decision makers? In determining the necessity of a particular survey, consideration should be given to what data are actually being collected and their use in management decisions. Survey utility should be considered in the context of the agency's data needs, given necessary prioritization and allocation of staff and monetary resources.

c. Reliability: Are the decision makers confident in the data? Survey design should be based on sound science and key results should be statistically reliable. A review of the literature will show whether the methodology is still current or if there are other state-of-the-art techniques that might prove more suitable. Validity of the survey approach and whether assumptions are met should be considered as well as whether sample sizes are sufficient to achieve desired levels of precision.

d. Efficiency: Are the data being collected in a cost efficient manner? Data collection is costly, both in staff time and dollars expended. The cost of data collection and analysis should be assessed relative to applicability and use of the data by decision makers.

7. Habitat Management—In ''Approach,'' include the number of acres/hectares to be created or improved and the methods or techniques to be employed. If the work proposed involves the construction, enlargement, or rehabilitation of dams subject to Federal design requirements, provide evidence that an engineer qualified in the design and construction of dams has reviewed the design and specifications. For construction costing more than $100,000, include written assurance that a qualified engineer will approve plans and specifications, approve the feasibility determination, and supervise the construction.

8. Facilities Construction—In ''Approach'' provide a description of the capacity, type of construction, etc. If specifically requested, include plans and specifications. If applicable, describe third party arrangements for operation and/or maintenance of the facility, including how revenue from any user fees will be handled. For construction costing more than $100,000, include written assurance that a qualified engineer will approve engineering plans and specifications, approve the feasibility determination, and supervise the construction.

9. Research—In ''Need,'' include a brief discussion of the literature review relative to the problem. In ''Approach,'' describe how the research will be carried out, including the method(s) to be employed and the schedule to be followed. If the work (or major portion of the work) will be performed under an agreement with a third party, such as a university, identify the performer. Also include the name of the principal investigator.

10. All projects must meet all applicable NEPA, Endangered Species Act (Section 7), and National Historic Preservation Act requirements. Information will be collected as mandated under those Acts to satisfy compliance requirements. (This burden is included in the 80 hour estimate per application.)

Sportfish and Wildlife Grant—Compliance Issue Matrix

The X's indicate compliance issues that may need to be considered when planning a specific type of grant.

Compliance issue—	NEPA	NHPA	ESA	E.O. 11990	E.O. 11988	FPPA	ADA	COE	Exotic animals	AWA	Invassive species	Environ-mental justice	Coastal zone	Costal barriers
Coordination	X						X							
Strategic plans and comprehensive management systems	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Land acquisition	X	X	X	X	X	X	X	X			X	X	X	X

Compliance issue—	NEPA	NHPA	ESA	E.O. 11990	E.O. 11988	FPPA	ADA	COE	Exotic animals	AWA	Invassive species	Environmental justice	Coastal zone	Costal barriers
Operation and maintenance	X	X	X	X	X	X	X	X			X	X	X	
Fish and wildlife population management	X		X						X	X	X	X		
Habitat management	X	X	X	X	X	X	X	X	X		X	X		X
Facilities construction	X	X	X	X	X	X	X	X				X	X	X
Research	X		X						X	X		X		
Surveys and inventories	X		X							X		X		
Hunter and aquatic education	X	X	X				X					X		
Technical guidance	X											X		
Motorboat access facilities	X	X	X	X	X	X	X	X				X	X	X
Clean Vessel Act facilities	X	X	X	X	X	X	X	X				X	X	X
Boating infrastructure	X	X	X	X	X	X	X	X				X	X	X
Outreach and communication	X						X					X		

Part 6—Financial and Accomplishment and Financial Reporting

Accomplishment and Performance

Accomplishment and Performance reports shall compare the proposed work, approved as part of the Grant Agreement, with the actual work accomplished, any deviation, including, but not limited to, cost, time, quality, or quantity shall be reported.

Financial Reports

Grantees shall use the SF–269 series documents provided by our Regional Offices, on our website, diskette or CD.

Payment

How do grantees get paid? Payments are made only to grantee officials authorized to enter into grant agreements and request funds. Payments to grantees are made for the Federal share of allowable costs incurred by the grantee in accomplishing approved grants. All payments are subject to final determination of allowability based on audit. a. Requests for payments by check are submitted on Standard Form SF–270, Request for Reimbursement. Grantees must submit a SF–270 and supporting documentation to the FWS Project Leader, who will review, approve, and forward to USFWS Finance for processing the payment.

Note: Grantees will be told at the time the grant is issued if they are a regular or special grantee. b. For regular grants, payments within 24 hours by Electronic Fund Transfer (EFT) from the grantor are accomplished by completing a SF–1199A Direct Deposit Sign Up Form and forwarding it6 to Health and Human Services (address at FWS Regional Offices) for authorization in the payment management system SMARTLINK. Request for payment are submitted by grantee to SMARTLINK, payment is monitored/authorized by the FWS Regional Office.

c. For special grants, payments within 24 hours by Electronic Fund Transfer (EFT) from the grantor are accomplished by completing a SF–1199A Director Deposit Sign Up Form and forwarding it to Health and Human Services (address at FWS Regional Offices) for authorization in the payment management system SMARTLINK Funds are then requested by submitting through FAX or E-mail an invoice/request for review and approval by the FWS project leader. After approval is received, the grantee may request funds electronically through SMARTLINK.

PART 7

The U.S. Fish and Wildlife Service (Service), Division of Federal Aid awards grants to successful applicants from States and certain other entities to benefit fish and wildlife resources. Applications may be mailed to the following addresses for review by the Regional Office serving your need.

Region 1—AS–CA–GU–HI–ID–NV–OR–MP–WA.	U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232–4181.	Comm: (503) 231–6996; FAX: (503–231–6128.
Region 2—AZ–NM–OK–TX.	U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306 or 625 Silver SW., Suite 325, Albuquerque, NM 87102.	Comm: (505) 248–7450; FAX: (505) 248–7471.
Region 3—IA–IL–MI–MN–MO–OH–WI	U.S. Fish and Wildlife Service, 1 Federal Drive, Ft. Snelling, MN 55111–4056.	Comm: (612) 713–5130; FAX: (612) 713–5290.
Region 4—AL–AR–FL–GA–KY–LA–MS–NC–PR–SC–TN–VI.	U.S. Fish and Wildlife Service, 1875 Century Blvd., Suite 324, Atlanta, GA 30345.	Comm: (404) 679–4159; FAX: (404) 679–4160.
Region 5—CT–DC–DE–MA–MD–ME–NH–NJ–NY–RI–VA–VT–WV–PA.	U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.	Comm: (413) 253–8508; FAX: (413) 253–8487.
Region 6—CO–KS–MT–ND–NE–SD–UT–WY.	U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225 or Lake Plaza North Blvd., 134 Union Blvd., 4th Floor, Lakewood, CO 80228.	Comm: (303) 236–7392; FAX: (303) 236–8192.
Region 7—AK	U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.	Comm: (907) 786–3435; FAX: (907) 786–3575.
Washington, DC, National issues and program coordination.	U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 140, Arlington, VA 22203.	Comm: (703) 358–2156; FAX: (703) 358–1837.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and the Privacy Act of 1974 (U.S.C. 552), please be advised that:

The gathering of information from applicants to gain benefits is authorized under the Federal Aid in Sport Fish

Restoration Act (16 U.S.C. 777–777k) and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i). Information from this form will be used to formalize and execute Grant Agreements and Amendment to Grant Agreements issued under these and other Acts. Your participation in completing this information collection is required to obtain benefits. Once submitted this data becomes public information and is not protected under the Privacy Act. The public reporting burden for this information is estimated at 80 hours per grant and two hours per amendment to a grant, including time for gathering information, completing narratives, reviewing and obtaining signature. Direct comments to the Service Infiroamtion collection Clearance Officer, 1018–XXXX, U.S. Fish and Wildlife Service, MS 222–ARLSQ; 1849 C Street NW., Washington, DC 20240.

An agency may not conduct and a person is not required to complete a collection of information unless a currently valid OMB control number is displayed.

Version 8/2000.

Dated: November 17, 2000.

Rebecca A. Mullin,

U.S. Fish and Wildlife Service Information Collection Clearance Officer.

[FR Doc. 00–31509 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Acceptance of Retrocession of Jurisdiction for the Tulalip Tribes, Washington; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Indian Affairs published a document in the **Federal Register** of December 5, 2000 (65 FR 75948), concerning the Tulalip Tribes' request that the state of Washington retrocede partial criminal jurisdiction to the tribes by Resolution No. 96–0167 dated November 2, 1996. The document contained an incorrect date. This notice corrects the following date.

FOR FURTHER INFORMATION CONTACT: Peter Maybee, 202–208–5787.

Correction

In the **Federal Register** of December 5, 2000, in FR Doc. 00–30956, on page 75948, in the first column, line seven, change the date November 21, 2000 to November 21, 2001.

Dated: December 7, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–31698 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Louisiana State University Museum of Natural Science professional staff in consultation with representatives of the Caddo Indian Tribe of Oklahoma.

Between 1936–1954, human remains representing 46 individuals were removed during excavations at the Belcher Mounds Site (LSUMNS Site Number 16CD013), Caddo Parish, LA, by Clarence H. Webb. Dr. Webb donated these remains and objects to the Louisiana State University Museum of Natural Science in 1974. No known individuals were identified. The 32 associated funerary objects are earthenware pottery, a ceramic spindle whorl and hair ornament, shell artifacts including a shell necklace, and a stone celt. Unassociated funerary objects from the Belcher Mounds Site at the Louisiana State University Museum of Natural Science will be reported separately in a Notice of Intent to Repatriate.

The Belcher Site is a dual mound and habitation site that functioned as a ceremonial center and cemetery between circa A.D. 900–1700. Twenty-four of the individuals excavated by Dr. Webb were buried between circa A.D. 900 and 1400. Twenty-two of these individuals were buried between circa A.D. 1500 and 1700. The mortuary practices and ceramic styles indicate site affiliations with Caddoan culture.

In 1935, human remains representing one individual were removed from the Ida Site (LSUMNS Site Number 16CD025), Caddo Parish, LA, during salvage excavations associated with highway construction by Clarence H. Webb. At an unknown date, Dr. Webb donated these remains to the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, along with remains from the Gahagan Mounds Site. At an unknown date, remains from the Ida Site were transferred from the Peabody Museum to the Louisiana State University Museum of Natural Science. No known individual was identified. No associated funerary objects are present.

Louisiana State University Museum of Natural Science records indicate that earthenware pottery collected from the surface of the Ida Site is dated to between circa A.D. 1200 and 1400, and perhaps earlier as well, on the basis of surface decoration. Stylistic attributes of the pottery affiliate the site with Caddo Indians.

In 1935, Clarence H. Webb removed human remains representing two individuals during excavations at the Smithport Landing Site (LSUMNS Site Number 16DS004), De Soto Parish, LA. The same year, Dr. Webb donated these remains and objects to the Louisiana State University Museum of Natural History. No known individuals were identified. The two associated funerary objects consist of two ceramic vessels. Unassociated funerary objects from the Smithport Landing Site in the Louisiana State University Museum will be reported separately in a Notice of Intent to Repatriate.

Smithport Landing is a non-mound burial site. The stylistic attributes of the associated funerary objects date the burials to circa A.D. 1000–1300. These attributes culturally affiliate the interred with Caddo Indians.

In 1937–1938, human remains representing two individuals were removed during salvage excavations by James Ford at the Hogg Place Site (LSUMNS Site Number 16LI003), Lincoln Parish, LA. Dr. Ford donated the remains and the object to the Louisiana State University Museum of Natural Science in 1938. No known individuals were identified. The one associated funerary object is an incised ceramic vessel.

The Hogg Place Site was a village and associated cemetery. The observed mortuary treatment of the remains is typical of the Caddo culture. The Plaquemine influence seen in the

incised Caddo vessel suggests an interment between A.D. 1200–1700.

At an unknown time prior to 1985, human remains representing two individuals were donated to the Louisiana State University Museum of Natural Science by an unknown donor. The remains were removed from the Hampton Place Site (LSUMNS Site Number 16NA000), Natchitoches Parish, LA, by an unknown person, possibly Clarence H. Webb. No known individual was identified. No associated funerary objects are present.

The determination of cultural affiliation with the Caddo tribe is based on geographic location and knowledge of Dr. Webb's research focus.

Between 1933–1935, human remains representing one individual was removed during excavations at the Wilkinson Place Site (LSUMNS Site Number 16NA003), Natchitoches Parish, LA, by James Ford. Dr. Ford donated the remains to the Louisiana State University Museum of Natural Science in the late 1930's. No known individual was identified. No associated funerary objects are present.

Euroamerican objects placed with other burials at the site indicate that the mortuary use of the Wilkinson Place site dates to the historical period. Previous research suggests that the site is affiliated with the Yatasi, a Caddoan group once centered along the Red River near Shreveport, LA. This group moved southward during the historic period and consolidated with the Kaddohadacho circa 1830. The Kaddohadacho are an historically documented group ancestral to the Caddo.

In 1936 or 1937, human remains representing one individual were removed during excavations at the Allen Place Site (LSUMNS Site Number 16NA004), Natchitoches Parish, LA, by James Ford. Dr. Ford donated the remains to the Louisiana State University Museum of Natural Science in the late 1930's. No known individuals were identified. The 95 associated funerary objects are a necklace made of glass beads and a tubular jasper bead. Unassociated funerary objects in the Louisiana State University Museum from the Allen Place Site will be reported separately in a Notice of Intent to Repatriate.

The Euroamerican glass beads found with this burial and Euroamerican objects found with other burials excavated by Dr. Ford but not donated to this museum suggest that the Allen Place Site was utilized during the historic period.

In 1970, human remains representing one individual were removed from the Fish Hatchery Site (LSUMNS Site Number 16NA009), Natchitoches Parish, LA, and donated to the Louisiana State Museum of Natural Science by Robert Neuman. Mr. Neuman collected the remains from the surface of the site. No known individuals were identified. No associated funerary objects are present.

Material culture and human remains discovered during salvage excavations associated with construction of a U.S. Bureau of Fisheries fish hatchery in 1931 indicate that there was an extensive mortuary component dating to A.D. post-1700 at the Fish Hatchery Site.

In 1946, human remains representing three individuals were removed during salvage excavations associated with facility construction at the Southern Compress and Oil Mill Site (LSUMNS Site Number 16NA014), Natchitoches Parish, LA, by Clarence H. Webb. Dr. Webb donated these remains to the Louisiana State University Museum of Natural Science as part of a larger collection. No known individuals were identified. No associated funerary objects are present.

Other burials excavated at the Southern Compress and Oil Mill Site, but not donated to the museum, contained Euroamerican and Native American objects dating to the A.D. mid-1700's.

In 1972, human remains representing one individual were removed during excavations at the Lake Rodemacher Site (LSUMNS Site Number 16RA021), Rapides Parish, LA, by John House. Mr. House donated these remains to the Louisiana State University Museum of Natural History the same year. No known individuals were identified. No funerary objects are present.

The Lake Rodemacher Site occupation dates to A.D. 1100–1500, as determined by the excavator.

At an unknown date, human remains representing eight individuals removed from the Gahagan Mounds Site (LSUMNS Site Number 16RR001), Red River Parish, LA, were donated to the Louisiana State University Museum of Natural Science by the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The remains were part of multiple burials removed during excavations of ''Burial Pit 1'' and ''Burial Pit 2'' by Clarence H. Webb in 1939. No known individuals were identified.

In 1972, three associated funerary objects removed from ''Burial Pit 1'' and/or ''Burial Pit 2'' at the Gahagan Mound Site (LSUMNS Site Number 16RR001) were donated to the Louisiana State University Museum of Natural Science by Clarence Webb. These objects were removed during the same 1939 excavations as the human remains. The three associated funerary objects are a Hayes-style projectile point, a Catahoulan-style projectile point, and a Reed-style projectile point.

Mortuary practices and stylistic attributes of the associated funerary objects indicate that the Gahagan Mound Site was utilized circa A.D. 900–1200.

At an unknown date, human remains representing two individuals were removed from LSUMNS Site Number 16RR002, an unnamed site in Red River Parish, LA, by an unknown person, but who was possibly Clarence H. Webb. Dr. Webb donated these remains as part of a larger collection to the Louisiana State University Museum of Natural Science in 1974. No known individuals were identified. No associated funerary objects are present.

The determination of cultural affiliation with the Caddo tribe is based on geographic location and knowledge of Dr. Webb's research focus.

In 1960, human remains representing three individuals were removed during salvage excavations associated with road construction at the Cedar Bluff Site (LSUMNS Site Number 16WN001), Winn Parish, LA, by William Haag. Mr. Haag donated these remains to the Louisiana State University Museum of Natural Science the same year. No known individuals were identified. No associated funerary objects are present.

Mr. Haag noted diagnostic Caddo sherds on the surface of the site. While not definitive, the sherds suggest an occupation sometime between A.D. 900-1700, which is the occupation span of Caddo culture in the area. No more precise dates are available.

Historical evidence and oral history indicate that northwest Louisiana is part of the traditional territory of the Caddo people. Archeological evidence indicates that settlements within this region exhibit a cultural continuity dating from circa A.D. 900 and continuing into the historic period. In the historic period these stylistic attributes are associated with the Caddo people. Based on archeological, historical and oral history evidence, the 13 sites reported above are identified with the Caddoan culture.

Based on the above-mentioned information, Louisiana State University Museum of Natural Science officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 73 individuals of Native American ancestry. Officials of the Louisiana State University Museum of Natural Science also have determined

that, pursuant to 43 CFR 10.2 (d)(2), the 133 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Louisiana State University Museum of Natural Science have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Caddo Indian Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Rebecca Saunders, Assistant Curator of Anthropology, Louisiana State Museum of Natural Science, 119 Foster Hall, Baton Rouge, LA 70803, telephone (225) 578–6562, before January 12, 2001. Repatriation of the human remains and associated funerary objects to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: November 30, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–31657 Filed 12–12–00 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Louisiana State University Museum of Natural Science professional staff in consultation with representatives of the Tunica-Biloxi Indian Tribe of Louisiana; the Choctaw Nation of Oklahoma; the Jena Band of Choctaw Indians; and the Mississippi Band of Choctaw Indians, Mississippi.

In 1941, human remains representing six individuals were removed during excavations at Nick's Place (16AV004), Avoyelles Parish, LA, by Robert S. Nietzel. Mr. Neitzel donated the remains and objects to the Louisiana State University Museum of Natural Science in 1941. No known individuals were identified. The 363 associated funerary objects are Euroamerican bracelets, rings, glass beads, textiles, shell fragments, gun flints, lead shot, iron nails, and iron nail fragments. Unassociated funerary objects also were removed during these excavations.

Nick's Place consists of a conical mound near the eastern escarpment of the Marksville prairie, about a mile south of Marksville, LA. The human remains and funerary objects described here were removed from intrusive historic-age burials into the mound. The associated funerary objects date the burials to the late 18th or early 19th centuries. Archeological evidence and characteristics of the mortuary program culturally affiliate the remains with the Choctaw. Oral history evidence indicates that the Choctaw population occupying Nick's Place during the 18th and 19th centuries were absorbed into the Tunica-Biloxi Tribe.

In 1934–1935, human remains representing one individual were removed from the Angola Farm Site (16WF002), West Feliciana Parish, LA, by James Ford. The Angola Farm Site is currently on the grounds of the Louisiana State Penitentiary. The remains and objects were removed from ''Burial 7.'' Dr. Ford donated these remains and objects to the Louisiana State University Museum of Natural Science in 1935 and 1939. No known individual was identified. The 11 associated funerary objects are an aboriginal pot, an iron spike, gun parts, gun flints, and iron nails. Funerary objects interred with individuals whose remains are not present in Louisiana State University Museum of Natural Science collections also were removed during these excavations.

The Angola Farm Site is an historic cemetery located below the bluffs on the eastern side of the Mississippi River. The burial was removed from a filled stream channel at the site. Archeological and historic evidence indicate that the site was a small Tunica village and cemetery occupied 1706–1731.

Based on archeological evidence, the human remains and objects from the two sites described above date to the post-European contact period in the late 17th-early 19th centuries. Historical documentation and oral history indicate that the sites were occupied either by Tunica groups or by groups that were absorbed into the Tunica-Biloxi Indian Tribe of Louisiana. The geographical location of these sites during this time period is consistent with the known traditional territory of the Tunica-Biloxi people.

Based on the above-mentioned information, Louisiana State University Museum of Natural Science officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. Officials of the Louisiana State University Museum of Natural Science also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 374 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Louisiana State University Museum of Natural Science have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Tunica-Biloxi Indian Tribe of Louisiana; the Choctaw Nation of Oklahoma; the Jena Band of Choctaw Indians; and the Mississippi Band of Choctaw Indians, Mississippi.

This notice has been sent to officials of the Tunica-Biloxi Indian Tribe of Louisiana; the Choctaw Nation of Oklahoma; the Jena Band of Choctaw Indians; and the Mississippi Band of Choctaw Indians, Mississippi. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Rebecca Saunders, Assistant Curator of Anthropology, Louisiana State Museum of Natural Science, 119 Foster Hall, Baton Rouge, LA 70803, telephone (225) 578–6562, before January 12, 2001. Repatriation of the human remains and associated funerary objects to the Tunica-Biloxi Indian Tribe of Louisiana; the Choctaw Nation of Oklahoma; the Jena Band of Choctaw Indians; and the Mississippi Band of

Choctaw Indians, Mississippi may begin after that date if no additional claimants come forward.

Dated: November 30, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–31658 Filed 12–12–00 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Louisiana State University Museum of Natural Science professional staff in consultation with representatives of the Chitimacha Tribe of Louisiana.

In 1929–1930, human remains representing seven individuals were removed during excavations conducted at the Fatherland Site (22AD001), Adams County, MS, by Moreau B. Chambers. Mr. Chambers donated these remains to the Lousiana State University Museum of Natural Science in 1930. Museum records indicate that these remains were found in Burial 7, and Burial 13C. No known individuals were identified. The 85 associated funerary objects are textile fragments, shell fragments, wood fragments, trunk parts, and iron nails. One hundred and seven unassociated funerary objects also were removed during these excavations.

The Fatherland Site is located on the west side of St. Catherine Creek, about three miles south of Natchez, MS. The material culture excavated from the Fatherland Site dates to A.D. 1682-1729. Historical and archeological evidence demonstrate that the Fatherland Site is the Grand Village of the Natchez. This settlement was occupied until 1729, when the Natchez lost a war with the French and were forced to flee. The majority resided for some time with the Chickasaw, though some moved to live with the Upper Creek and the Cherokee. Each of these groups were removed with their hosts to Indian Territory in the 19th century.

Based on the archeological, ethnohistorical, and historical evidence, the human remains and objects from the Fatherland Site are determined to be affiliated with the Chitimacha Tribe of Louisiana. The Chitimacha Tribe of Louisiana is the sole remaining Federally recognized tribe that share cultural attributes with the late prehistoric Delta-Natchezan complex from which both the Natchez and the Chitimacha derived. On the basis of linguistic and sociocultural evidence, the Chitimacha Tribe of Louisiana is considered to be the most closely related of the Federally recognized Native American groups.

Based on the above-mentioned information, Louisiana State University Museum of Natural Science officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. Officials of the Louisiana State University Museum of Natural Science also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 85 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Louisiana State University Museum of Natural Science have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Chitimacha Tribe of Louisiana.

This notice has been sent to officials of the Chitimacha Tribe of Louisiana; the Cherokee Nation of Oklahoma; the United Keetoowah Band of Cherokee Indians of Oklahoma; the Muskogee Creek; and the Chickasaw Nation, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Rebecca Saunders, Assistant Curator of Anthropology, Louisiana State Museum of Natural Science, 119 Foster Hall, Baton Rouge, LA 70803, telephone (225) 578-6562, before January 12, 2001. Repatriation of the human remains and associated funerary objects to the Chitimacha Tribe of Louisiana may begin after that date if no additional claimants come forward.

Dated: November 30, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–31659 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service.

Notice of Intent to Repatriate Cultural Items in the Possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10(a)(3), of the intent to repatriate cultural items in the possession of the Louisiana State University Museum of Natural Science that meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

Between 1936–1954, 18 unassociated funerary objects were removed during excavations at the Belcher Mounds Site (LSUMNS Site Number 16CD013), Caddo Parish, LA, by Clarence H. Webb. Dr. Webb donated these objects as part of a larger collection to the Louisiana State University Museum of Natural Science in 1974. The unassociated objects include earthenware pottery, a decorated conch shell cup and other shell artifacts, a zoomorphic shell pendant, and a decorated platform pipe.

The Belcher Site is a dual mound and habitation site that functioned as a ceremonial center and cemetery between circa A.D. 900–1700. Twenty-four individuals were buried between circa A.D. 900 and 1400, and 22

individuals were buried between circa A.D. 1500 and 1700. The mortuary practices and ceramic styles indicate affiliations with Caddoan culture.

Between 1950–1952, two unassociated funerary objects were removed during excavations at the Mounds Plantation (LSUMNS Site Number 16DC071/16DC02/16DC012), Caddo Parish, LA, by Clarence H. Webb. Dr. Webb donated these objects as part of a larger collection to the Louisiana State University Museum of Natural Science in 1974. The objects consist of wood lath and decorated cane matting removed from the log tomb covering of ''Burial Pit 5.''

Diagnostic pottery, mortuary customs, and other distinctive features indicate that ''Burial Pit 5'' in Mound 5 represents an intrusive Caddoan interment in an earlier Coles Creek Period mound. The logs of the tomb covering of ''Burial Pit 5'' were dated to circa A.D. 1050–1475.

In 1935, Clarence H. Webb removed three unassociated funerary objects during excavations at the Smithport Landing Site (LSUMNS Site Number 16DS004), De Soto Parish, LA. The same year, Dr. Webb donated these remains and objects to the Louisiana State University Museum of Natural History. The unassociated funerary objects consist of ceramic vessels.

Smithport Landing is a non-mound burial site. The stylistic attributes of the associated funerary objects date the burials to circa A.D. 1000–1300. They also indicate that the cultural affiliations with the interred are with Caddo Indians.

In 1936, four unassociated funerary objects were removed from an unknown location in Lincoln Parish, LA. These were donated to the Louisiana State University Museum of Natural Science by Hubert Smith in 1937. The unassociated funerary objects consist of three vessels and a pipe fragment. Though precise provenience locations are lacking and the vessels do not differ significantly from utilitarian wares, Mr. Smith's habits as a pothunter strongly suggest that they were taken from burial contexts.

Stylistic attributes of the pottery date them to circa A.D. 1400–1600, and are diagnostic of Caddoan culture.

In 1936 or 1937, four unassociated funerary objects were removed during excavations at the Allen Place Site (LSUMNS Site Number 16NA004), Natchitoches Parish, LA, by James Ford. Dr. Ford donated the objects to the Louisiana State University Museum of Natural Science in the late 1930's. The unassociated funerary objects consist of four ceramic vessels.

Stylistic attributes of these vessels and the presence of Euroamerican objects found with burials excavated by Dr. Ford but not donated to this museum suggest that the Allen Place Site was utilized during the historic period.

In 1939, two unassociated funerary objects were removed during excavations at the Gahagan Mounds Site (LSUMNS Site Number 16RR001), in Red River Parish, Louisiana by Clarence H. Webb. Dr. Webb donated these objects to the Louisiana State Museum of Natural Science in 1974 as part of a larger collection. The two objects were recovered from ''Burial Pit #3,'' and consist of a Holly Engraved bottle and one fragmented blade, possibly a Gahagan.

Mortuary practices and stylistic attributes of the unassociated funerary objects indicate that the Gahagan Mound Site was utilized circa A.D. 900–1200.

Historical evidence and oral history indicate that northwest Louisiana is part of the traditional territory of the Caddo people. Archeological evidence indicates that settlements within this region exhibit a cultural continuity dating to circa A.D. 900 and continued into the historic period. In the historic period these stylistic attributes are associated with the Caddo people. Based on archeological, historical and oral history evidence, the six sites reported above are identified with the Caddo people.

Officials of the Louisiana State University Museum of Natural Science have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Louisiana State University Museum of Natural Science also have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these cultural items and the Caddo Indian Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these cultural items should contact Dr. Rebecca Saunders, Assistant Curator of Anthropology, Louisiana State Museum of Natural Science, 119 Foster Hall, Baton Rouge, LA 70803, telephone (225) 578–6562, before January 12, 2001. Repatriation of the cultural items to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: November 30, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–31662 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Palmer Foundation for Chiropractic History, Palmer College of Chiropractic, Davenport, IA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Palmer Foundation for Chiropractic History, Davenport, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Palmer Foundation for Chiropractic History professional staff in consultation with representatives of the Santa Ynez Band of Mission Indians.

In approximately 1903–1904, human remains representing two individuals were removed from an unidentified island in the Santa Barbara Channel Islands, CA, by D.D. Palmer. These remains were part of a collection of human remains held at a chiropractic college founded by Mr. Palmer in Santa Barbara, CA. After this institution closed, the remains were transferred to the Palmer School, Davenport, IA, in approximately 1906. The Palmer School was a forerunner of the Palmer College of Chiropractic. No known individuals were identified. No associated funerary objects are present.

Osteological examination of the human remains by Palmer Foundation for Chiropractic History curatorial staff indicates that these individuals are Native American. The degree of preservation of the remains suggests that they can be dated to the last several thousand years. The geographical location of the finding of the remains is consistent with the territory of the Island Chumash, represented by the Santa Ynez Band of Mission Indians. There is no evidence to contradict this.

Based on the above-mentioned information, officials of the Palmer Foundation for Chiropractic History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Palmer Foundation for Chiropractic History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Santa Ynez Band of Mission Indians.

This notice has been sent to officials of the Santa Ynez Band of Mission Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Alana Callender, Palmer Foundation for Chiropractic History, Palmer College of Chiropractic, 1000 Brady Street, Davenport, IA 52803, telephone (319) 884-5404, before January 12, 2001. Repatriation of the human remains to the Santa Ynez Band of Mission Indians may begin after that date if no additional claimants come forward.

Dated: December 1, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–31661 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Louisiana State University Museum of Natural Science, Baton Rouge, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Louisiana State University Museum of Natural Science professional staff in consultation with representatives of the Chickasaw Nation, Oklahoma; and the Chitimacha Tribe of Louisiana.

In 1937, human remains representing one individual were removed from the Glenn McCullogh Place (''the Burial Ground'') (22LE011), Lee County, MS, by Moreau B. Chambers. Mr. Chambers donated these human remains to the Louisiana State University Museum of Natural Science the same month. No known individual was identified. No associated funerary objects are present.

Recent archeological research, including a review of the site records and the artifact assemblage, suggests that Site 22LE011 was the site of the short-lived Chickasaw village of ''Etoukouma,'' inhabited during the early 1700's. The burial, presumably, dates to this occupation.

In 1937, human remains representing one individual were removed from the Alston Place Site (22LE014), Lee County, MS, by Moreau B. Chambers. Mr. Chambers donated these human remains to the Louisiana State University Museum of Natural Science the same year. No known individual was identified. No associated funerary objects are present. Unassociated funerary objects from the Alston Place Site in the Louisiana State University Museum of Natural Science also were removed during these excavations.

The Alston Place Site is a fortified habitation site. Archeological evidence dates the latest occupation to the 18th century. The site has been identified both as an unnamed Chickasaw village and as the Natchez village of ''Falatchao.'' Falatchao was established after the Natchez fled their lands following defeat by the French in 1729. The Chitimacha Tribe of Louisiana is the sole remaining Federally recognized tribe that share cultural attributes with the late prehistoric Delta-Natchezan complex from which both the Natchez and the Chitimacha derived. On the basis of linguistic and sociocultural evidence, the Chitimacha Tribe of Louisiana is considered to be the most closely related of the Federally recognized Native American groups.

Based on the above-mentioned information, Louisiana State University Museum of Natural Science officials have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Louisiana State University Museum of Natural Science also have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonabley traced between these Native American human remains and the Chickasaw Nation, Oklahoma; and the Chitimacha Tribe of Louisiana.

This notice has been sent to officials of the Chickasaw Nation, Oklahoma; and the Chitimacha Tribe of Louisiana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Rebecca Saunders, Assistant Curator of Anthropology, Louisiana State Museum of Natural Science, 119 Foster Hall, Baton Rouge, LA 70803, telephone (225) 578–6562, before January 12, 2001. Repatriation of these human remains to the Chickasaw Nation, Oklahoma; and the Chitimacha Tribe of Louisiana may begin after that date if no additional claimants come forward.

Dated: November 30, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–31660 Filed 12–12–00; 8:45 am]

BILLING CODE 4310–70–F–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–403 and 731–TA–895–897 (Preliminary)]

Pure Magnesium From China, Israel, and Russia; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 733(a)

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioners Miller, Hillman, and Askey dissenting with respect to imports of pure magnesium ingot from Israel and pure granular

of the Tariff Act of 1930,[3] that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pure magnesium from Israel and Russia, and pure granular magnesium from China,[4] that are alleged to be sold in the United States at less than fair value (LTFV).

The Commission also determines,[5] pursuant to section 703(a) of the Tariff Act of 1930,[6] that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pure magnesium from Israel that are alleged to be subsidized by the Government of Israel.

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the Federal Register as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On October 17, 2000, a petition was filed with the Commission and the Department of Commerce by Magnesium Corporation of America (MagCorp), Salt Lake City, UT, the United Steel Workers of America, Local 8319, Salt Lake City, UT, and the United Steelworkers of America, AFL–CIO–CLC (USWA International),[7] alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of pure magnesium from Israel and Russia, and pure granular magnesium from China, that are alleged to be sold in the United States at LTFV, and by reason of imports of pure magnesium from Israel that are alleged to be subsidized by the Government of Israel. Accordingly, effective October 17, 2000, the Commission instituted countervailing duty investigation No. 701–TA–403 (Preliminary) and antidumping investigations Nos. 731–TA–895–897 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 25, 2000.[8] The conference was held in Washington, DC, on November 7, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 1, 2000. The views of the Commission are contained in USITC Publication 3376 (December 2000), entitled Pure Magnesium from China, Israel, and Russia: Investigations Nos. 701–TA–403 (Preliminary) and 731–TA–895–897 (Preliminary).

By order of the Commission.

Issued: December 5, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–31719 Filed 12–12–00; 8:45 am]

BILLING CODE 7020–02–P

magnesium from China. Commissioners Miller and Hillman dissenting with respect to imports of pure magnesium ingot from Russia. Commissioners Miller, Hillman, and Askey found imports of pure granular magnesium from Israel and Russia to be negligible.

[3] 19 U.S.C. § 1673b(a).

[4] The imported goods covered in the investigations concerning Israel and Russia include pure magnesium, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes. The imported goods covered in the investigation concerning China include all of the foregoing pure magnesium products, except pure magnesium ingots (which are covered by an existing order and are classifiable under subheadings 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (HTS)).

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); and (3) products that contain 50 percent or greater, but less than 99.8 percent primary magnesium, by weight, and that do not conform to an American Society for Testing and Materials (ASTM) specification for magnesium alloy (generally referred to as ''off-specification pure'' magnesium).

The merchandise subject to the investigation concerning Israel and Russia is classifiable under subheadings 8104.11.00, 8104.19.00, and 8104.30.00 of the HTS. The merchandise subject to the investigation concerning China is classifiable under subheading 8104.30.00 of the HTS.

[5] Commissioners Miller, Hillman, and Askey dissenting with respect to imports of pure magnesium ingot from Israel. Commissioners Miller, Hillman, and Askey found imports of pure granular magnesium from Israel to be negligible.

[6] 19 U.S.C. § 1671b(a).

[7] See letter from petitioners dated October 26, 2000 amending the petitions to include the USWA International as co-petitioners.

[8] 65 FR 63888, Oct. 25, 2000.

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP (BJS)–1307A]

Hate Crime Statistics Data Collection in Selected Police and Sheriffs' Departments; Extension

AGENCY: Office of Justice Programs, Bureau of Justice Statistics, Justice.

ACTION: Extension of grant application due date.

SUMMARY: The purpose of this notice is to announce a change to the deadline date of the submission of proposals to the Solicitation ''Hate Crime Statistics Data Collection in Selected Police and Sheriffs' Departments'' from December 31, 2000 to January 8, 2001.

DATES: Proposals must arrive at the Bureau of Justice Statistics (BJS) on or before 5:00 p.m. ET, Monday, January 8, 2001, or be postmarked on or before January 8, 2001.

ADDRESSES: Proposals should be mailed to: Application Coordinator, Bureau of Justice Statistics, 810 Seventh St. NW., Washington, DC 20531; (202) 616–3497.

FOR FURTHER INFORMATION CONTACT: Charles R. Kindermann, Ph.D., Senior Statistician, Bureau of Justice Statistics, (202) 616–3489 or Carol Kaplan, Chief, National Criminal History Improvement Program (202) 307–0759.

Dated: December 5, 2000.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 00–31693 Filed 12–12–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Pension and Welfare Benefits Administration (PWBA) is announcing that a collection of information included in its Interim Final Rule for Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers (Interim Final Reporting Rule) has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This notice announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT: Copies of the current Form M–1 and instructions are available on the Internet at: *http://www.dol.gov/dol/pwba.* In addition, after printing, copies will be available by calling the PWBA toll-free publication hotline at 1–800–998–7542. Questions on completing the form are being directed to the PWBA help desk at (202) 219–8770 (not a toll-free number).

Address requests for copies of the information collection request (ICR) to Gerald B. Lindrew, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW. Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 11, 2000, PWBA published the Interim Final Reporting Rule and the Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception (Form M–1) (65 FR 7152), along with an Interim Final Rule for the Assessment of Civil Penalties under Section 502(c)(5) of ERISA and an Interim Rule Governing Procedures of Administrative Hearing Regarding the Assessment of Civil Penalties under Section 502(c)(5) of ERISA (Interim Final Penalty Rules, 65 FR 7181). At the time of publication, the Department submitted the ICR included in the Interim Final Reporting Rule to OMB using emergency procedures, and received approval through August 31, 2000. On August 31, 2000, the Department submitted the ICR to OMB for an extension of the initial approval.

On November 22, 2000, OMB approved the ICR under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and 5 CFR 1320. The approval will expire on November 30, 2003. The control number assigned in this ICR by OMB is 1210–0116.

Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid control number.

Dated: November 29, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–31704 Filed 12–12–00; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

TXU Electric; Comanche Peak Steam Electric Station, Units 1 and 2; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by TXU Electric, (the licensee) for an amendment to Facility Operating License Nos. NPF–87 and NPF–89 issued to the licensee for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on October 4, 2000 (65 FR 59226).

The purpose of the licensee's amendment request was to revise the CPSES Security Plan as follows: (1) To allow response team members to perform compensatory measures for protective area intrusion detection or closed circuit television failure, (2) to post compensatory measures for vital doors only if both the alarm and lock are inoperable, (3) to modify vital area door alarm response if no unresolved protective area alarms are received, (4) to eliminate the need to perform vehicle ignition key checks within the protected area, (5) to modify the patrol frequency for the protected area, (6) to eliminate the need to search generic packages sealed at the point of manufacturing and sent to a site from a general distribution center (e.g., pallet of paper), and (7) to allow material/equipment to be sealed prior to exiting the protective area or searched and sealed in a location exterior to the protective area (this would permit material/equipment to be transferred from one site to another without additional search). The U.S Nuclear Regulatory Commission (the Commission) staff has completed its evaluation of the proposed changes to the CPSES Security Plan as detailed in the Safety Evaluation dated December 5, 2000. Of the changes proposed by the licensee, changes (1) and (5) are acceptable, change (2) is not applicable to CPSES and is thus denied, change (3) is unacceptable and is thus denied, change (4) is not a Security Plan commitment associated with CPSES and thus is denied, and changes (6) and (7) are currently approved in the CPSES Security Plan and thus are denied.

The licensee was notified of the Commission's denial of proposed Security Plan changes (2), (3), (4), (6) and (7) by a letter dated December 5, 2000.

By January 12, 2001, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the U.S. Nuclear Regulatory Commission, Public Document Room, Washington, DC 20555–000, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington DC 20036–5869, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 2, 2000, and the supplement dated August 30, 2000, and (2) the Commission's letter to the licensee dated December 5, 2000.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 5th day of December 2000.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Project Director, Project Directorate IV–1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31737 Filed 12–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 17, 2000, through December 1, 2000. The last biweekly notice was published on November 29, 2000.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 12, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first Floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such

a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: July 5, 2000.

Description of amendment request: The proposed amendment would revise the maximum power level specified in each unit's license; revise the value of rated thermal power of each unit from 3411 megawatts thermal (MWt) to 3586.6 MWt and the reference source for conversion factors in the calculation of Dose Equivalent Iodine 131 in the technical specification (TS) definitions; add a Departure from Nucleate Boiling Ratio (DNBR) limit specifically for a thimble cell; increase the minimum limit for reactor coolant system (RCS) total flow; revise the steam generator laser welded sleeve plugging limit; and reduce the peak calculated containment internal pressure P_a for the design basis loss-of-coolant accident (LOCA).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

A. Evaluation of the Probability of Previously Evaluated Accidents.

Plant systems and components have been verified to be capable of performing their intended design functions at uprated power conditions. Where necessary, some components will be modified prior to implementation of uprated power operations to accommodate the revised operating conditions. The analysis has concluded that operation at uprated power conditions will not adversely affect the capability or reliability of plant equipment. Current TS surveillance requirements ensure frequent and adequate monitoring of system and component operability. All systems will continue to be operated in accordance with current design requirements under uprated conditions, therefore no new components or system interactions have been identified that could lead to an increase in the probability of any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). No changes were required to the Reactor Trip or Engineered Safety Features (ESF) setpoints.

B. Evaluation of the Consequences of Previously Evaluated Accidents.

The radiological consequences were reviewed for all design basis accidents (DBAs) (*i.e.*, both Loss of Coolant Accident (LOCA) and non-LOCA accidents) previously analyzed in the UFSAR. The analysis showed that the resultant radiological consequences for both LOCA and non-LOCA accidents remain either unchanged or have not significantly increased due to operation at uprated power conditions. The radiological consequences of all DBAs continue to meet established regulatory limits.

The proposed addition of Table E–7 of NRC Regulatory Guide 1.109, ''Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I,'' Revision 1, 1977, or International Commission on Radiological Protection (ICRP) 30, ''Limits for Intakes of Radionuclides by Workers,'' Supplement to Part 1, page 192–212, Table titled, ''Committed Dose Equivalent in Target Organs or Tissues per Intake of Unit Activity,'' for thyroid dose conversion factors, will not significantly increase the consequences of an accident previously evaluated. If Regulatory Guide 1.109, or ICRP 30, Supplement to Part 1, are used to calculate maximum dose equivalent iodine specific activity, the total RCS iodine activity may increase, depending on the iodine nuclide mix, and this activity is used to calculate the doses resulting from a Main Steam Line Break (MSLB) or other analyzed accident. The calculated thyroid doses resulting from an MSLB or other analyzed accident would not increase as the corresponding dose conversion factors would be used to calculate the offsite thyroid doses. For a given Dose Equivalent I–131 concentration in the RCS, the offsite dose predicted using the dose conversion factors in either Table E–7 of Regulatory Guide 1.109, or ICRP 30, Supplement to Part 1, is less than that predicted by Table III of Atomic Energy Commission (AEC) Technical Information Document TID–14844, ''Calculation of Distance Factors for Power and Test Reactor Sites,'' which is currently referenced in the TS definition of Dose Equivalent I–131.

ICRP–30 is the updated reference for thyroid dose conversion factors used in the power uprate accident analysis radiological evaluation. The current version of 10 CFR 20, ''Standards for Protection Against Radiation,'' also utilizes ICRP–30 data.

Based on the analysis, it is concluded that the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The configuration, operation and accident response of the Byron Station and the Braidwood Station systems, structures or components are unchanged by operation at uprated power conditions or by the associated proposed TS changes. Analyses of transient events have confirmed that no transient event results in a new sequence of events that could lead to a new accident scenario.

The effect of operation at uprated power conditions on plant equipment has been

evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or equipment failure mode was identified as a result of operating at uprated conditions. In addition, operation at uprated power conditions does not create any new failure modes that could lead to a different kind of accident. Minor plant modifications, to support implementation of uprated power conditions, will be made as required to existing systems and components. The basic design of all systems remains unchanged and no new equipment or systems have been installed which could potentially introduce new failure modes or accident sequences. No changes have been made to any Reactor Trip or ESF actuation setpoints.

Based on this analysis, it is concluded that no new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The proposed TS changes do not have an adverse effect on any safety-related system. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

A comprehensive analysis was performed to support the power uprate program at the Byron Station and the Braidwood Station. This analysis identified and defined the major input parameters to the NSSS [Nuclear Steam Supply System], reviewed NSSS design transients, and reviewed the capabilities of the NSSS fluid systems, NSSS/BOP [balance-of-plant] interfaces, NSSS control systems, and NSSS and BOP components. All appropriate NSSS accident analysis was reperformed to confirm acceptable results were maintained and that the radiological consequences remained within regulatory limits. The nuclear and thermal hydraulic performance of nuclear fuel was also reviewed to confirm acceptable results. The analysis confirmed that all NSSS and BOP systems and components are capable, some with minor modifications, to safely support operations at uprated power conditions.

To support the operation of Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2 at uprated power conditions, nuclear fuel Departure from Nucleate Boiling Ratio (DNBR) reanalysis was required to define new core limits, axial offset limits, and Condition II, ''Faults of Moderate Frequency,'' acceptability. This analysis included review of the following events: loss of RCS flow, reactor coolant pump locked rotor, feedwater malfunction, dropped control rod, steamline break, and control rod withdrawal from a subcritical condition. DNB design criteria was met for all events.

NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995, allows Dose Equivalent I–131 to be calculated using any one of three dose conversion factors; Table III of TID–14844, 1962, Table E–7 of NRC Regulatory Guide 1.109, Revision 1, 1977, or ICRP 30, Supplement to Part 1. Using thyroid dose conversion factors other than those given in TID–14844 results in lower doses and higher allowable activity but is justified by the discussion given in the **Federal Register** (*i.e.*, **Federal Register** (FR) page 23360 Vol. 56, May 21, 1991). This discussion accompanied the final rulemaking on 10 CFR 20, ''Standards for Protection Against Radiation,'' by the NRC. In that discussion, the NRC stated that it was incorporating modifications to existing concepts and recommendations of the ICRP into NRC regulations. Incorporation of the methodology of ICRP–30 into the 10 CFR 20 revision was specifically mentioned with the changes being made resulting from changes and updates in the scientific techniques and parameters used in calculating dose. This FR reference clearly shows that the NRC was updating 10 CFR 20 to incorporate ICRP–30 recommendations and data. Regulatory Guide 1.109 thyroid dose conversion factors are higher than the ICRP–30 thyroid dose conversion factors for all five iodine isotopes of concern. Therefore, using Regulatory Guide 1.109 thyroid dose conversion factors to calculate Dose Equivalent I–131 is more conservative than ICRP–30 and is therefore acceptable. For a given Dose Equivalent I–131 concentration in the Reactor Coolant, the offsite dose predicted using the dose conversion factors in either Table E–7 of Regulatory Guide 1.109, Revision 1, NRC, 1977, or ICRP 30, Supplement to Part 1, is less than that predicted by Table III of TID–14844 which is currently referenced in the TS definition of Dose Equivalent I–131.

ICRP–30 is the updated reference source used in the power uprate accident analysis radiological evaluation. All regulatory acceptance criteria continue to be met and adequate safety margin is maintained.

Revising the minimum limit for RCS total flow from greater than or equal to 371,400 gpm to greater than or equal to 380,900 gpm does not represent a significant reduction in the margin of safety. The reactor coolant pumps run at full flow and have a total flow capacity greater than 380,900 gpm. The analysis has shown that DNBR criteria has been met for all normal operational transients and loss of flow accident scenarios.

The margin of safety of the reactor coolant pressure boundary is maintained under uprated power conditions. The design pressure of the reactor pressure vessel and reactor coolant system will not be challenged as the pressure mitigating systems were confirmed to be sufficiently sized to adequately control pressure under uprated power conditions.

The proposed change revises the plugging limit for laser welded sleeves from 40% to 38.7% of nominal wall thickness. The analysis performed in support of the power uprate effort, indicated that it is necessary to remove steam generator (SG) tubes with laser welded sleeves from service upon discovering an imperfection depth of 38.7% wall thickness to ensure the structural integrity of SG tubes which have been sleeved thereby precluding the occurrence of an SG tube rupture of sleeved tubes under all operating conditions. The previous laser welded sleeve plugging limit was based on an analysis that used lower tolerance limit material strength values. The new analysis methodology, required for laser welded sleeves, uses minimum strength properties from the American Society of Mechanical Engineers Code. As determined by the new analysis, reducing the plugging limit from 40% to 38.7% maintains a comparable margin of safety to the previous analysis.

Reanalysis of containment structural integrity under Design Basis Accident (DBA) conditions indicated that the safety margin improved, even though the mass and energy release due to a LOCA under uprated power conditions increases. Based on new and improved analytical methodologies, P_a, the peak calculated containment internal pressure for the design basis LOCA, is 42.8 psig as compared to the current value of 47.8 psig for Unit 1; and is 38.4 psig as compared to the current value of 44.4 psig for Unit 2, for both Byron Station and Braidwood Station.

Radiological consequences of the following accidents were reviewed: Main Steamline Break, Locked Reactor Coolant Pump (RCP) Rotor, Locked RCP Rotor with Power-Operated Relief Valve Failure, Rod Ejection, Small Line Break Outside Containment, Steam Generator Tube Rupture, Large Break Loss of Coolant Accident, Small Break Loss of Coolant Accident, Waste Gas Decay Tank Rupture, Liquid Waste Tank Failure, and Fuel Handling Accident. The resultant radiological consequences for each of these accidents did not show a significant change due to uprated power conditions and 10 CFR 100 limits continue to be met.

The analyses supporting the power uprate program have demonstrated that all systems and components are capable of safely operating at uprated power conditions. All design basis accident acceptance criteria will continue to be met. Therefore, it is concluded that the proposed TS changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant

Date of amendment request: July 7, 2000.

Description of amendment request: The proposed amendment would add a new license condition which would approve the License Termination Plan dated July 7, 2000, and allow the licensee to make changes to the approved License Termination Plan without prior Nuclear Regulatory Commission (NRC) approval if certain

criteria specified in the license condition are met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Connecticut Yankee Atomic Power Company (CYAPCO) has provided its analysis of the issue of no significant hazards consideration, which is presented below:

CYAPCO has reviewed the proposed change to the Operating License in accordance with the requirements of 10 CFR 50.92, ''Issuance of Amendment,'' and concluded that the change does not involve a significant hazards consideration (SHC). The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Currently, the bounding airborne radioactivity event given in the Haddam Neck Plant UFSAR [Updated Final Safety Analysis Report] is the resin container accident. Whereas previously doses associated with gaseous waste system accidents would have bounded those associated with solid waste system failures, the small amount of radioactivity contained within the gaseous radioactive waste system with the plant in the permanently defueled condition results in this system's failure no longer being bounding. The curie content of the resin container was based on the actual radioactivity inventory collected on the resin from the reactor coolant system decontamination. This corresponded to approximately 90% of the NRC Class C burial limits. Consistent with NUREG–0782 for a resin fire, one percent of the activity of the container was assumed to be released to the environment. The 1% bounds the potential airborne release fraction from various resin incidents, such as an exothermic reaction during dewatering, dropping of a high integrity container, or a resin spill. Other airborne particulate radwaste or radioactive material accidents considered in the UFSAR but bounded by the resin container fire are as follows:

- a fire in the radwaste storage facility,
- a drop of a component (*e.g.*, steam generator, reactor vessel, or heat exchanger) being removed from the site,
- a van of radioactive waste materials consumed by a fire while stored in the yard area on-site,
- a radiological HEPA [High-Efficiency Particulate Air] filter rupture,
- segmentation of components or structures during loss of local engineering controls,
- an oxyacetylene tank explosion, or
- an explosion of liquid propane gas leaked from a front-end loader.

The UFSAR also discusses a fuel handling accident in the fuel building, involving the drop of a spent fuel assembly onto the fuel racks. The postulated drop assumes the rupture of all fuel rods in the associated assembly. The probability or consequences of this accident would not be increased during any future fuel transfer operations in the spent fuel pool related to decommissioning. Transfer of the spent fuel to canisters for dry cask storage will involve additional restrictions contained in the cask certificate of compliance in order to maintain decommissioning activities within the assumption and consequences of the fuel handling accident.

The requested license amendment is consistent with plant activities described in the Post Shutdown Decommissioning Activities Report (PSDAR) and the HNP [Haddam Neck Plant] Decommissioning UFSAR. Accordingly, no systems, structures, or components that could initiate the previously evaluated accidents or are required to mitigate these accident are adversely affected by this proposed change. Therefore, the proposed change does not involve an increase in the probability or consequences of any previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Accident analyses related to decommissioning activities are addressed in the UFSAR. The requested license amendment is consistent with the plant activities described in the HNP Decommissioning UFSAR and the PSDAR. Thus, the proposed change does not affect plant systems, structures, or components in a way not previously evaluated. No new failure mechanisms will be created by this activity, and the proposed activity does not create the possibility of a new or different kind of accident than those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The License Termination Plan (LTP) is a plan for demonstrating compliance with the radiological criteria for license termination as provided in 10 CFR 20.1402. The margin of safety defined in the statements of consideration for the final rule on the Radiological Criteria for License Termination is described as the margin between the 100 mrem/yr public dose limit established in 10 CFR 20.1301 for licensed operation and the 25 mrem/yr dose limit to the average member of the critical group at a site considered acceptable for unrestricted use (one of the criteria of 10 CFR 20.1402). This margin of safety accounts for the potential effect of multiple sources of radiation exposure to the critical group. Since the License Termination Plan was designed to comply with the radiological criteria for license termination for unrestricted use, the LTP supports this margin of safety.

In addition, the LTP provides the methodologies and criteria that will be used to perform remediation activities of residual radioactivity to demonstrate compliance with the ALARA [as low as reasonably achievable] criterion of 10 CFR 20.1402.

Additionally, the LTP was designed with recognition that (a) the methods in MARSSIM (Multi-Agency Radiation Survey and Site Investigation Manual) and (b) the building surface contamination levels are not directly applicable to use with complex nonstructural components. Therefore, the LTP states that nonstructural components remaining in buildings (*e.g.*, pumps, heat exchangers, etc.) will be evaluated against the criteria of RG [Regulatory Guide] 1.86 to determine if the components can be released for unrestricted use. The LTP also states that materials, surveyed and evaluated as a part of normal decommissioning activities and prior to implementation of the final status survey, will be surveyed for release using current site procedures to demonstrate compliance with the ''no detectable'' criteria. Such materials that do not pass these criteria will be controlled as contaminated.

Also, as previously discussed, the bounding accident for decommissioning is the resin container accident. Since the bounding decommissioning accident results in more airborne radioactivity than can be released from other decommissioning events, the margin of safety associated with the consequences of decommissioning accidents is not reduced by this activity.

Thus, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Robert K. Gad, III, Ropes & Gray, One International Plaza, Boston, Massachusetts 02110–2624.

NRC Section Chief: Michael T. Masnik.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: November 2, 2000.

Description of amendment request: The proposed amendment would revise the WNP–2 Technical Specifications (TS) to incorporate long-term power stability solution requirements. The proposed changes reflect: (1) The addition of a new TS Section 3.3.1.3, ''Oscillation Power Range Monitoring (OPRM) Instrumentation,'' (2) a revision to TS Section 3.4.1, ''Recirculation Loops Operating,'' to remove monitoring specifications that would no longer be necessary upon activation of the automatic OPRM instrumentation, and (3) a revision to TS 5.6.5 to include in the Core Operating Limits Report (COLR) the applicable operating limits for the OPRMs, and also reference the topical report which describes the analytical methods used to determine the setpoint values for the OPRM.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change specifies limiting conditions for operation, required actions and surveillance requirements for the OPRM system and allows operation in regions of the power-to-flow map currently restricted by the requirements of interim corrective actions (ICAs) and certain limiting conditions of operation of Technical Specification 3.4.1. The restrictions of the ICAs and Technical Specification 3.4.1 were imposed to ensure adequate capability to detect and suppress conditions consistent with the onset of thermal-hydraulic oscillations that may develop into a thermal-hydraulic instability event. A thermal-hydraulic instability event has the potential to challenge the minimum critical power ratio (MCPR) safety limit. The OPRM system can automatically detect and suppress conditions necessary for thermal-hydraulic instability. With the installation of the OPRM system, the restrictions of the ICAs and Technical Specification 3.4.1 are no longer required to prevent a potential challenge to the MCPR safety limit during an anticipated instability event.

The probability of a thermal-hydraulic event is dependent on power-to-flow conditions such that only during operation inside specific regions of the power-to-flow map, in combination with power shape and inlet enthalpy conditions, can the occurrence of an instability event be postulated to occur. Operation in these regions may increase the probability that operation with conditions necessary for a thermal-hydraulic instability can occur. When the OPRM system is operable, conditions consistent with the imminent onset of oscillations are automatically detected and the conditions necessary for oscillations are suppressed, which decreases the probability of an instability event. In the event the trip capability of the OPRM is not maintained, the proposed change limits the period of time before an alternate method to detect and suppress thermal-hydraulic oscillations is required. The probability of a thermal-hydraulic instability event may be increased during the limited period of time that operation is allowed at conditions otherwise requiring the trip capability of the OPRM to be maintained. However, since the duration of this period of time is limited, the increase in the probability of a thermal-hydraulic instability event is not significant.

The proposed change requires the OPRM system to be operable and, thereby, ensures mitigation of thermal-hydraulic instability events with a potential to challenge the MCPR safety limit when initiated from anticipated conditions, by detection of the onset of oscillations and actuation of an RPS [reactor protection system] trip signal. The OPRM also provides the capability of an RPS trip being generated for thermal-hydraulic instability events initiated from unanticipated, but postulated conditions. These mitigating capabilities of the OPRM system will become available as a result of the proposed change and have the potential to reduce the consequences of anticipated and postulated thermal-hydraulic instability events. The OPRM installation has been evaluated and does not alter the function or capability of any other installed equipment such as the average power range monitoring (APRM) system or the RPS to mitigate the consequences of postulated events.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change specifies limiting conditions for operation, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power-to-flow map currently restricted by the requirements of ICAs and Technical Specification 3.4.1. The OPRM system uses input signals shared with APRM and rod block functions to monitor core conditions and generate an RPS trip when required. Quality requirements for software design, testing, implementation and module self-testing of the OPRM system provide assurance that no new equipment malfunctions due to software errors are created. The design of the OPRM system also ensures that neither operation nor malfunction of the OPRM system will adversely impact the operation of other systems and no accident or equipment malfunction of these other systems could cause the OPRM system to malfunction or cause a different kind of accident.

Operation in regions currently restricted by the requirements of ICAs and Technical Specification 3.4.1 is within the nominal operating domain and ranges of plant systems and components, and within the range for which postulated equipment and accidents have been previously evaluated.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change specifies limiting conditions for operation, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power-to-flow map currently restricted by the requirements of ICAs and Technical Specification 3.4.1.

The OPRM system monitors small groups of LPRM [local power range monitor] signals for indication of local variations of core power consistent with thermal-hydraulic oscillations and generates an RPS trip when conditions consistent with the onset of oscillations are detected. An unmitigated thermal-hydraulic instability event has the potential to result in a challenge to the MCPR [minimum critical power ratio] safety limit. The OPRM system provides the capability to automatically detect and suppress conditions which might result in a thermal-hydraulic instability event and, thereby, maintains the margin of safety by providing automatic protection for the MCPR safety limit while significantly reducing the burden on the control room operators. In the event the trip capability of the OPRM is not maintained, the proposed change limits the period of time before an alternate method to detect and suppress thermal-hydraulic oscillation is required. The alternate method to detect and suppress oscillations would be comparable to current actions required by the interim corrective actions and no significant reduction in the margin of safety would result in the event that an unmitigated instability event occurred.

Operation in regions currently restricted by the requirements of ICAs and Technical Specification 3.4.1 is within the nominal operating domain and ranges of plant systems and components, and within the range assumed for initial conditions considered in the analysis of anticipated operational occurrences and postulated accidents.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: August 29, 2000.

Description of amendment request: The proposed changes to the Arkansas Nuclear One, Unit 1 (ANO–1) Technical Specifications (TS) provide for the use of an Alternate Repair Criteria (ARC) for steam generator tubes with indications of outer diameter intergranular attack (ODIGA) within the upper tube sheet region of the once-through steam generators (OTSGs). Amendment 202 to the ANO–1 TS dated October 4, 1999, allowed the ARC for ODIGA indications only during Operating Cycle 16 at ANO–1. The proposed change would allow continued operation beyond Cycle 16 for ANO–1 with OTSG tubes that have ODIGA indications that are located in a defined area of the upper tube sheet.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the criteria in 10 CFR 50.92(c). A discussion of these criteria as they relate to this amendment request follows:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The purpose of the periodic surveillance performed on the OTSGs in accordance with ANO–1 Technical Specification (TS) 4.18 is to ensure that the structural integrity of this portion of the reactor coolant system will be maintained. The TS plugging limit of 40% of the nominal tube wall thickness requires tubes to be repaired or removed from service because the tube may become unserviceable prior to the next inspection. Unserviceable is defined in the TS as the condition of a tube if it leaks or contains a defect large enough to affect its structural integrity in the event of an operating basis earthquake, a loss-of-coolant accident, or a steam line or feedwater line break. The proposed TS change allows OTSG tubes with ODIGA indications contained within a defined area of the UTS [upper tube sheet] to remain in service with existing degradation exceeding the existing 40% through-wall (TW) plugging limit.

Extensive testing and plant experience has illustrated that ODIGA flaws confined to this area within the OTSG will not result in tube burst and tube leakage is unlikely. Therefore, allowing ODIGA flaws in this specific region to remain in service will not alter the conditions assumed in the current ANO–1 accident analysis for OTSG tube failures under postulated accident conditions. In addition, the condition of the OTSG tubes in this region are monitored during regular inspection intervals to assess for evidence of growth. Any growth noted will be addressed through testing and the operational assessment. Therefore, ANO–1 has determined that the identification, testing, monitoring, assessment, and corrective action programs provided in ANO [Arkansas Nuclear One] Engineering Report No. 00–R–1005–01, sufficiently supports this change request.

Application of the ODIGA alternate repair criteria will allow leaving tubes with ODIGA indications found in the defined area of the UTS in service while ensuring safe operation by monitoring and assessing the present and future conditions of the tubes. ANO–1 has operated since 1984 with ODIGA affected tubes in service with no appreciable effect on structural integrity or indications of tube leakage from ODIGA sources within the UTS. Through the inspection, testing, monitoring, and assessment program previously mentioned, and the on-line leak detection capabilities available during plant operation, continued safe operation of ANO–1 is reasonably assured.

Therefore, the application of the ODIGA alternate repair criteria does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The implementation of the ODIGA alternate repair criteria will not result in any failure mode not previously analyzed. The OTSGs are passive components. The intent of the TS surveillance requirements are being met by these proposed changes in that adequate structural and leak integrity will be maintained. Additionally, the proposed change does not introduce any new modes of plant operation.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The application of an alternate repair criteria for ODIGA provides adequate assurance with margin that ANO–1 steam generator tubes will retain their integrity under normal and accident conditions. The structural requirements of ODIGA affected tubes have been evaluated satisfactorily and meet or exceed regulatory requirements. Leakage rates for these tubes within the defined region of the upper tubesheet are essentially zero and are reasonably assured to remain within the assumptions of the accident analysis by proper application of the ODIGA alternate repair criteria program. Assuming high differential pressures following an ATWS [Anticipated Transient Without Scram] or MSLB [Main Steam Line Break], if the ODIGA patches leak, the leakage would be less than the normal makeup capacity of the reactor coolant system. Since no appreciable impact is evidenced on the tubes structural integrity or its resulting leak rate, the margin to safety remains effectively unaltered.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 28, 2000.

Description of amendment request: The proposed changes to the Arkansas Nuclear One, Unit 1 (ANO–1) technical specifications revise the safety-related 4160 Volt (V) bus loss-of-voltage and 480 V bus degraded voltage relay allowable values.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The two 4160 V vital bus loss-of-voltage protection relays that are provided on each of the 4160 V safety buses act to mitigate the consequences of an accident by detecting a loss of voltage, isolating the safety buses, initiating load shedding schemes, and starting the associated emergency diesel generator (EDG). The safety function of the relays is unchanged by the proposed setpoint revisions. The revised settings for the loss-of-voltage protection relays will continue to provide the safety function with no appreciable additional time delay. The proposed time delays are within those assumed in the ANO–1 safety analyses. Additionally, the lower voltage settings will aid in preventing unnecessary isolation from the off-site power sources, which in turn will reduce the probability of a loss of off-site power to the unit due to off-site power system transients. Since the proposed change does not adversely impact the mitigating function of the relays, the consequences of an accident previously evaluated remains unchanged.

The two degraded voltage protection relays that are provided on each of the 480 V safety buses act to mitigate the consequences of an accident by detecting a sustained undervoltage condition, isolating the safety buses from offsite power, and starting the associated EDG. This safety function is unchanged by the proposed setpoint revisions. The revised settings for the degraded voltage protection relays will continue to provide the safety function of protecting the associated Class IE equipment from the effects of a low voltage condition. There is no proposed change to the existing timer setting and the time delays remain within those assumed in the ANO–1 safety analyses. Additionally, the revised allowable voltage settings will not result in any unnecessary isolation from the off-site power sources. Since the proposed change does not adversely impact the mitigating function of the relays, the consequences of an accident previously evaluated remains unchanged.

The ANO–1 technical specifications will continue to require the 4160 V bus loss-of-voltage functions and 480 V bus degraded voltage functions to be surveillance tested at their present frequency without changing the modes in which the surveillance is required or the modes of applicability for these components. The technical specifications will continue to require the same actions as currently exist for the inoperability of one or more of the 4160 V bus loss-of-voltage channels or the 480 V bus degraded voltage channels.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change introduces no new modes of plant operation or new plant configuration that could lead to a new or different kind of accident from any previously evaluated being introduced. The 4160 V vital bus loss-of-voltage protection relays are required to operate following a complete loss of off-site power to initiate the bus power source transfer to on-site power, *i.e.,* the EDGs, to prevent a loss of all AC power. Likewise, the 480 V bus degraded voltage relays are required to operate upon detection of a sustained undervoltage condition to protect the Class IE components from damage from low voltage by initiating transfer of the 4160 V safety bus power source to the EDG. These safety functions are unchanged by the proposed setpoint revisions, and the proposed setpoints continue to provide the required actions consistent with the ANO–1 safety analysis.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The two undervoltage relays located on each 4160 V safety bus are provided to detect loss-of-voltage, isolate the safety buses, initiate load shedding, and start the EDGs. The two undervoltage relays located on each 480 V safety bus are provided to detect sustained undervoltage, isolate the safety buses, and start the EDGs. These safety functions are unchanged by the proposed setpoint revisions. The proposed changes to the allowable values for both loss-of-voltage and degraded voltage relays incorporate channel uncertainties and calibration tolerances, while fully meeting their required safety functions of loss-of-voltage and degraded voltage protection without resulting in undesired tripping of the offsite power source.

The lower loss-of-voltage values do not affect the margin of safety since there is no appreciable time difference in reaching the lower setpoints during a loss-of-voltage event. The maximum proposed time delay allowable value with the minimum loss-of-voltage relay allowable value is within that used in the ANO–1 safety analysis. The revised allowable values for the loss-of-voltage relays will continue to provide the safety function with no appreciable additional time delay. Additionally, the lower voltage settings will help to prevent unnecessary isolation from the off-site power sources due to off-site perturbations in the electrical grid, and thus contribute to increasing the margin of safety. Also, the slightly higher range of allowable values for the degraded voltage settings allows enhanced protection of the Class IE components, but does not result in undesired tripping of the offsite power source for the analyzed grid minimum normal condition. The degraded voltage relays, therefore, also act to contribute to an increased margin of safety.

Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations, Inc. has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 28, 2000.

Description of amendment request: The proposed changes to Arkansas Nuclear One, Unit 1 (ANO–1), Technical Specifications (TS) provide for the implementation of a revised reroll repair process for ANO–1 Once-Through Steam Generators (OTSG). The current TSs limit application of the reroll repair process to repair tubes with defects in the upper tubesheet area only, using a 1 inch roll length, and allow the reroll repair process to be performed only once per steam generator tube. The requested amendment would allow the reroll repair process to be used multiple times for a single tube and would allow the repairs in both the upper and lower tubesheets.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the criteria in 10 CFR 50.92(c).

OTSG tubesheet areas where reroll installation is excluded are specified in Appendix A of topical report BAW–2303P, Revision 4 [A non-proprietary version of the report, BAW–2303NP, Revision 4, ''OTSG Repair Roll Qualification Report,'' was submitted on October 26, 2000.]. The following discussion applies to areas of the OTSG tubesheets where installation of reroll repairs is permitted:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Two types of repair rolls have been developed for installation in the OTSGs, a single 1-inch roll expansion and an overlapping roll consisting of two 1-inch roll expansions. The overlapping roll provides a minimum of 1⅝ inch effective roll expansion. There is an additional ¼-inch roll transition region on each end of the roll expansion and a new leak-limiting pressure boundary is created by the repair roll. Applicable OTSG transient conditions were evaluated to develop a set of bounding test conditions for application to both types of repair rolls. Testing included examination of the effects of crevice deposits, cyclic loading, tube yield strength, differential dilations, axial loads and internal pressure.

Test results conclude that the single 1-inch minimum repair roll is structurally adequate to prevent tube slip during all non-faulted operating transients. A small amount of slippage is acceptable provided the tube does not slip out of the tubesheet and tube bow due to post-faulted transient heatup does not result in tube failure. Exclusion areas are established in the tubesheets to provide assurance that tube will not slip out of the tubesheet . The 1⅝ inch minimum overlapping roll is structurally acceptable based on the bounding evaluation of the single 1-inch repair roll.

Bounding leak rates are applied based on tubesheet depth and radial position. A post-slip leak rate is applied to any location where there is potential for repair roll slip during a postulated accident. The bounding leak rates are very conservative because the leakage is based on test samples with a full circumferential sever outboard of the repair roll. The majority of the degradation in the tubesheets is comprised of short, axial cracks for which the leakage would be much less under axial tensile loads than for the tested severed tube. In addition, repair rolls will actually slip only if the tube is severed outboard of the repair roll. Since the majority of the degradation in the region of the roll joints has been identified as small axial cracks, the probability of the repair roll maintaining structural integrity is very high and the potential for a joint to slip is very low. The leakage from each repair roll that serves as a pressure boundary is added to the leakage from all other sources and the total leakage must be within current accident analysis limits.

The application of the reroll repair process as described in topical report BAW–2303P, Revision 4 will not alter the conditions assumed in the current ANO–1 accident analysis for OTSG tube failures under postulated accident conditions. In addition, the condition of the OTSG tubes in this region are monitored during regular inspection intervals to assess for evidence of degradation. Any degradation noted will be addressed in the operational assessment and appropriate actions taken.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility

of a New or Different Kind of Accident from any Previously Evaluated.

The reroll process establishes a new pressure boundary for the associated tube in the tubesheet region inboard of the flaw. The new roll transition may eventually develop primary water stress corrosion cracking (PWSCC) and require additional repair. Industry experience with roll transition cracking has shown that PWSCC in roll transitions are normally short axial cracks, with extremely low leak rates. The standard MRPC eddy current inspection during the refueling outages have proven to be successful in detecting these defects.

In the unlikely event the rerolled tube failed and severed completely at the heel transition of the reroll region, the tube would retain engagement in the tubesheet bore, preventing any interaction with neighboring tubes. In this case, leakage is minimized and is well within the assumed leakage of the design basis tube rupture accident. In addition, the possibility of rupturing multiple steam generator tubes is unaffected. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The repair roll is applicable to repairing axial, volumetric, or circumferential indications. Testing was conservatively performed with the assumption that the tube is severed at the heel transition (360 degree and 100% through-wall circumferential defect). The joint strength margin (actual load/limiting load) was calculated for each tubesheet depth and radial position for the cooldown transient to ensure margin against slip for non-faulted conditions. All locations showed a joint strength margin less than 0.65 with an acceptable margin less than 1.0.

A tube with degradation can be kept in service through the use of the reroll process. The new roll expanded interface created with the tubesheet satisfies all of the necessary structural and leakage requirements. Since the joint is constrained within the tubesheet bore, there is no additional risk associated with tube rupture. Therefore, the analyzed accident scenarios remain bounding, and the proposed modifications to the reroll process do not reduce the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: November 9, 2000.

Description of amendment request: The proposed amendment requests fourteen of the simpler, generic administrative/editorial/consistency improvements agreed upon between the Nuclear Energy Institute Technical Specification Task Force (TSTF) and the NRC, subsequent to the conversion of the Perry Technical Specifications to the improved Standard Technical Specifications. The proposed amendment requests Perry-specific versions of TSTF 5, ''Delete Notification, Reporting, and Restart Requirements if a Safety Limit is Violated;'' TSTF 32, ''Slow/Stuck Control Rod Separation Criteria;'' TSTF 38, ''Revise Visual Surveillance of Batteries to Specify Inspection is for Performance Degradation;'' TSTF 52, ''Implement 10 CFR Part 50, Appendix J, Option B;'' TSTF 65, ''Use of Generic Titles for Utility Positions;'' TSTF 104, ''Relocate to the Bases the Discussion of Exceptions to Limiting Condition for Operation (LCO) 3.0.4;'' TSTF 106, ''Change to Diesel Fuel Oil Testing Program;'' TSTF 118, ''Administrative Controls Program Exceptions;'' TSTF 152, ''Revise Reporting Requirements to be Consistent with 10 CFR Part 20;'' TSTF 153, ''Clarify Exception Notes to be Consistent with the Requirement being Excepted;'' TSTF 166, ''Correct Inconsistency between LCO 3.0.6 and the Safety Functional Determination Program (SFDP) Regarding Performance of an Evaluation;'' TSTF 258, ''Changes to Section 5.0, Administrative Controls;'' TSTF 278, ''Battery Cell Parameters (LCO 3.8.6) includes more than Table 3.8.6–1 Limits;'' and TSTF 279, ''Remove the Words 'Including Applicable Supports' from the Description of the Inservice Testing Program.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve reformatting and rewording of the existing Technical Specifications to be consistent with regulations or other existing Technical Specifications, or the changes do not involve a change in intent. The proposed changes also involve Technical Specification requirements that are administrative rather than technical in nature. As such, this change does not affect initiators of previously evaluated events, or assumed mitigation of accident or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed changes will not impose new or eliminate old requirements on design or operation of the plant. The administrative changes also do not introduce new initiators of events. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change has no impact on any safety analysis assumptions or design basis margins. This change is administrative in nature. The proposed changes will not impose new or eliminate old requirements on design or operation of the plant. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

GPU Nuclear, Inc., Three Mile Island Nuclear Station, Unit 2, Docket No. 50–320, Dauphine County, Pennsylvania

Date of amendment request: July 25, 2000.

Description of amendment request: The proposed technical specifications change request (TSCR) is to revise Three Mile Island Nuclear Generating Station, Unit 2 (TMI–2), Technical Specification (TS) Section 6.7.2 to eliminate a change associated with periodic reviews of procedures. Currently, TS 6.7.2 states that required procedures shall be reviewed periodically as required by American National Standards Institute (ANSI) N18.7–1976 (a biennial review). This TSCR proposes to revise the wording for TS 6.7.2 to be essentially identical with the Three Mile Island, Unit 1 (TMI–1), TS requirements for procedure reviews, which states that

required procedures shall be revised periodically, as set forth in administrative procedures (currently a biennial review). This TSCR would also be consistent with the TMI–2 Post-Defueling Monitored Storage (PDMS) Quality Assuance (QA) Plan, which states that ''Procedural documentation shall be periodically reviewed for adequacy as set forth in administrative procedures.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Applying the three standards set forth in 10 CFR 50.92, the proposed changes to the Technical Specifications involve no significant hazards consideration. The proposed changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators or assumptions are affected. The proposed changes have no effect on any plant systems. All Limited Conditions for PDMS and Safety Limits specified in the Technical Specifications will remain unchanged.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected. The proposed changes do not alter the source term, containment isolation, or allowable radiological consequences. The change in specified periodic procedure review requirements will have no adverse effect on any plant system.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. The proposed changes have no direct effect on any plant systems. The changes do not affect any system functional requirements, plant maintenance, or operability requirements.

3. Not involve a significant reduction in the margin of safety because the proposed changes do not involve significant changes to the initial conditions contributing to accident severity or consequences. The proposed changes have no direct effect on any plant systems.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 0037.

NRC Section Chief: Michael T. Masnik.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: October 16, 2000.

Description of amendment request: The proposed amendment would incorporate new pressure and temperature (P/T) curves into the Technical Specifications. The reactor pressure vessel P/T limit curves would be updated for inservice leakage and hydrostatic testing, non-nuclear heatup and cooldown, and criticality.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The P/T [pressure and temperature] limits are not derived from Design Basis Accident (DBA) analyses. They are prescribed by the ASME [American Society of Mechanical Engineers] Code and 10 CFR 50 Appendix G and H as restrictions on operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause non-ductile failure of the reactor coolant pressure boundary.

The changes to the calculational methodology for the P/T limits based upon Code Case N–640 continue to provide adequate margin in the prevention of a non-ductile type fracture of the reactor pressure vessel (RPV). The Code Case was developed based upon the knowledge gained through years of industry experience. P/T curves developed using the allowances of Code Case N–640 indeed yield more operating margin. However, the experience gained in the areas of fracture toughness of materials and pre-existing undetected defects shows that some of the existing assumptions used for the calculation of P/T limits are unnecessarily conservative and unrealistic. Therefore, providing the allowances of the Code Case in developing the P/T limit curves will continue to provide adequate protection against non-ductile type fractures of the RPV.

The proposed change will not affect any other system or piece of equipment designed for the prevention or mitigation of previously analyzed events. The change does not adversely affect the integrity of the reactor coolant system such that its function in control of radiological consequences is affected.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The amendment will revise the P/T curves which are established to the requirements of 10 CFR 50, Appendix G to assure that non-ductile fracture of the reactor vessel is prevented.

The proposed change provides more operating margin in the P/T limit curves for inservice leakage and hydrostatic pressure testing, non-nuclear heatup and cooldown, and criticality, with benefits being primarily realized during the pressure tests. The proposed change does not result in any new or unanalyzed operation of any system or piece of equipment important to safety, and as a result, the possibility of a new type event is not created.

(3) The proposed amendment will not involve a significant reduction in a margin of safety. 10 CFR 50, Appendix G specifies fracture toughness requirements to provide adequate margins of safety during operation over the service lifetime. The values of adjusted reference temperature and upper shelf energy are expected to remain within the limits of Regulatory Guide 1.99, Revision 2 and Appendix G of 10 CFR 50 (less than 200 degrees F and greater than 50 ft-lbs respectively) for at least 32 effective full power years (EFPY) of operation.

The proposed change reflects an update of P/T curves based on the latest ASME guidance. The revised P/T curves provide more operating margin and thus, more operational flexibility than the current P/T curves. With the increased operational margin, a reduction in the safety margin results with respect to the existing curves. However, industry experience since the inception of the P/T limits in 1974 confirms that some of the existing methodologies used to develop P/T curves are unrealistic and unnecessarily conservative. Accordingly, ASME Code Case N–640 takes into account the acquired knowledge and establishes more realistic methodologies for the development of P/T curves. Therefore, operational flexibility is gained and an acceptable margin of safety to RPV non-ductile type fracture is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Claudia M. Craig.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: November 29, 1999, as supplemented on November 10, 2000.

Description of amendment request: The licensee submitted a proposed amendment to Kewaunee Nuclear Plant's Technical Specifications (TSs) modifying the TSs to incorporate requested changes per Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal,'' dated June 3, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Shield Building Ventilation, the Auxiliary Building Ventilation, the Spent Fuel Pool Sweep Systems and the Control Room Post Accident Recirculation System are not accident initiators. Therefore, the proposed change will not increase the probability of an accident. The purpose of each of these systems is to mitigate the consequences of an accident once it has occurred. Based upon a comparison, the later version of ASTM D3803, ASTM D3803–89 was found to test the efficiency of the charcoal material under more conservative conditions. By testing the charcoal absorber material under more conservative conditions, the charcoal will require replenishment sooner. Therefore, the consequences will not be increased.

The changes to the basis sections are to promote clarity and uniformity. These statements were previously contained in the basis section or clarify which revision of Regulatory Guide 1.52 that should be used. This change provides acceptable guidelines for the qualification of replacement charcoal absorbent. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request does not change any component at the plant. It is changing the testing requirements for material already installed. The material being tested has not changed. By testing the charcoal material under this revised protocol the material will be replaced with fresh charcoal sooner. This will ensure the equipment performs as described in the USAR.

The changes to the basis sections are to promote clarity and uniformity. These statements were previously contained in the basis section or clarify which revision of Regulatory Guide 1.52 that should be used. This change provides acceptable guidelines for the qualification of replacement charcoal adsorbent. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

There is no reduction in the margin of safety. The efficiency of the charcoal material assumed by the USAR will not change as a result of this amendment and the functioning of the system will not change. Therefore, the original margin of safety is maintained.

The changes to the basis sections are to promote clarity and uniformity. These statements were previously contained in the basis section or clarify which revision of Regulatory Guide 1.52 that should be used. This change provides acceptable guidelines for the qualification of replacement charcoal adsorbent. Therefore, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: Claudia M. Craig.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: October 12, 2000.

Description of amendment request: In accordance with 10 CFR 50.59, the topical report WPSRSEM–NP, ''Reload Safety Evaluation Methods for Application to Kewaunee,'' Revision 3, is being submitted for the staff's review and approval since the licensee determined the revision of the report involved an unreviewed safety question. The topical report is intended to be applicable to Kewaunee reload cycles after and including Cycle 25, presently scheduled to commence in the fall of 2001. The topical report reflects:

- Editorial changes, including corrections to the limiting directions of core physics parameters and clarification of the definition of core physics parameters.
- Changes made to incorporate the CONTEMPT code for containment analysis. CONTEMPT is currently described for this purpose in the Kewaunee updated safety analysis report (USAR).
- The adoption of the GOTHIC code for containment analysis.
- Changes in Reload Safety Evaluation Methods due to Large Break Loss-of-Coolant Accident Upper Plenum Injection Analysis.
- The adoption of RETRAN–3D for use in the 2D mode for system analysis.
- The extension of the VIPRE–01 code to reflect changes in fuel design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Analysis methods are not accident initiators, therefore, changes in analysis methods will not increase significantly the probability of occurrence or the consequences of an accident previously evaluated.

The changed analysis methods are conservative and conform to industry standards for analysis methods that are applied to design basis safety analyses. Benchmark analyses have demonstrated good agreement between the changed analysis methods and the current analysis of record (AOR) methods. The safety analysis results using the changed analysis methods are shown to satisfy all applicable design and safety analysis acceptance criteria. The demonstrated adherence to safety analysis acceptance criteria precludes new challenges to components and systems that could adversely affect the ability of existing components and systems to mitigate the consequences of any accident or adversely affect the integrity of any fission product barrier.

Analysis methods changes will not impact plant equipment important to safety. Equipment important to safety will continue to operate within its design capabilities. The analysis methods changes also do not affect the plant configuration or the overall plant performance capabilities.

Therefore, the changes will not increase probability or the consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change is a change to the analysis methods, which are applied to Kewaunee. Analysis methods are not accident initiators. The changed analysis methods are applied to the accidents that are the established design basis accidents for Kewaunee. Analysis methods changes will not impact plant equipment important to safety. Equipment important to safety will continue to operate within its design capabilities. The analysis methods changes also do not affect the plant configuration or the overall plant performance capabilities.

As demonstrated by the benchmark reports the methodologies provide a more accurate but still conservative representation of expected plant response following a design basis accident. Since the new methodologies are conservative with respect to actual expected plant response the changes will not create the possibility of an accident of a different type than any previously evaluated.

(3) Involve a significant reduction in the margin of safety.

The proposed changes are changes to the analysis methods, which are applied to Kewaunee design basis safety analyses. The revised analysis methods have been verified through benchmark analyses against the current Analysis of Record methods. The analysis methods are conservative and appropriate for application to Kewaunee design basis analyses. Safety analysis acceptance criteria are satisfied when the changed analysis methods are applied to the Kewaunee design basis safety analyses. Demonstrated adherence to safety analysis acceptance criteria using the new analysis methods assures that Technical Specification limits will be satisfied during operation with the changed analysis methods.

Therefore, the margin of safety as defined in the basis of any Technical Specification will not be reduced significantly because of these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: Claudia M. Craig.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: November 10, 2000.

Description of amendment request: The proposed amendment is to revise several sections of the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TSs). These sections include administrative changes, Table 4.1–1, and Sections 1.0, 6.4, and 6.10.

Administrative changes are submitted with this proposed amendment to correct minor typographical errors in the Table of Contents and among these changes are renumbering the index section pages and the addition of previously omitted sections.

The proposed changes will modify TS Table 4.1–1, ''Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels.'' This proposed change will decrease the calibration frequency for Turbine First Stage Pressure to support KNPP's 18-month operating cycle, and modify the table to eliminate a note that could lead to non-conservative calibration frequency.

The proposed TS Section 1.0, ''Definitions,'' will incorporate a line item improvement to provide additional clarification on channel calibration.

The proposed TS Section 6.4, ''Training,'' will remove the title of director for the KNPP training program and relocate the title reference to the Operational Quality Assurance Program Description (OQAPD).

The proposed TS Section 6.10, ''Record Retention,'' will revise the off-site review committee title.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

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The proposed changes are administrative in nature and, therefore, have no impact on accident initiators or plant equipment, and thus do not affect the probability or consequences of an accident.

TS Section 1.0, ''Definitions''

A calibration will continue to ensure that a channel is within specification. Furthermore, calibration methodology is not an accident initiator. Therefore, the proposed change will not significantly raise the probability or consequences of an accident previously evaluated.

TS Table 4.1–1

The proposed change amends the calibration interval of the turbine first stage pressure from 12 months to each refueling cycle to coincide with KNPP's operating cycle. Calibration frequency would not change the consequence of a failure of the first stage pressure channel. Calibration frequency is not an accident initiator. Therefore, the proposed changes will not significantly raise the probability or consequences of an accident previously evaluated. Additionally, this change is consistent with the turbine first stage pressure calibration frequency stated in STS.

The proposed changes to the identified line items in Table 4.1–1 will require calibration of the instruments on a refueling cycle interval without exception. These calibration frequencies are not accident initiators and thus do not affect the probability of an accident. These changes are more conservative than existing TS and, therefore, will not increase the consequences of an accident.

TS Section 6.4, ''Training''

The proposed change will not change the intent of the TS. Removing the title from the TS is administrative in nature and, therefore, has no impact on accident initiators or plant equipment, and thus does not affect the probability or consequences of an accident.

TS Section 6.10, ''Record Retention''

The proposed change will not change the intent of the TS. Changing the title of the off-site review committee is administrative in nature and, therefore, has no impact on accident initiators or plant equipment, and thus does not affect the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

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The proposed changes do not involve changes to the physical plant or operations. Since these administrative changes do not contribute to accident initiation, they do not produce a new accident scenario or produce a new type of equipment malfunction. Also, these changes do not alter any existing accident scenarios; they do not affect equipment or its operation, and thus, do not create the possibility of a new or different kind of accident.

TS Section 1.0, ''Definitions''

The proposed TS change to channel calibration will not introduce any new equipment or result in existing equipment functioning differently from that previously evaluated in the USAR or TS. Calibration will continue to ensure that the channel is within specification and capable of performing its design basis function. No new accident is introduced and no safety-related equipment or safety functions are altered. Therefore, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any accident.

TS Table 4.1–1

The proposed TS change will not introduce any new equipment or result in existing equipment functioning differently from that previously evaluated in the USAR or TS. The proposed change amends the calibration interval of the turbine first stage pressure from 12 months to each refueling cycle to coincide with KNPP's operating cycle. Performing the surveillance during refueling will decrease the likelihood for an induced transient. Expanding the calibration frequency will not affect the performance of the first stage pressure channel. A review of turbine first stage pressure calibration results for the last three years concluded no adjustment of the instrument was necessary due to little or no drift. Furthermore, similar transmitters already calibrated on a refueling basis have remained within acceptable limits. These results indicate stable instrument performance to support extending calibration frequency from 12 months to each refueling cycle.

The proposed changes will ensure that the affected channels are calibrated on a refueling basis. These changes will not introduce any new equipment or result in existing equipment functioning differently from that previously evaluated in the USAR or TS. No new accident is introduced and no safety-related equipment or safety functions are altered. The proposed changes do not affect any of the parameters or conditions that contribute to initiation of any accident.

TS Section 6.4, ''Training''

The proposed change does not involve a change to the physical plant or operations. Since an administrative change does not contribute to accident initiation, it does not produce a new accident scenario or produce a new type of equipment malfunction.

TS Section 6.10, ''Record Retention''

The proposed change does not involve a change to the physical plant or operations. Since an administrative change does not contribute to accident initiation, it does not produce a new accident scenario or produce a new type of equipment malfunction.

3. Involve a significant reduction in the margin of safety.

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Administrative changes do not involve a significant reduction in the margin of safety. The proposed changes do not affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by these changes.

TS Section 1.0, ''Definitions''

Operation of the facility in accordance with this proposed TS change would not involve a significant reduction in a margin of safety. The specification will still ensure the operability of channels requiring calibration.

TS Table 4.1–1

Operation of the facility in accordance with the proposed TS changes would not involve a significant reduction in the margin of safety. The calibration will continue to verify the operability of the turbine first stage pressure channels. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Operation of the facility in accordance with the proposed TS changes would not involve a significant reduction in a margin of safety. The proposed changes will ensure the continued reliability of the instruments. This change is more conservative than existing TS and is consistent with STS.

TS Section 6.4, ''Training''

Administrative changes do not involve a significant reduction in the margin of safety. The proposed change does not affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this change.

TS Section 6.10, ''Record Retention''

Administrative changes do not involve a significant reduction in the margin of safety. The proposed change does not affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: Claudia M. Craig.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: March 20, 2000.

Description of amendment request: The proposed amendment would revise the Susquehanna Steam Electric Station (SSES), Unit 2, Technical Specification 2.1.1.2, minimum critical power ratio (MCPR) safety limits. These safety limits are being revised to reflect planned changes to the core composition for the next operating cycle and to support a separate license amendment proposing an increase in the SSES, Unit 1 and 2, rated thermal power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes in MCPR Safety Limits do not affect any plant system or component (except the reactor core) and therefore does not increase the probability of an accident previously evaluated.

A Unit 2 Cycle 11 MCPR Safety Limit analysis was performed for PPL by SPC [Siemens Power Corporation]. This analysis used NRC approved methods as required by SSES Technical Specifications. For Unit 2 Cycle 11 [U2C11], the critical power performance of the ATRIUM™–10 fuel was determined using the NRC approved ANFB–10 correlation. Also, the analysis for U2C11 supports a Core Thermal Power of 3493 MWt which is a 1.5% increase over U2C10 (3441 MWt). The Safety Limit MCPR calculations statistically combine uncertainties on feedwater flow, feedwater temperature, core flow, core pressure, core power distribution, and uncertainties in the Critical Power Correlation. The SPC analysis used cycle specific power distributions and calculated MCPR values such that at least 99.9% of the fuel rods are expected to avoid boiling transition during normal operation or anticipated operational occurrences. The resulting two-loop and single-loop MCPR Safety Limits are included in the proposed Technical Specification change. Thus, the cladding integrity and its ability to contain fission products are not adversely affected. It is therefore concluded that the proposed change does not increase the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed changes to the Unit 2 Technical Specifications (MCPR Safety Limits) do not affect any plant system or component and do not affect plant operation. The consequences of transients and accidents will remain within the criteria approved by the NRC. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Since the proposed changes do not affect any plant system or component, and do not have any impact on plant operation, the proposed changes will not affect the function or operation of any plant system or component. The consequences of transients and accidents will remain within the criteria approved by the NRC. The proposed MCPR Safety Limits do not involve a significant reduction in the margin of safety as currently defined in the bases of the applicable Technical Specification sections. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Marsha Gamberoni.

Southern California Edison Company, et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit 1, San Diego County, California

Date of amendment requests: October 30, 2000–PCN 268.

Description of amendment requests: This amendment application requests to delete license condition 2.C(3) related to fuel transshipments between San Onofre Nuclear Generating Station, Unit 1 (SONGS 1), which is in the process of decommissioning, and SONGS Units 2 or 3 since such transshipments will no longer be made. In addition, the amendment application requests revisions to the Unit 1 defueled Technical Specifications to (1) remove the spent fuel pool (SFP) temperature limits and related cooling system operability requirements, (2) remove the SFP auxiliary feedwater storage tank makeup water requirements and related surveillance requirements, (3) change the SFP water level limit for conditions other than spent fuel movement, and (4) change the operator staffing requirements for the decommissioning control room. As a result of these proposed changes, the licensee also proposes to delete the definitions of FUNCTIONAL and SPENT FUEL POOL COOLING TRAIN and revise the table of contents and list of tables according to the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change is a request to revise the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1) license and permanently defueled technical specifications. The license condition for transshipment is being deleted since there is no safety-related equipment to protect and no plans for transshipment of SONGS 1 fuel to SONGS 2 or 3. Since the purpose of removing this license condition is that this activity will

no longer be performed, there is no impact on accident probability or consequences. Deleting the technical specifications for spent fuel pool temperature and makeup are based on the current benign status of the spent fuel and spent fuel pool. The requirements and surveillances provided by these technical specifications no longer provide appropriate limits for the safe storage of the spent fuel. The spent fuel temperature limit cannot be reached. Makeup water is available from various sources onsite and offsite in a timely manner. Deleting these technical specifications has no impact on the probability or consequences of an accident. Modifying the spent fuel pool water level requirements provides two levels for maintaining water: One water level (elevation 28' [feet]) for just storage and a higher water level (elevation 40′ 3″ [inches]) for fuel movement. Lowering the water level for storage of spent fuel does not affect the accident probability. The fuel handling accident will not occur when the pool water level is at elevation 28 feet since spent fuel will only be handled when the pool water level is at elevation 40′ feet 3″. Removing the restrictions for having one individual of the minimum shift crew located in the control room will not have any impact on the fuel handling accident since a certified fuel handler is still required to be present.

Therefore, this change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different type of accident from any accident previously evaluated?

No. This proposed change is a request to revise the SONGS 1 license and permanently defueled technical specifications. The transshipment license condition is being deleted since there is no safety-related equipment to protect and no plans for transshipment of Unit 1 spent fuel to Units 2 or 3. The technical specifications for spent fuel pool temperature and makeup are being deleted since these requirements no longer provide limits appropriate for maintaining the spent fuel pool. Removing these requirements does not create the possibility for a new or different accident since the associated limits are no longer attainable by the spent fuel pool. The only potential accident remaining is the spent fuel handling accident. Lowering the level of the spent fuel pool to elevation 28 feet has no impact on accident initiations since fuel handling will not be allowed at this water level. Removing the restrictions in the location of the minimum shift crew has no impact on accident initiation, and the certified fuel handler will be present during fuel handling operations.

Therefore, this change does not involve the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

No. This proposed change is a request to delete requirements from the license and the technical specifications and modify the spent fuel pool level requirements. Deleting the transshipment license condition has no impact on margin since there no longer is any safety-related equipment to protect and there are no plans for transshipment of Unit 1 spent fuel to Units 2 or 3. Deleting the spent fuel pool temperature and makeup requirements has no effect on margin since the status of the spent fuel pool is such that the margins associated with these requirements have increased and with time will continue to increase. Modifying the level requirement to allow the water level to be at elevation 28 feet for spent fuel storage has no impact on margin since the spent fuel has cooled significantly and fuel movement will not occur at this level. Since the status of the spent fuel pool is such that the margins are improving with time, removing the restrictions in the location of the minimum shift crew has no effect on the margins.

Therefore, this change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. The staff also reviewed the proposed administrative changes to delete definitions and conform the table of contents and list of tables to the proposed changes for no significant hazards consideration. These administrative changes do not affect the design or operation of the facility and satisfy the three standards of 10 CFR 50.92(c). Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Michael Masnik (Unit 1).

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia

Date of application for amendments: October 5, 2000.

Brief description of amendments: The amendments revise the VEGP Updated Final Safety Analysis Report (UFSAR) Chapters 11 and 15 to incorporate changes due to an updated Dose Equivalent Iodine analysis. The new analysis was performed in response to Westinghouse Nuclear Safety Advisory Letter, ''NSAL–00–04: Nonconservatisms in Iodine Spiking Calculations.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated in the [Updated Final Safety Analysis Report] UFSAR. The comprehensive engineering review included evaluations or reanalysis of all accident analyses. The letdown flow rate does not initiate any accident; therefore, the probability of an accident has not been increased. All dose consequences have been analyzed or evaluated with respect to the proposed changes, and all acceptance criteria continue to be met. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not create the possibility of a new or different kind of accident than any accident already evaluated in the UFSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The changes have no adverse effects on any safety-related system and do not challenge the performance or integrity of any safety-related system. Therefore, all accident analyses criteria continue to be met, and these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

The proposed changes do not involve a significant reduction in a margin of safety. All analyses and evaluations using these inputs have been revised to reflect the proposed values. The evaluations and analyses results demonstrate that applicable acceptance criteria are met. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: November 3, 2000.

Description of amendment request: The proposed amendments would revise Technical Specification 5.5.11, ''Technical Specification Bases Control Program,'' to provide consistency with the changes to 10 CFR 50.59 which were published in the **Federal Register** (64 FR 53582) on October 4, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change deletes the reference to unreviewed safety question as defined in 10 CFR 50.59. Deletion of the definition of unreviewed safety question was approved by the NRC with the revision of 10 CFR 50.59. Consequently, the probability of an accident previously evaluated is not significantly increased. Changes to the TS Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the consequences of any accident previously evaluated are not significantly affected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously analyzed?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no direct effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the critieria in paragraph 10 CFR 50.59(c)(2) will still require NRC approval pursuant to 10 CFR 50.59. This change is administrative in nature based on the revision to 10 CFR 50.59. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 6, 2000.

Brief description of amendments: The request revises the VEGP Technical Specification (TS) Limiting Conditions for Operation 3.7.10, 3.7.11, and 3.7.13 to address degraded pressure boundaries. The changes revise the TS to allow the pressure boundaries of ventilation systems such as the Control Room Emergency Filtration System (CREFS) and the Piping Penetration Area Filtration and Exhaust System (PPAFES) to be opened intermittently under administrative controls. A new condition is also added that allows 24 hours to restore inoperable CREFS and PPAFES pressure boundaries before requiring the units to perform an orderly shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The control room emergency filtration system (CREFS) and the piping penetration area filtration and exhaust system (PPAFES) are not assumed to be initiators of any analyzed accident. Therefore, the proposed changes do not affect the probability of any accident previously evaluated. The proposed changes for the CREFS and PPAFES Technical Specifications (TS) would permit the subject pressure boundaries to be opened intermittently under administrative control. Based on the proposed compensatory measures in the form of a dedicated individual who is in communication with the control room, and his ability to rapidly restore the pressure boundary, the capability to mitigate a design basis event will be maintained. In addition, the proposed changes would add a new condition that would permit a 24-hour period to take action to restore an inoperable pressure boundary to operable status, modify existing conditions to accommodate the new condition (so as to maintain the requirements of the existing conditions), and correct a typographical error. With respect to CREFS, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated based on the availability of a self-contained breathing apparatus to minimize radiological dose due to iodine and the ability to operate more than one train as the need arises to maintain positive pressure or at least maintain an outflow of air from the control room environment. With respect to the PPAFES, it has been demonstrated by analysis that a breach of the pressure boundary will not result in control room or offsite doses that exceed their respective limits. The correction of the typographical error is an administrative change that has no technical impact.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed changes for the CREFS and PPAFES TS would permit the subject pressure boundaries to be opened intermittently under administrative control. In addition, the proposed changes would add a new condition that would permit a 24-hour period to take action to restore an inoperable pressure boundary to operable status, modify existing conditions to accommodate the new condition (so as to maintain the requirements of the existing conditions), and correct a typographical error. The proposed changes do not alter the operation of the plant or any of its equipment, introduce any new equipment, or result in any new failure mechanisms or single failures. Therefore, there is no potential for a new accident and no changes to the way that an analyzed accident will progress. The correction of the typographical error is an administrative change that has no technical impact.

3. Do the proposed changes result in a significant reduction in a margin of safety?

No. The proposed changes for the CREFS and PPAFES TS would permit the subject pressure boundaries to be opened intermittently under administrative control. In addition, the proposed changes would add a new condition that would permit a 24-hour period to take action to restore an inoperable pressure boundary to operable status, modify existing conditions to accommodate the new condition (so as to maintain the requirements of the existing conditions), and correct a typographical error. The proposed changes do not adversely affect the ability of the fission product barriers to perform their functions. The only safety-related equipment affected by the proposed changes is the CREFS and the PPAFES. It has been demonstrated by analysis that a breach in the pressure boundary of the PPAFES will not cause the control room or offsite doses to exceed their respective limits. Adequate compensatory measures are available to mitigate a breach in the CREFS pressure boundary. The probabilities of design bases accidents that would place demands on these systems during a period that the ventilation system pressure boundaries would be allowed to be inoperable have been shown to be negligible. In addition, the proposed changes avoid the potential of placing one or both units in TS Limiting Condition for Operation (LCO) 3.0.3 solely due to a breach of the ventilation system pressure boundary. The correction of the typographical error is an administrative change that has no technical impact.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 16, 2000.

Brief description of amendments: The request proposes to amend Technical Specification 5.5.1, '' Technical Specification Bases Control Program'' to provide consistency with the changes to 10 CFR 50.59 as published in the **Federal Register** (64 FR 53582) dated October 4, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change deletes the reference to unreviewed safety question as defined in 10 CFR 50.59. Deletion of the definition of unreviewed safety question was approved by the NRC with the revision of 10 CFR 50.59. Consequently, the probability of an accident previously evaluated is not significantly increased. Changes to the TS Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the consequences of any accident previously evaluated are not significantly affected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously analyzed?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no direct effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the criteria in paragraph 10 CFR 50.59 (c)(2) will still require NRC approval pursuant to 10 CFR 50.59. This change is administrative in nature based on the revision to 10 CFR 50.59. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

Tennessee Valley Authority, Docket No. 50–260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: November 21, 2000 (TSC–396).

Description of amendment request: The proposed amendment would revise the reactor core Safety Limit Minimum Critical Power Ratio (SLMCPR) specified in Technical Specification (TS) Section 2.1.1.2 from 1.10 to 1.07 for two reactor recirculation loop operation and from 1.12 to 1.10 for single loop operation. The change is based on use of newly approved analytical methodology for the Cycle 12 reload analysis. This methodology is described in Global Nuclear Fuels (GNF) licensing document, ''General Electric Standard Application for Reactor Fuel, GESTAR-II, Amendment 25,'' dated June 2000, which has been approved by NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment establishes revised SLMCPR values for two recirculation loop operation and for single recirculation loop operation. The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The proposed SLMCPRs preserve the existing margin to transition boiling and the probability of fuel damage is not increased. Since the change does not require any physical plant modifications or physically affect any plant components, no individual precursors of an accident are affected and the probability of an evaluated accident is not increased by revising the SLMCPR values.

The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. The revised SLMCPRs have been performed using NRC-approved methods and procedures. The basis of the MCPR [minimum critical power ratio] Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. These calculations do not change the method of operating the plant and have no effect on the consequences of an evaluated accident. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license amendment involves a revision of the SLMCPR for two recirculation loop operation and for single loop operation based on the results of an analysis of the Cycle 12 core. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in the allowable methods of operating the facility. This proposed license amendment does not involve any modifications of the plant configuration or changes in the allowable methods of operation. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS bases will remain the same. The new SLMCPRs are calculated using NRC-approved methods and procedures which are in accordance with the current fuel design and licensing criteria. The SLMCPRs remain high enough to ensure that greater than 99.9% of all fuel rods in the core are

expected to avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 25, 2000.

Description of amendment request: The proposed change would revise the 125 volt DC (Vdc) station battery system Technical Specifications (TSs) to reflect the availability of a second, fully qualified charger, for each main station battery system. The licensee also proposed corresponding changes to the listing of components in the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of the Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no change in the method of operation of the 125 Vdc main station battery systems by this change. The battery chargers will function the same, except that an additional battery charger will be available to each system. No change to accident assumptions or precursors are involved with this change. Likewise, no change in system operation or response to analyzed events is affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The new chargers to be installed will provide additional charging capability. No reduction in DC system equipment operation or capability is involved. The methods by which the DC systems perform their safety functions are unchanged and remain consistent with current safety analysis assumptions. There is no change in system or plant operation that involves failure modes other than those previously evaluated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

No adverse affect on equipment operation or capability will result from this change. The installation of additional chargers in fact enhances the reliability of the battery charging function. The equipment fed by the DC systems involved in this change will continue to provide adequate power to safety related loads in accordance with analysis assumptions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: November 1, 2000.

Description of amendment request: The proposed change would revise the operability requirement for high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) low steam line pressure isolation instrumentation to coincide with system operability requirements. The proposed change eliminates the need to open manual containment isolation valves under administrative control during reactor heatup, reduces the potential for operator error when closing these valves (potential for leaving valve mispositioned) and clarifies the steam line low pressure isolation function description. An administrative change to correct the HPCI High Steam Line d/p instrument component numbers was also proposed to ensure the accuracy of isolation instrumentation information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of the Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change clarifies the equipment protection purpose of the HPCI and RCIC low steam line isolation function. [The proposed change would require] operability of the steam supply pressure instrumentation [ ] whenever the systems are required to be operable. This change does not significantly alter the function of containment isolation actuation instruments nor does it significantly alter containment integrity requirements. The proposed change does not alter the basic operation of process variables, systems, or components as described in the safety analysis. No new equipment is being introduced.

The proposed change does not affect the ability of the primary containment isolation system or high pressure core cooling systems to perform their safety functions. The essential safety function of providing primary containment integrity is maintained since operability of the primary instrumentation associated with detection of a HPCI or RCIC steam line break outside containment will continue to be required when primary containment integrity is required. The essential safety function of providing water to cool the core in the event of a small break in the nuclear system is maintained. The operational change being made would not alter the sequence of events, plant response, or conclusions of existing safety analyses. This proposed change results in no impact on analyzed accident event precursors, initiators or effects.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. No new or different types of equipment will be installed. Operation with the HPCI and RCIC steam line isolation valves open between 212 °F and 150 psig does not alter the input or result of existing accident analyses. The change in plant operation does not involve failure modes other than those previously evaluated. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The change involves operation with the HPCI and RCIC systems with steam line isolation valves open between 212 °F and 150 psig. This change will not alter the basic operation of process variables, systems, or components as described in the safety analysis. No new equipment is introduced.

The proposed change maintains design margins of the primary containment isolation system or high pressure core cooling systems to perform their required safety functions. The essential safety functions of providing primary containment integrity and providing water to cool the core in the event of a small break in the nuclear system are maintained. There is no physical or operational change being made which would alter the sequence of events, plant response, or margins in existing safety analyses. This proposed change results in no impact on analyzed accident event precursors or effects.

This proposed change does not alter the physical design of the plant. The change in method of operation results in no significant impact on safety functions or assumed responses. The proposed change does not alter the means by which primary containment isolation is maintained and high pressure core cooling systems are operated.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 27, 2000, as supplemented November 21, 2000.

Description of amendment request: The proposed changes will increase the fuel enrichment limit from 4.3 weight percent to 4.6 weight percent Uranium^{235} (U^{235}), establish Technical Specifications to control the boron concentration in the spent fuel pool (SFP) and impose restrictions on the storage locations for some spent fuel assemblies, and change the method of criticality calculation used to evaluate the effect of a fuel enrichment change on the SFP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1.] Criterion 1. The proposed increase in maximum fuel enrichment and the changes to the SFP design basis will not significantly increase the probability of or consequences of an accident previously evaluated in the North Anna Units 1 and 2 UFSAR [Updated Final Safety Analysis Report].

The only accidents for which the probability of occurrence is potentially affected by the fuel enrichment and SFP changes involve criticality events during fuel handling and storage (e.g., fuel mispositioning). The proposed Technical Specifications establish additional restrictions on the placement of each fuel assembly in the SFP to ensure subcriticality. However, criticality safety analyses have been performed that demonstrate that the K_{eff} during the handling and storage of both new and spent fuel remains low enough to ensure subcriticality during postulated accident conditions. In addition, analyses of the dilution of the spent fuel pool have been performed to ensure that there is adequate time for a dilution event to be detected and mitigated, such that the required subcritical margin is maintained in the spent fuel pool. Therefore the probability of occurrence of criticality during fuel handling or storage is not significantly increased. In addition the consequences of the operating reactor accident scenarios are also unchanged, because the source terms used to determine the releases from fuel during accidents are a function of burnup, rather than initial enrichment.

[2.] Criterion 2. The proposed increase in maximum fuel enrichment or the change in the SFP design basis does not create a new or different kind of accident from any already discussed in the North Anna Units 1 and 2 UFSAR.

Although there are new restrictions on placement of fuel in the SFP, the administrative controls on fuel movement to specified locations in the pool are unchanged. The higher enrichment fuel and the new Technical Specifications for the spent fuel pool do not require any new or different plant equipment, and do not change the manner in which currently installed equipment is operated. There are no changes to normal core operation, and the units will meet all applicable design criteria and will operate within existing Technical Specifications limits. No new failure modes have been created for any system, component, or piece of equipment, and no new single failure mechanisms have been introduced. No new or different plant equipment is introduced, and the operation of currently equipment is not changed. The use of a higher maximum fuel enrichment will not cause the design criteria for fuel operation or storage to be exceeded. No new modes or limiting single failures are created by the use of a higher fuel enrichment. Safety analyses for the fuel storage area have demonstrated that subcriticality will be maintained during fuel handling and storage, including fuel mispositioning and pool dilution scenarios.

[3.] Criterion 3. The proposed increase in maximum fuel enrichment and the changes to the SFP design basis will not significantly reduce the margin of safety.

The use of higher enriched fuel and the changes to the SFP design basis have the potential to affect only criticality events during fuel handling and storage. Criticality analyses demonstrate that the limits on K_{eff} for the new and spent fuel storage areas will be satisfied. Therefore, there is adequate margin to ensure subcriticality during the storage and handling of fuel. The requirements of 10 CFR 50 Appendix A General Design Criterion 62 are satisfied. Safety analyses demonstrated that K_{eff} will remain sufficiently low to ensure subcriticality, so no new releases will result and there is no impact on radiological consequences of accidents. The safety analyses of record will remain applicable for the operation of fuel with a higher initial U^{235} enrichment and changes to the spent fuel pool. Therefore, the margin of safety is not affected by the proposed increase in initial fuel enrichment or changes to the spent fuel pool design basis.

Based on the evaluations and analyses results presented in the foregoing safety significance evaluation, it has been demonstrated that increasing the North Anna Units 1 and 2 maximum initial fuel enrichment to 4.6 weight percent U^{235} and changing the design basis of the spent fuel pool to eliminate any credit for Boraflex but take credit for soluble boron in the pool will not result in a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination,

and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 27, 2000.

Brief Description of amendments: The amendments change the Technical Specifications to allow one of each unit's Direct Current power subsystems to be inoperable when in Modes 4 and 5, and during movement of irradiated fuel assemblies in the secondary containment.

Date of issuance: November 29, 2000.

Effective date: November 29, 2000.

Amendment Nos.: 211 and 238.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register**: September 20, 2000 (65 FR 56948). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 29, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 1, 2000.

Brief description of amendments: The amendments revise TS Section 3.7.15 and associated Bases, and Section 4.0 for the McGuire Nuclear Stations, Units 1 and 2, to allow the use of credit for soluble boron in spent fuel pool criticality analyses. The request is based on the NRC-approved Westinghouse Owners Group Topical Report WCAP–14416–NP–A, which provides generic methodology for crediting soluble boron.

Date of issuance: November 27, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 197 and 178.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 18, 2000 (65 FR 62385). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 27, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: October 18, 2000.

Brief description of amendments: The amendments revise the implementation date of Amendment Nos. 312, 312, and 312 from November 30, 2000, so that implementation will be on or before implementation of amendments resulting from the application that must be submitted by April 5, 2001. This submittal will be based on an engineering study that is being conducted to evaluate both the appropriate Keowee Hydro Unit out-of-tolerance surveillance criteria and resolve overshoot concerns.

Date of Issuance: November 27, 2000.

Effective date: As of the date of issuance.

Amendment Nos.: 317/317/317.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Implementation Date.

Date of initial notice in **Federal Register**: October 25, 2000 (65 FR 63896). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 27, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 25, 2000.

Brief description of amendment: The amendment changed the action statements for Technical Specification (TS) 3.8.2.2, A.C. Distribution—Shutdown, and TS 3.8.2.4, DC Distribution—Shutdown, by replacing the requirement to establish containment integrity within eight hours with a requirement to immediately suspend core alterations, the movement of irradiated fuel assemblies, and any operations involving positive reactivity additions. Related changes to the associated Bases were also made.

Date of issuance: November 28, 2000.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 227.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 12, 2000 (65 FR 43045). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 2000.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: May 31, 2000.

Brief description of amendment: The Technical Specifications (TS) were revised by adding an additional Condition to ITS 3.3.11, Emergency Feedwater Initiation and Control System Instrumentation, regarding the required action to be taken for one or more Emergency Feedwater Initiation and Control System channels when up to two Reactor Coolant Pump status signals are inoperable.

Date of issuance: November 21, 2000

Effective date: November 21, 2000

Amendment No.: 194.

Facility Operating License No. DPR–72: Amendment revised the TS.

Date of initial notice in **Federal Register**: July 12, 2000 (65 FR 43047). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: June 8, 2000.

Brief description of amendments: The amendments allow the use of probabilistic risk assessment (PRA) techniques in evaluating the need for tornado-generated missile barriers; this provides an alternative to installing physical missile protection for those structures, systems, and components that are not physically protected from tornado-generated missiles.

Date of issuance: November 17, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 247 and 228.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments approved revision of the UFSAR.

Date of initial notice in **Federal Register**: July 12, 2000 (65 FR 43049). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 17, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: September 1, 2000, as supplemented October 27, 2000.

Brief description of amendments: The licensee proposed the following three changes:

(1) A one-time change to Unit 1 Technical Specification (TS) Surveillance Requirement (SR) 4.6.1.2 to add the following: ''A one-time exception to the requirement to perform post-modification Type A testing is allowed for the steam generators and associated piping, as components of the containment barrier. For this case, American Society of Mechnical Engineers (ASME) Section XI leak testing will be used to verify leak tightness of the repaired or modified portions of the containment barrier. Entry into MODES 3 and 4 following the extended outage that commenced in 1997, may be made to perform this testing.''

(2) A change to Unit 1 and Unit 2 TS SR 4.6.1.2 to add the phrase ''except as modified by NRC-approved exemptions'' to the requirement to perform testing in accordance with 10 CFR Part 50, Appendix J, Option B, and the September 1995 version of Regulatory Guide 1.163.

(3) A change to the Unit 1 and Unit 2 Bases TS SR 4.6.1.2 to add the phrase ''Regulatory Guide 1.163, dated September 1995, and Nuclear Energy Institute (NEI) document NEI 94–01, except as modified'' after the surveillance testing for measuring leakage rates are consistent with the Appendix ''J'' of 10 CFR Part 50.

Date of issuance: November 17, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 248 and 229.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 20, 2000 (65 FR 56953). The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 17, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: April 6, 2000, as supplemented November 13, 2000.

Brief description of amendments: The amendments would approve changes involving unreviewed safety questions to the Updated Final Safety Analysis Report to incorporate new methodology to be used in the analysis of high-energy line breaks at D. C. Cook.

Date of issuance: November 21, 2000.

Effective date: As of the date of issuance.

Amendment Nos.: 249 and 230.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 23, 2000 (65 FR 51355). The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 21, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: October 18, 2000, as supplemented November 10, 2000.

Brief description of amendments: The amendments revise Technical Specifications (TSs) 3/4.7.1.2, ''Auxiliary Feedwater [AFW] System,'' to change the description in the TSs surveillance requirement (SR) 4.7.1.2.d of the position for each automatic valve in the AFW system from the ''fully open'' position to the ''correct'' position.

Date of issuance: November 30, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 250 and 231.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 25, 2000 (65 FR 63899) The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 30, 2000.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 20, 2000, as supplemented on September 25, 2000.

Description of amendment request: The amendment revises the Technical Specifications (TS) by removing the prescriptive requirement for determining the reactor coolant system flow rate by precision heat balance in Surveillance Requirement 4.2.5.3. The amendment also revises TS Table 2.2–1 to reflect the allowed calibration tolerance of the protection racks and noting that the Trip Setpoint for Functional Unit 12, Reactor Coolant Flow-Low reactor trip is based on an indicated value rather than a measured value.

Date of issuance: October 26, 2000.

Effective date: As of its date of issuance, and shall be implemented at commencement of Cycle 8 operation (scheduled for November 2000).

Amendment No.: 77.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 2000 (65 FR 48753) The supplemental letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendments: June 6, 2000.

Brief description of amendment: The amendment deletes or modifies license conditions and confirmatory orders to reflect the permanently defueled condition of the unit.

Date of Issuance: November 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 108.

Facility Operating License No. DPR–21: The amendment revised the Facility Operating License.

Date of initial notice in **Federal Register:** July 26, 2000 (65 FR 46010). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 2000.

No significant hazards consideration comments received: No.

Nuclear Management Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: May 12, 2000.

Brief description of amendment: The amendment revises the Technical Specification 4.6.E.1.d safety/relief valve bellows monitoring system test frequency from quarterly to once per operating cycle.

Date of issuance: November 30, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 114.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 28, 2000 (65 FR 39959). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 2000.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: December 21, 1999, as supplemented May 2, 2000

Brief description of amendments: These amendments incorporate changes to the Technical Specifications (TSs) to more clearly define the requirements for service water (SW) system operability in accordance with the system configuration assumed in the SW system analysis. The application dated December 21, 1999, as supplemented May 2, 2000, superceded an application dated July 30, 1998, in its entirety. The December 21, 1999, application was submitted because the licensee performed additional analyses of the SW system subsequent to the submittal of the July 30, 1998, application, which necessitated additional changes to the TSs.

Date of issuance: November 17, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 199 and 204.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 23, 2000 (65 FR 9014). The May 2, 2000, supplemental letter provided additional clarifying information that was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 17, 2000.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: June 14, 2000, as supplemented on October 12, 2000.

Brief description of amendments: The amendments modify the Salem Unit Nos. 1 and 2 Technical Specifications (TS), and allow PSEG Nuclear to use the Best Estimate Analyzer For Core Operations—Nuclear (BEACON) system at Salem to fulfill certain TS surveillance requirements that involve core power distribution measurements. BEACON is a core power distribution monitoring and support system based on a three dimensional nodal code. The system is used to provide data reduction for incore neutron flux maps, core parameter analysis and follow, and core prediction.

Date of issuance: November 6, 2000.

Effective date: As of the date of issuance, and shall be implemented within 30 days of issuance.

Amendment Nos.: 237 and 218.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 26, 2000 (65 FR 46014). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 6, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: November 24, 1999, as supplemented September 14, 2000.

Brief description of amendment: The amendment revises the Technical Specifications to implement Filtration, Recirculation, and Ventilation System and Control Room Emergency Filtration System charcoal filter testing requirements that are consistent with the U.S. Nuclear Regulatory Commission guidance delineated in Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.''

Date of issuance: November 17, 2000

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 130.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 29, 1999 (64 FR 73096). The September 14, 2000, supplement provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: July 20, 2000 (PCN–488, supplement 1; supersedes application dated August 11, 1999).

Brief description of amendments: The amendments revised Technical Specifications surveillance requirements (SRs) related to the acceptance criteria for TS 3.3.7, ''Diesel Generator (DG)—Undervoltage Start,'' SR 3.3.7.3, which verifies operability of the loss of voltage and degraded voltage actuation circuits. The amendments replaced the analytical limits currently specified as acceptance criteria with allowable values, and deleted SR 3.3.7.4 on the basis that it is redundant with SR 3.3.7.3.

Date of issuance: November 29, 2000.

Effective date: November 29, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2–174; Unit 3–165.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 23, 2000 (65 FR 51362). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 29, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: August 28, 2000.

Description of amendment request: The amendments revise the Units 1, 2 and 3 Technical Specifications (TS) to incorporate TS Task Force (TSTF) Items Nos. TSTF–71, TSTF–208, TSTF–222, TSTF–284, TSTF–258 and TSTF–364. TSTFs are changes to the Improved Standard TS that were initiated by the nuclear power industry and submitted to the NRC staff. A description of each of the six TSTFs proposed for implementation at Browns Ferry follows: (1) TSTF–71, Revision 2, adds an example of the application of the Safety Function Determination Program to the Bases for Limiting Conditions for Operation (LCO) 3.0.6. (2) TSTF–208, Revision 0, extends the allowed time to reach MODE 2 in LCO 3.0.3 from 7 hours to 10 hours. The change is based on plant experience regarding the time needed to perform a controlled shutdown in an orderly manner. (3) TSTF–222, Revision 1, clarifies Improved Technical Specification (ITS) Section 3.1.4, Control Rod Scram Times, Surveillance Requirements (SRs) to better delineate the requirements for testing control rods following refueling outages and for control rods requiring testing due to work activities. (4) TSTF–258, Revision 4, revises TS Section 5.0, Administrative Controls, to delete specific TS staffing requirement provisions for Reactor Operators (ROs), eliminates TS details for working hour limits, clarifies requirements for the Shift Technical Advisor position, adds regulatory definitions for Senior ROs and ROs, revises the Radioactive Effluent Controls Program to be consistent with the intent of 10 CFR Part 20, deletes periodic reporting requirements for mainsteam relief valve openings, and revises radiological area control requirements for radiation areas to be consistant with those specified in 10 CFR 20.1601(c). (5) TSTF–284, Revision 3, modifies Improved TS Section 1.4, Frequency, to clarify the usage of the terms ''met'' and ''performed'' to facilitate the application of SR Notes. Two new SR Examples, 1.4–5 and 1.4–6, are added to illustrate the application of the terms. (6) TSTF–364, Revision 0, revises Section 5.5.10, TS Bases Control Program, to reference 10 CFR 50.59 rather than ''unreviewed safety question.'' Also, editorial change WOG–ED–24, which substitutes ''require'' for ''involve'' in 5.5.10.b is made for consistency in usage.

Date of issuance: November 21, 2000.

Effective date: November 21, 2000.

Amendment Nos.: 239, 266, and 226.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the licenses.

Date of initial notice in **Federal Register**: October 4, 2000 (65 FR 59224)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 2000.

No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: September 15, 2000.

Brief description of amendments: The proposed change replaces the general references currently provided in Technical Specification 5.6.6 for determining the reactor coolant system pressure and temperature limits with the requirement that the Pressure/Temperature Limits and Low Temperature Overpressure Protection System Setpoints shall not be revised without prior U.S. Nuclear Regulatory Commission approval.

Date of issuance: November 27, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 81 & 81.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 1, 2000 (65 FR 65351). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 27, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: September 19, 2000.

Brief description of amendment: The amendment revises the Technical Specifications to establish operability requirements to ensure that adequate reactor coolant inventory and sufficient heat removal capability exist during cold shutdown and refueling conditions.

Date of Issuance: November 17, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 195.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 18, 2000 (65 FR 62393). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 17, 2000.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 29, 1999, as supplemented August 31, 2000.

Brief description of amendments: The amendments revise the testing requirements in Technical Specification (TS) 4.7.7.1 and TS 4.7.8.1 to incorporate the American Society for Testing and Materials D3803–1989 standard and the application of a safety factor of 2.0 for the charcoal filter

efficiency assumed in Virginia Electric and Power Company's design-basis dose analysis.

Date of issuance: November 20, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 224 and 205.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 9, 2000 (65 FR 6413). The August 31, 2000, supplement provided clarifying information only, and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 20, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 6th day of December 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31541 Filed 12–12–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series, with its related Standard Review Plan section. The Regulatory Guide Series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1096 (which should be mentioned in all correspondence concerning this draft guide), is titled ''Transient and Accident Analysis Methods.'' This guide is being developed to describe a process that is acceptable to the NRC staff for the development and assessment of evaluation models that may be used to analyze transient and accident behavior.

Draft Standard Review Plan Section 15.0.2, ''Review of Analytical Computer Codes,'' is being developed to describe the review process for NRC staff and acceptance criteria for analytical models and computer codes used by licensees to analyze accident and transient behavior. This draft Standard Review Plan (SRP) section is intended to become Section 15.0.2 of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants.''

This draft guide and draft standard review plan section have not received complete staff approval and do not represent an official NRC staff position.

Comments on both documents may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4209; fax (301) 415–3548; email <*PDR@NRC.GOV*>. Comments will be most helpful if received by February 15, 2001.

You may also provide comments or access these documents via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* Electronic copies of this draft guide, under Accession Number ML003770849, are available in NRC's Public Electronic Reading Room, which can also be accessed through NRC's web site, *WWW.NRC.GOV.* For information about the draft guide and the related documents, contact Mr. N. Lauben at (301) 415–6762; e-mail *GNL1@NRC.GOV.* For information about the draft standard review plan section, contact Mr. J.L. Staudenmeier at (301) 415–2869, email *JLS4@NRC.GOV*; or Mr. M.A. Shuaibi at (301) 415–2859, email *MAS4@NRC.GOV.*

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides and standard review plan sections are available for inspection at the Commission's Public Document Room, 11555 Rockville Pike, Rockville, MD. Requests for single copies of draft or final guides or SRP sections (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by email to *DISTRIBUTION@NRC.GOV*. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 28th day of November 2000.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Acting Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 00–31736 Filed 12–12–00; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Retirement Plan for Manually Set Postage Meters

AGENCY: Postal Service.

ACTION: Notice of final plan.

SUMMARY: This notice of the final plan for the retirement of manually set postage meters clarifies the second phase of the plan to take postage metering to a higher level of security. The Postal Service recently completed the first phase of an overall Postal Service plan with the decertification of mechanical postage meters. Upon completion of the four phases of this plan, all meters in service will offer enhanced levels of security, thereby greatly reducing the Postal Service's exposure to meter fraud, misuse, and loss of revenue.

DATES: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, 703–292–3703.

SUPPLEMENTARY INFORMATION: In 1995 the Postal Service, in cooperation with all authorized postage meter manufacturers, began a phase-out, or decertification, of all mechanical postage meters because of identified cases of indiscernible tampering and misuse. Postal revenues were proven to be at serious risk. The completion of this effort, which resulted in the withdrawal of 776,000 mechanical meters from service, completed Phase I of the proposed plan for secure postage meter technology. Recent advances in postage meter technology offer high

levels of security, operational reliability, and flexibility for meter users. As a result, the Postal Service is addressing the next category of less secure meters: electronic meters that are manually set by postal employees. Of the current total, installed population of 1,469,841 meters, almost 92 percent are remotely set through telephone access to a manufacturer's setting center. Customers have recognized the advantages of remote setting, and as a result the marketplace has moved in a positive direction. The remaining 131,426 manually set electronic meters are to be retired and no longer authorized for use as postage evidencing devices. It is the Postal Service's intent to make this an orderly process with minimal problems for users.

The proposed plan for Phase II, the retirement of manually reset electronic meters, was published for comment in the **Federal Register**, May 1, 2000. The Postal Service requested that comments on the proposed plan be submitted by June 15, 2000. The Postal Service received seven written comments from postage meter manufacturers, interested companies, large commercial mailers, and industry associations representing commercial mailers. Eight additional comments came from companies and industry associations after an article on the retirement plan was published in the Postal Service's Memo to Mailers, June 2000. Although those comments came after June 15, 2000, they were considered in the response.

The Postal Service gave thorough consideration to those comments, modified the proposed plan as appropriate, and now announces the adoption of the final plan. This plan gives users of manually reset postage meters ample time to make timely and intelligent decisions on replacement meters.

The Postal Service's evaluation of the comments follows. The final plan, as revised, follows the discussion of comments. The comments are organized to reflect common topics addressed by the commenters.

A. Discussion of Comments

1. *Support for plan.* Two postage meter manufacturers commented in support of the plan.

2. *Meter models not available to the public.* One postage meter manufacturer commented that the list of meter models included some models that fit the category but that are not available to the public.

The Postal Service revised the list to include only those models available to the public.

3. *Affected meter models.* One postage meter manufacturer commented that some of the models included on the list are capable of remote setting and need not be retired or withdrawn.

The Postal Service determined that those models should remain on the list. Any meter capable of remote setting that is currently being reset manually must be reinstalled by the postage meter manufacturer as a remote set meter with a new model number before the user can continue to use it. The Postal Service added a requirement to this effect.

4. *Timing of retirement plan.* Three commenters questioned the timing of the retirement plan, coming as it does soon after the completion of the decertification of mechanical meters. They noted that some users who replaced their mechanical meters with manually reset electronic meters are faced now with the expense of another meter replacement.

Although the Postal Service did not require that users of mechanical meters replace those meters with remote set electronic meters, pamphlets that were widely distributed to users by the Postal Service during the decertification process suggested that users rent ''remote set meters as this will be our direction in the future.''

5. *Replacement meters.* Two industry associations were concerned about the possibility that the Postal Service would require the near-term retirement of a meter selected to replace a manually reset meter and asked about the long-range plans for postage meter technology.

Phases III and IV of the proposed plan for secure postage meter technology were published for comment in the **Federal Register** on August 21, 2000. Upon completion of these phases of the plan all meters in service will offer enhanced levels of security, thereby greatly reducing the Postal Service's exposure to meter fraud, misuse, and loss of revenue. Given the rapid pace of new technological developments for secure postage meter technology, leases for postage meter equipment of more than five (5) years' duration would appear to be inadvisable.

6. *Communications with meter users.* One postage meter manufacturer was concerned about inadequate, misleading, or confusing communications to meter users, and another questioned the Postal Service requirement for the manufacturer to provide generalized correspondence with meter users to the Postal Service for review.

The Postal Service is working to ensure the integrity of the meter retirement process with expeditious, accurate, and informative communications with postage meter users, postal employees, and postage meter manufacturers, and it expects manufacturers to provide accurate, timely information to their customers. If the Postal Service finds that meter manufacturers or their agents are disseminating misleading information, it reserves the right to review all generalized manufacturer communications to all customers or a subclass of its customers prior to distribution to customers.

7. *Request for list of lease expiration dates.* One postage meter manufacturer questioned the requirement to provide the Postal Service with a complete listing of lease expiration dates, since such information is considered confidential business information.

Manufacturers will no longer be asked to submit this information. However, in order to accomplish the goal of ensuring that manually reset meters are withdrawn in accordance with the plan, the Postal Service will review meter manufacturer lease records and records of meter withdrawals shortly after each quarterly retirement date.

8. *Security of remote set meters.* One industry association asked for information to support the Postal Service claim of increased security benefits with remote set postage meters and the actual risk to Postal Service revenue from manually reset meters.

Postal Service records show that all major meter fraud cases have involved physical tampering. USPS ability to detect meter fraud involving conventional postage meters is limited; the best protection for postal revenue comes from requiring the change to more secure meters. The increased security of remote reset meters is based, first of all, on the analysis by the resetting computer of the meter control total when the meter user contacts the resetting center to obtain additional postage. The computer used for resetting can identify any imbalance that would warrant investigation. This amounts to an ''inspection'' of the control totals each time the meter is reset. Second, remote meter resetting eliminates the use of the meter keys that must be used when meters are reset manually. These keys allow access to any meter of the same model and sometimes other meters of the same manufacturer. Loss and theft of these keys, which would allow improper access to meters, is a major security issue that is eliminated with remote set meters. In addition, any manually set meter allows the possibility of human error by the resetting clerk.

New, remotely reset meters are also more reliable and have more features than manually reset meters; meter manufacturers can provide the specifics. The remote set meters are clearly more flexible because, unlike manual set meters, they do not have to be removed from the plant or office and taken to a remote location for resetting. They can be reset and returned to service in minutes.

There are 131,426 manually reset meters in use, which represents 8.2 percent of the total number of postage meters. Postal revenue from manually reset meters for our 2000 fiscal year is $6,121,084,200, which is 29.8 percent of total meter revenue. Given the significant contribution of the relatively small number of manually reset meters to postal revenue, it is essential that these meters be secure.

9. *Advantage to meter manufacturers from retirement of manually reset meters.* Several large commercial mailers and the industry associations representing such mailers commented that the change to remote reset meters gives an advantage to the meter manufacturers over meter users. They felt that manufacturers would benefit from replacement of mailing equipment, from additional fees—which could be increased at any time—and from the interest on the money deposited by a user before it is reset on the meter.

Retiring manually reset postage meters is a USPS plan to increase meter security and is not driven by the manufacturers. Checks for postage must be made payable to the U.S. Postal Service (or to the manufacturer) and are sent by the meter user to the designated Postal Service lockbox account at Citibank. The manufacturer does not benefit from any ''float'' on the money, unless the manufacturer has established its own bank to handle the funds before they are deposited with the Postal Service and its customers elect to deposit funds in that bank. Moreover, through its Postage Now™ program, the USPS promotes the use of electronic payments: automated clearing house (ACH) debits and credits, and wire transfer of funds. Using such electronic payments to the Postal Service lockbox account minimizes float by allowing customers to pay for postage at a time that is very close to the time that postage is needed. In most cases, postage payment and meter resetting can take place on the same business day.

Any additional fees and costs for users are determined on a manufacturer-by-manufacturer basis and not by the Postal Service. Customers have choices in a competitive meter marketplace if they are not satisfied with the fees and policies of a given manufacturer. Users of remote set meters benefit from the additional features not available on manually set meters and from the increased convenience of using meters that do not require a trip to the post office during the business day for resetting. Individual meter manufacturers can provide detailed information about their products and services.

10. *Inconvenience and increased cost of remote set meters.* All comments from interested companies, large commercial mailers, and industry associations representing such mailers addressed the perceived difficulties, inconvenience, and cost of changing from manually reset meters to remote set meters. The following comments and responses discuss the major areas of concern.

11. *Increased fees.* Commenters were concerned about increased fees and the financial costs associated with the change to a remote set meter including (1) Higher resetting fees compared with the free resets at the post office; (2) higher service fees, especially for last-minute mailings, or if the mailer wants immediate access to postage, or if funds are not on deposit for a specified time period; and (3) the loss to the mailer of interest earned on funds during the time period between when money is sent to the manufacturer and when postage is used. Mailers noted that they would need to keep significant funds on deposit with a meter manufacturer to cover the costs of last-minute mailings—especially since the amount of postage needed each day is so unpredictable.

The Postal Service is encouraging meter manufacturers to work with the industry and the Postal Service to ensure that the fees and procedures for resetting remote set meters meet the needs of all customers, including large commercial mailers and third party mailers. In the competitive postage meter marketplace, every customer has the option to change meter manufacturers and/or to negotiate the fees paid. Although the commenters assumed that manually reset meters are reset for free, that assessment does not account for the user time, labor, and travel costs incurred when a meter is taken to the post office. Remote set meters can thus be more cost effective and convenient than manually reset meters, and offer the possible availability of postage 24 hours a day, seven days a week, depending on the manufacturer plan selected.

12. *Increased equipment costs.* Nine commenters were concerned about increased equipment costs, especially the need for new mailing equipment if the new remote set meter is incompatible with the mailer's existing equipment. They also mentioned the cost of installing a new (possibly dedicated) telephone line to handle meter resets.

Any changes to mailing equipment required because of incompatibilities with remote set postage meters, as well as the need for an additional telephone line, is manufacturer dependent and not under the control of the Postal Service. However, according to manufacturer feedback, mailing equipment changes should be minimal.

13. *Problems in handling last-minute mailings.* Seven commenters, including presort bureaus, third party mailers, and industry associations, were concerned about losing the ability to obtain postage on their meters to process last-minute mailing requests. Currently, many mailing agents bring a check and a postage meter to the post office to have the meter reset while they wait. They claim that losing this option will inconvenience their customers since mailers would be unable to bring in mail for processing at the last minute and have it metered. They noted that additional time is required for remote setting since there is a delay of several days between the time when additional funds are transmitted or requested and when the funds are available for use. Commenters noted that they would need to keep significant funds on deposit to cover such last-minute postage needs since costs are so unpredictable and variable, another added expense. Commenters noted that they might have to change procedures to accommodate last-minute mailings.

Through the Postal Service's Postage Now™ program, which was designed to facilitate quick electronic payment for postage, mailers can pay close to the last minute for mailings. If the customer authorizes an ACH debit, the meter can be reset immediately. Payment by wire transfer allows meter resetting within two to three hours. Should a customer prefer to pay for postage by check, there is no waiting period required by the Postal Service for a check to clear before an account is credited. In fact, the Postal Service processes all checks within 24 hours of receipt, and the information is then transferred to the manufacturer for an update of the user's account. The user's designated Citibank lockbox is located geographically so as to minimize time in transit for the checks mailed in for postage. The Citibank lockbox is specific to each manufacturer and has files for automated updates of users' accounts. The Postal Service agrees that some mailers may have to adapt new procedures for last-minute mailings.

However, both the Postal Service and meter manufacturers are aware of the challenges for some mailers in handling last-minute mail and are working on solutions that will be implemented by June 30, 2001, the first mandated retirement date for manually reset meters. In addition, the Postal Service strongly encourages use of Postage Now™.

14. *Cut-off time for end-of-day resets.* One industry representative noted that depending on time zone, meter manufacturer cut-off time for daily deposits (such as 6:00 p.m. EST) limits the ability of West Coast and Hawaiian commercial mailers to respond to emergency postage needs after 12:00 noon.

The Postal Service does not have a cut-off time for daily deposits. Any cut-off time is established on a manufacturer-by-manufacturer basis, rather than by the Postal Service. Meter manufacturers are aware of the potential timing problems with meter resetting for some mailers and are working on solutions that will be implemented by June 30, 2001, the first mandated retirement date for manually reset meters.

15. *Alternative payment plans.* Two industry associations suggested alternative payment options for customers who need immediate access to postage, including using credit cards and having the Postal Service act as an intermediary between the customer and meter manufacturer for immediate resetting of the meter. Commenters said that any solution must involve nearly instantaneous deposit and crediting of postage.

As noted before, certain electronic payments through Postage Now™ can satisfy any last-minute request for postage. The Postal Service does not allow use of credit cards as a payment option for remote meter resettings. Since local post offices do not have any direct interface with the Citibank lockbox, they cannot be used as an intermediary for resetting postage meters.

16. *Procedures for getting customer postage on meters for mailing agents.* Four commenters, including commercial mailers and industry associations, were concerned with the procedures for paying for customer postage on remote set meters. Commercial mailers' customers prepay for mailings, which can include the use of meters from more than one manufacturer, as well as other forms of postage, such as permits. The commenters were unclear about how they will be able to get this postage onto their remote set meters under the new system without either a waiting period for the customer, or else providing the postage up front and taking the risk that the customer's check will clear. Even if checks are made out to the U.S. Postal Service, they said different checks will now be needed for each meter manufacturer and form of postage.

Mailing agents, such as presort bureaus, will need a way to guarantee their customer funds. Checks should be made payable to the U.S. Postal Service and sent to the designated Citibank lockbox, as appropriate for each meter company. However, if a check is made out to a third party, it will be processed by the Postal Service if the third party endorses it over to the Postal Service on the back of the check. As the commenters noted, there may be a need for different checks for each meter manufacturer and form of postage.

17. *Multiple meters.* Two industry associations were concerned about how commercial mailers would handle multiple customer meters, since they often have meters from more than one manufacturer, resulting in multiple setting fees and contractual arrangements.

The customers of the third party mailers are responsible for meter fees. Commercial mailers should handle these costs in accordance with industry practices.

18. *Permission to continue to reset meters at post office.* Two commenters asked for permission to continue to reset their meters at the local post office, given the many problems associated with changing to remote reset meters.

The Postal Service must maintain a level playing field for all mailers and cannot accept the continued risk of less secure meters. The Postal Service will not allow the continued use of manually reset meters beyond the dates given in the plan.

19. *Mailings for state and local governments.* Two industry associations asked how meter resetting will be handled for state and local governments that use only checks for payment. They also noted that it is often illegal for state and local governments to place funds on deposit with private parties.

Although the funds for resetting postage meters are sent to the Postal Service's lockbox account at Citibank, a private sector bank, checks are made payable to the U.S. Postal Service. In addition, the Postal Service does not keep funds on deposit at Citibank. Each day, all available Postal Service funds are concentrated in the Postal Service Fund at the U.S. Treasury. Checks made payable to the U.S. Postal Service are sent to a designated Citibank Postal Service lockbox account, but the funds for resetting postage meters are not deposited with a private business; rather, they are deposited with the U.S. Postal Service.

20. *Speed of remote set meters.* One industry association was concerned that remote set meters are not as fast as manually reset meters. The availability of high-speed meters is dependent on the individual meter manufacturer's approved meter models and is not within the control of the Postal Service.

21. *Timetable for meter retirement.* One manufacturer questioned the timetable for withdrawals of manually set meters, especially the immediate withdrawal of meters upon lease expiration for leases expiring between January 1, 2001, and June 30, 2001, and suggested an alternative.

The Postal Service reviewed the suggestion and revised the timetable to simplify the withdrawal schedule and to ensure that all users will be able to make timely and intelligent decisions on replacement meters. Under the revised timetable, any meter covered under a lease that expires after December 31, 2000, may be used until the end of the calendar quarter following the quarter in which the lease expires, at which time the meter must be retired and withdrawn from service. This date is called the retirement date. For example, any meter with a lease expiring during the first quarter of 2001 (January, February, or March 2001) must be retired before the end of the second quarter of 2001 and will have a retirement date of June 30, 2001. This timetable will give all manually set postage meter users at least three months to replace the meter with a remote set meter and will consolidate retirement dates. The first date for mandatory manual meter retirement will be June 30, 2001.

22. *Protection of funds for postage if meter or meter manufacturer fails.* One commenter was concerned about how postage funds would be protected in the event of the failure of the postage meter, and another was concerned about the possible bankruptcy of the meter manufacturer.

Postage meters undergo extensive testing to ensure against meter failure and memory loss. There are established procedures for postage refunds in the case of meter failure. The Postal Service is working with manufacturers to make the process easier and more immediate. The new technology used in remote set meters enhances the process and gives the customer additional protections. All funds for postage are sent directly from customers to a Postal Service account and are not held by the manufacturer. Each day, the Postal Service concentrates all of its available funds in

the Postal Service Fund at the U.S. Treasury. Therefore, the user's money is protected in the unlikely event of a manufacturer bankruptcy.

B. The Final Postal Service Plan for the Retirement of Manually Reset Postage Meters

1. Effective February 1, 2000, new placements of manually reset electronic postage meters ceased. The decision applied to new customers as well as existing meter users. All meter manufacturers were notified of this policy and have complied.

2. The Postal Service will allow a lease extension for a manually set electronic meter up to December 31, 2001, for any lease that expires during calendar year 2000. No other lease extensions are permitted by the Postal Service. Manufacturers or users cannot avoid meter retirement by the manipulation of leases.

3. Some users currently have a lease for a manually reset electronic meter that expires after December 31, 2000. Any meter covered under such a lease may be used until the end of the calendar quarter following the quarter in which the lease expires, at which time the meter must be retired and withdrawn from service. This date is called the ''retirement date.'' For example, any meter with a lease expiring during the first quarter of 2001 (January, February, or March 2001) must be retired before the end of the second quarter of 2001 and will have a retirement date of June 30, 2001. This timetable will give all manually set postage meter users at least three months to replace the meter with a remote set meter and will consolidate retirement dates.

4. All retired meters must be withdrawn from active service records immediately upon the retirement date following lease expiration. Manufacturers must process PS Form 3601–C, Postage Meter Activity Report, to withdraw the meter effective the retirement date.

5. Retired meters must be physically returned to the manufacturer within 30 business days after the retirement date. The use of a retired meter in the time period between the retirement date and when the meter is returned to the manufacturer may result in the cancellation of the user registration.

6. Official notification to users explaining this plan will be sent directly by the Manager, Postage Technology Management, Postal Service Headquarters. No other correspondence will be considered to be official.

7. The manager of Postage Technology Management reserves the right to review manufacturer correspondence to these meter users prior to distribution.

8. After each retirement date, the Postal Service may review meter manufacturers' lease records in comparison with meter withdrawals, to ensure that all meters that should have been retired were retired.

9. Any manually reset electronic postage meter that is capable of remote meter setting must be either converted to remote meter setting or withdrawn from service. The function that allows manual resetting must be disabled.

10. Given the rapid pace of new technological developments for secure postage meter technology, meter manufacturers should not offer, and customers should not accept, leases for postage meter equipment of more than five (5) years' duration.

11. The following meter models may be affected by this plan. Any postage meter that is taken to a post office for resetting is affected by this plan and must be retired, even if it is not included on the following list.

Ascom Hasler

1441
1441X
1446
1446X
16410
16413
16413X
16463
16463X
17563
17563X
4280
64280
741
741X
7410
7410X
7413
7413X
7560
7560X
7563
7563X

Francotyp-Postalia

7000
7100
7200

Neopost

9212
9212G
9248
9248G
9252
9252G
9257
9257G
9258
9258G
9252U
9257U
9258U
9258UG
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Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–31359 Filed 12–12–00; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 2001, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 2001, 39.7 percent of the taxes collected under sections 3221(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 60.3 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: December 1, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–31675 Filed 12–12–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

[SEC File No. 270–265; OMB Control No. 3235–0273]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filing and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 17Ad–10 Prompt Posting of Certificate Detail to Master Securityholder Files; Maintenance of Accurate Securityholder Files and Control Book; and Retention of Certificate Detail

Rule 17Ad–10, 17 CFR 240.17Ad–10, under the Securities Exchange Act of 1934, requires a registered transfer agent to create and maintain minimum information on securityholder's ownership of an issue of securities for which it performs transfer agent functions, including the purchase, transfer and redemptions of securities. In addition, the rule also requires transfer agents that maintain securityholder records to keep certificate detail that has been cancelled from those records for a minimum of six years and to maintain and keep current an accurate record of the number of shares or principle dollar amount of debt securities that the issuer has authorized to be outstanding (a ''control book''). These recordkeeping requirements assist in the creation and maintenance of accurate securityholder records, the ability to research errors, an ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding over issuance.

Given that there are 1,093 transfer agents currently registered, the staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–10 is approximately 20 hours per year, totaling 21,860 hours industry-wide. The average cost is approximately $20 per hour, with the industry-wide cost estimated at approximately $437,200. However, the information required by Rule 17Ad–10 generally is already maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17Ad–10 varies according to differences in business activity.

The retention period for the recordkeeping requirements under Rule 17Ad–10 is six years for certificate detail that has been cancelled and to maintain and keep current an accurate record of the number of shares or principle amount of debt securities that the issuer has authorized to be outstanding. The recordkeeing requirement under Rule 17Ad–10 is mandatory to ensure accurate securityholder records and to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Persons should note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, DC 20503; and (ii) Michael E. Bartell, Associate Executive Directive, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 5, 2000.

Margaret H. McFarland,

Secretary.

[FR Doc. 00–31678 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24786; International Series Release No. 1239/812–12334]

Telco Finance N.V.

December 7, 2000.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from all provisions of the Act.

SUMMARY: Applicant requests an order under section 6(c) of the Act exempting applicant from all provisions of the Act. The order would permit applicant to sell certain debt securities and use the proceeds to finance the business activities of Telsim Mobile Telekomunikayson Hizmetleri A.S. (''Telsim'').

Filing Date: The application was filed on November 29, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 2001, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Intertrust Management (Antilles) N.V., Attn: Robert R. Stroeve, Curaçao, Netherlands Antilles.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–5064 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a Netherlands Antilles limited liability corporation. Applicant was organized specifically to raise funds for the operations of Telsim by issuing debt securities (''Notes'') and lending the proceeds to Telsim. Telsim is a joint stock company organized under the laws of the Republic of Turkey and is a cellular telecommunications company in Turkey.

2. Telsim has determined to raise capital through applicant because the

direct issuance of the Notes by Telsim would not be feasible under Turkish tax and corporate law. In addition, under Turkish law, significant tax disadvantages may be borne by Telsim were it to own or control applicant and/or directly guarantee the Notes. For these reasons, all of applicant's common shares will be held by a Netherlands Antilles stichting (the ''Foundation'') for the benefit of an existing charity named in the Foundation's articles of organization (''Charity''). The Foundation will be prohibited by its articles of organization from transferring the shares of applicant to any other party. The Foundation will have no answers or shareholders, but will be managed by a Netherlands Antilles trust company. The Charity will have no ownership or other rights with regard to the Foundation. Neither the Foundation nor the Charity will pay any consideration in connection with its involvement in the activities described in the application.

3. Applicant intends to issue the Notes in reliance on rule 144A under the Securities Act of 1933 (''1933 Act'') and shortly thereafter file a registration statement under the 1933 Act. Applicant will loan the proceeds of the Notes to Telsim and assign applicant's right to receive interest and principal payments on the loan to an indenture trustee for the noteholders (the ''Trustee''). The Trustee, which will be a major U.S. commercial bank, will have the right to proceed directly against Telsim in the event of default on the loan payments. the loan agreement will provide that a default under the Notes and the trust indenture agreement constitutes a default under the loan agreement. In the event of a default under the Notes, the Trustee may declare the outstanding amount of the loan and any accrued but unpaid interest with respect to the loan to be immediately due and payable. Under the trust indenture agreement, if the Trustee does not exercise its rights following a default, holders of at least 25% in aggregate principal amount of the Notes outstanding may direct the Trustee to exercise the rights, or may themselves accelerate the Notes.

4. Telsim and applicant, in connection with the offering of the Notes, will submit to the jurisdiction of any state or federal court in the Borough of Manhattan in the City of New York, and will appoint an agent to accept any process which may be served, in any suit, action, or proceedings brought against Telsim or applicant based upon their obligation to the Trustee as described in the application. The consent to jurisdiction and appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to all outstanding obligations of Telsim to the Trustee as described in the application have been paid.

5. Applicant will loan at least 85% of any cash or cash equivalents raised by applicant to Telsim as soon as practicable, but in no event later than six months after applicant's receipt of the cash or cash equivalents. In the event that applicant borrows amounts in excess of the amounts to be loaned to Telsim at any given time, applicant will invest the excess in temporary investments pending lending the money to Telsim. All investments by Telsim, including all temporary investments, will be made in government securities, securities of Telsim or a company controlled by Telsim, or debt securities which are exempted from the provisions of the 1933 Act by section 3(a)(3) of that Act. Applicant's articles of incorporation and the trust indenture relating to the Notes will limit applicant's activities to issuing the Notes or other debt securities, loaning the proceeds to Telsim and assigning all of applicant's rights to repayment from Telsim to the Trustee.

Applicant's Legal Analysis

1. Applicant states that it may be viewed as falling technically within the definition of an investment company under section 3(a)(1) of the Act. Applicant requests an exemption under section 6(c) of the Act from all provisions of the Act. Section 6(c) of the Act permits the SEC to grant an exemption from the provisions of the Act if, and to the extent that, such exemption is necessary and appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

2. Applicant states that rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies. Applicant states that it meets all of the requirements of rule 3a–5 except for two, which it cannot meet for Turkish tax reasons.

3. Rule 3a–5(b)(1)(i) under the Act requires that all of applicant's common stock be owned by Telsim or a company controlled by Telsim. Applicant argues that, even though for Turkish tax reasons applicant's common stock will be held by the Foundation, applicant was organized to serve solely as a conduit for Telsim's capital raising activities. Applicant further states that its functions will be limited by its articles of incorporation and the trust indenture agreement to those of a traditional finance subsidiary.

4. Rule 3a–5(a)(1) under the Act requires that applicant's debt securities be directly guaranteed by Telsim. Applicant states that under the arrangement described in the application, the Trustee will have the right to proceed directly against Telsim. Applicant argues that this arrangement is necessitated by Turkish tax law and that the arrangement will provide the noteholders with the functional equivalent of a guarantee by Telsim. For the above stated reasons applicant argues that it is not the type of entity intended to be regulated under the Act.

Applicant's Condition

Applicant agrees that any order granting the requested relief will be subject to the following condition:

Applicant will comply with all provisions of rule 3a–5 under the Act except (i) with respect to rule 3a–5(b)(1)(i), applicant's common shares will be owned by the Foundation for the benefit of the Charity, and (ii) with regard to rule 3a–5(a)(1), the noteholders will have recourse to Telsim for payment of principal and interest on the Notes as described in the application. Applicant's articles of incorporation and the trust indenture agreement will: (i) limit applicant's activities to issuing Notes or other debt securities; loaning the proceeds to Telsim, and assigning all of its rights to repayment from Telsim to the Trustee; (ii) prohibit the sale of applicant's common shares held by the Foundation; and (iii) enable the Trustee in the event of a payment default to proceed directly against Telsim, as assignee of the loan agreement between applicant and Telsim.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31716 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24751A; 812–12294]

Stratevest Funds, et al.; Notice of Application

December 11, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY: Applicants request an order to permit the proposed reorganizations of two series (the ''Acquired funds'') of the Forum Funds with and into two series of the Stratevest Funds (the ''Acquiring Funds,'' and together with the Acquired Funds, the ''Funds''). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: Stratevest Funds, Forum Funds, The Stratevest Group, N.A. (''Stratevest Group''), and Forum Investment Advisors, LLC (''Forum Advisors'').

Filing Dates: The application was filed on October 10, 2000. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 28, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service.[1] Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Stratevest Funds and Stratevest Group, 111 Main Street, Burlington, Vermont 05402–0409; Forum Funds and Forum Advisors, Two Portland Square, Portland, Maine 04101.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Stratevest Funds, a Delaware business trust, is registered under the Act as an open-end management investment company and currently offers four series. Stratevest Funds is organizing two new series, the Stratevest Large Cap Core Fund (''Stratevest Core Fund'') and the Stratevest Intermediate Bond Fund (''Stratevest Bond Fund''), which will be Acquiring Funds. The Stratevest Group, a national banking association, serves as investment adviser to the Acquiring Funds and is exempt from registration under the Investment Advisers Act of 1940 (''Advisers Act''). On or before the Reorganizations (as defined below), the Stratevest Group is expected to own, in a fiduciary capacity, more than 25% of the outstanding voting shares of the Stratevest Bond Fund as a result of the Stratevest Bond Fund's proposed acquisition of assets of certain common and collective trust funds.

2. Forum Funds, a Delaware business Trust, is registered under the Act as an open-end management investment company and currently offers twenty-one series, two of which are Acquired Funds: the Investors Equity Fund (''Forum Equity Fund'') and the Investors High Grade Bond Fund (''Forum Bond Fund''). Stratevest Group is the investment adviser for Forum Equity Fund, and owns, in a fiduciary capacity, more than 25% of the outstanding voting shares of the Forum Bond Fund. Forum Advisors is an investment adviser registered under the Advisers Act and serves as investment adviser to the Forum Bond Fund. The Acquired Funds and Acquiring Funds are collectively referred to as the Funds.

3. On August 15, 2000 and October 2, 2000, the boards of trustees of the Acquiring Funds and the Acquired Funds (together, the ''Boards''), respectively, including all the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), unanimously approved the agreements and plans of reorganization between the Funds (the ''Reorganization Agreements''). Under the Reorganization Agreements, each Acquiring Fund will acquire all the assets and liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Fund (the ''Reorganizations'').[2] The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund's shares determined as of the close of business on the business day immediately preceding the day of the closing of each Reorganization (''Closing Date''), currently anticipated to occur on or after December 20, 2000. The value of the assets of the Funds will be determined according to the Funds' then-current prospectuses and statements of additional information. As soon as reasonably practical after the Closing Date, each Acquired Fund will be liquidated by the distribution of the Acquiring Fund shares *pro rata* to the shareholders of the Acquired Fund.

4. Applicants state that the investment objectives and strategies of each Acquired Fund are similar to those of the corresponding Acquiring Fund. The Funds offer one class of shares. The Acquired Funds' shares are subject to either a front-end sales charge or a contingent deferred sales charge, but are not subject to a distribution fee adopted under rule 12b–1 of the Act or shareholder services fees. The Acquiring Funds' shares are subject to a front-end sales charge, a rule 12b–1 distribution fee, and shareholder services fee. Shareholders of the Acquired Funds will not be subject to a contingent deferred sales charge upon redemption of the Acquiring Fund shares that they receive in connection with the Reorganizations. No sales charges or exchange fee will be imposed in connection with the Reorganizations. Stratevest Group, Federated Services Company, and, possibly, Forum Financial Group will bear the costs associated with the Reorganizations.

5. The Boards, including all of the Independent Trustee, determined that the participation of each Acquiring and Acquired Fund in a Reorganization was in the best interests of each Fund and its shareholders, and that the interests of the shareholders of each Fund would not be diluted as a result of the Reorganization. In approving the Reorganizations, the Boards considered various factors, including: (a) The

[1] A notice was originally issued on November 28, 2000 (Investment Company Act Release No. 24751) giving interested persons until December 20, 2000, to request a hearing. However, the original notice was not published in the Federal Register, therefore, interested persons have until December 28, 2000, to request a hearing on the application.

[2] The Acquired Funds and their corresponding Acquiring Funds are: (1) Forum Equity Fund and Stratevest Core Fund and (2) Forum Bond Fund and Stratevest Bond Fund.

investment objectives, strategies, techniques, investment risks and limitations of each Acquired Fund and their compatibility with those of the corresponding Acquiring Fund; (b) the investment advisory and other fees paid by each Acquiring Fund and the projected expense ratio of each Acquiring Fund as compared to those of the corresponding Acquired Fund; (c) the terms and conditions of each Reorganization Agreement; and (d) the anticipated tax consequences of the Reorganizations for the Funds and their shareholders. In addition, the Forum Board considered: (a) The small asset size of each Acquired Fund; (b) the likelihood that each Acquired Fund's service providers may not be able to maintain their current fee waivers; and (c) the fact that the Reorganizations would permit shareholders to own shares in a new fund without realizing tax consequences that would be present if the Acquired Funds were to liquidate.

6. The Reorganizations are subject to certain conditions, including that: (a) the shareholders of each Acquired Fund will have approved the Reorganizations; (b) the Funds will have received opinions of counsel concerning the tax-free nature of the Reorganizations; and (c) applicants will have received exemptive relief from the Commission to permit the Reorganizations. The Reorganization Agreements may be terminated and the Reorganizations abandoned at any time prior to the Closing Date by the Boards. Applicants agree not to make any material changes to the Reorganization Agreements without prior Commission approval.

7. Registration Statements on Form N–14 with respect to the Reorganizations were filed with the Commission on September 8, 2000. Proxy solicitation materials were mailed to shareholders of the Acquired Funds on November 1, 2000. A shareholders meeting of the Acquired Funds is scheduled for December 1, 2000.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

3. Applicants state that Stratevest Group is investment adviser to the Stratevest Core Fund and Stratevest Group holds of record more than 25% of the outstanding voting securities of the Forum Equity Fund. In addition, applicants state that, on or before the Reorganization, Stratevest Group will hold of record more than 25% of the outstanding voting securities of the both the Forum Bond Fund and the Stratevest Bond Fund. Because of these relationships and ownership positions, the Acquired Funds and their corresponding Acquiring Funds may be deemed affiliated persons for reasons other than those set forth in rule 17a–8 and therefore unable to rely on the rule.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b). Applicants note that the Boards, including all of the Independent Trustees, found that participation in the Reorganizations is in the best interests of each Fund and its shareholders and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganizations. Applicants also note that the Reorganizations will be based on the Funds' relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31889 Filed 12–11–00; 2:52 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43660; File No. SR–Amex–00–57]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Increase to One Hundred the Maximum Permissible Number of Equity and Index Option Contracts Executable Through AUTO–EX

December 4, 2000.

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 28, 2000, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to increase to one hundred the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, AUTO–EX. The text of the proposed rule change is available at the Office of the Secretary, Amex 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 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. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1985, the Exchange implemented the AUTO–EX system, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entitled into the Amex Order File (''AOF''). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to AUTO–EX, was recently increased to allow for the entry of orders of up to 250 option contracts.[3] Generally, however, AUTO–EX is only permitted to execute equity option orders and index option orders of up to seventy-five contracts.[4] Thus, market and marketable limit orders of more than seventy-five contracts are generally routed by AOF to the specialist's book.

The Exchange now proposes to increase to one hundred the maximum permissible number of equity and index option contracts in an order that can be executed through the AUTO–EX system. It is proposed that this increase to one hundred in permissible order size for AUTO–EX be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. Currently, the Amex posts applicable quote size parameters on its web page. Generally, these parameters provide that displayed quotes are for twenty contracts for equity options and for thirty contracts for index options and are set on a class-by-class basis. However, pursuant to Exchange Rule 958A, the order size for AUTO–EX will remain at ten contracts for equity and index options, or such larger size currently in effect and as indicated on the Exchange's web page.[5] The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increase.

The Exchange represents that AUTO–EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other, non-emergency situations for certain option classes. The Exchange believes that automatic executions of orders for up to one hundred contracts will allow for the quick, efficient execution of public customer orders.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[6] of the Act in general and furthers the objectives of section 6(b)(5)[7] 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex 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

The Commission invites interested persons 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 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–00–57 and should be submitted by January 3, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31682 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 42128 (November 10, 1999), 64 FR 63836 (November 22, 1999).

[4] *See* Securities Exchange Act Release No. 43516 (November 3, 2000), 65 FR 69079 (November 15, 2000). While the maximum permissible number of contracts in an index option order executable through AUTO–EX is generally seventy-five contracts, there are a few exceptions: The Institutional, Japan and S&P MidCap 400 Indexes allow ninety-nine contract orders. The Exchange proposes to increase the applicable parameter from ninety-nine to one hundred for the Institutional, Japan and S&P MidCap 400 indices to eliminate any potential for confusion over the permissible parameters applicable to AUTO–EX eligible orders for both equity and index options.

[5] Amex Rule 958A, referred to as the ''Firm Quote Rule,'' requires Exchange specialists to sell (buy) at least ten (10) contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading post where the option class is located for trading.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43666; File No. SR–CBOE–00–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc., Permitting the Implementation of the Exchange's Rapid Opening System in Conducting Rotations in Options on the S&P 100 Index

December 4, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Interpretation .01 to its Rapid Opening System (''ROS'') rule (CBOE Rule 6.2A), amend its Lead Market-Maker (''LMM'') and Supplemental Market-Maker (''SMM'') (CBOE Rule 8.15), and amend Interpretation 0.02 to its index option trading rotation rule (CBOE Rule 24.13) to clarify that LMMs and SMMs may employ the Exchange's ROS in conducting rotations in options on the S&P 100 Index (''OES''). The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In February 1999, the Exchange implemented a Rapid Opening System (''ROS'') that has facilitated the expedited openings of options classes on the Exchange.[4] since that time, ROS has been used in a number of equity option trading crowds to open options classes within seconds of the opening of the underlying security. The Exchange believes that by entering into open trading more quickly using ROS, customer orders have been addressed in open trading in a timelier manner.

Openings in OEX, however, have been conducted for many years by the use of LMMs, who are appointed pursuant to the terms of CBOE Rule 8.15, and who open the various series of OEX pursuant to the terms of Interpretation .02 to CBOE Rule 24.13.[5] The LMM system was put in place to allow for speedier openings in the OEX crowd and to make particular market-makers responsible for opening quotes. While the LMM system has been successful in speeding up the opening process in the OEX trading crowd, the openings still may not be completed for a number of minutes, particularly on days of extreme market conditions. Consequently, the CBOE Index Floor Procedure Committee, pursuant to its authority under CBOE Rule 24.13 to direct the manner of the opening rotations, has determined to require the LMMs to employ ROS to open OEX.[6] The CBOE Index Floor Procedure Committee expects to see the same benefits that have been experienced in the equity option trading crowds that have been using ROS for the past on and a half years, namely, entry into open trading within seconds of the opening bell.

When the Exchange adopted ROS, it intended for the system to be used at any trading location on the floor, whether in an equity option trading crown or an index option trading crowd. The rules governing ROS did not specifically address to what extent ROS was to be used in connection with the LMM system that was operating in the OEX trading crowd. The CBOE, however, represents that the ROS system was not meant to supplant the LMM system, which has added accountability to the openings in OEX. The CBOE believes that, at the option of the appropriate CBOE Floor Procedure Committee, ROS would be used as a tool by the LMM to facilitate openings. With the proposed rule change, the CBOE will thus clarify that the LMMs may use ROS to conduct the opening rotation in OEX. To the extent that market-makers want to participate in the opening of a series in which they do not hold LMM or SMM appointments, they will continue to be able to transmit written non-cancelable proprietary and market-makers orders to the LMM in the appropriate zone ten minutes prior to the opening of trading, pursuant to the terms of Interpretation .02 to CBOE Rule 24.13.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general and further the objectives of section 6(b)(5);[8] in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(1)[10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears

[3] The CBOE filed its proposed rule change on August 3, 2000. On October 5, 2000, however, the CBOE filed Amendment No. 1, which clarified that the proposed rule change will be effective only as long as ROS is approved for use by the Commission. *See* Letter from Timothy Thompson, Assistant General Counsel and Vice President, CBOE, to Susie Cho, Attorney, Division of Market Regulation (''Division''), Commission (October 5, 2000).

[4] The ROS pilot program was first approved by the Commission in February 1999. *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999). The ROS pilot has been extended through September 2001. *See* Securities Exchange Act Release No. 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000).

[5] The rules governing opening rotations in OEX were approved by the Commission on March 31, 1988. *See* Securities and Exchange Act Release No. 25545 (March 31, 1988), 53 FR 11720 (April 8, 1988).

[6] Previously, only those open classes that employed the Exchange's AutoQuote system were able to use ROS. *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999). The OEX does not employ the Exchange's AutoQuote; however, the CBOE represents that ROS can now accommodate inputs from systems other than the Exchange's AutoQuote. Telephone conversation between Timothy Thompson, Assistant General Counsel and Vice President, CBOE, and Susie Cho, Attorney, Division, SEC, September 11, 2000. For purposes of CBOE Rule 6.2A, the term ''AutoQuote'' means either the Exchange's AutoQuote system or a proprietary autoquote system operated by a member of the trading crown. *See* Securities Exchange Act Release No. 43667 (December 4, 2000).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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–CBOE–00–34 and should be submitted by January 3, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31681 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43667; File No. SR–CBOE–00–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Permitting the Use of the Exchange's AutoQuote System or a Proprietary Autoquote System in the Operation of the Exchange's Rapid Opening System

December 4, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Interpretation .02 of its Rapid Opening System (''ROS'') rule (CBOE Rule 6.2A)[3] to clarify that for purposes of the rule, ''AuoQuote'' means either the Exchange's AutoQuote system or a proprietary autoquote system operated by a member of the trading crowd where the particular ROS class is traded. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In February 1999, the Exchange implemented a Rapid Opening System (''ROS'') that has facilitated the expedited openings of options classes on the Exchange.[4] Since that time, ROS has been used in a number of equity option trading crowds to open options classes within seconds of the opening of the underlying security. The Exchange believes that by entering into open trading more quickly using ROS, customer orders have been addressed in open trading in a timelier manner.

ROS determines a single opening price for each series by applying an algorithm that takes into account the AutoQuote values fed into ROS as well as those orders contained in the customer limit order book (and that are otherwise represented in the crowd pursuant to the ROS rule). The algorithm is generally designed to maximize the number of customer orders able to be traded at or between the bid-ask values submitted from AutoQuote. When the Exchange first implemented ROS, the system was designed to operate only with the Exchange's AutoQuote system. The Exchange noted, however, that ''[l]ater versions of ROS may accommodate inputs from systems other than AutoQuote.''[5] The CBOE now represents that ROS is able to accept inputs from various proprietary quote systems that are operated on the floor of the Exchange.[6] The Exchange is thus proposing to add Interpretation .02 to CBOE Rule 6.2A to make it clear that, for purposes of the Rule, the term ''AutoQuote'' means either the Exchange's AutoQuote system or a proprietary autoquote system operated by a member of the trading crowd.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general and furthers the objectives of section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The rule text for the CBOE's proposed rule change was identified as ''Interpretation .01'' to Rule 6.2A instead of ''Interpretation .02'' and has been corrected in this notice. Interpretation 0.01 to Rule 6.2A was added in Securities Exchange Act Release No. 43666 (December 4, 2000). Telephone conversation between Timothy Thompson, Assistant General Counsel and Vice President, CBOE, and Susie Cho, Attorney, Division, SEC, December 4, 2000.

[4] The ROS pilot program was first approved by the Commission in February 1999. *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999). The ROS pilot has been extended through September 2001. *See* Securities Exchange Act Release No. 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000).

[5] *Id.*

[6] In lieu of using the Exchange's own AutoQuote system, some DPMs and trading crowds employ proprietary autoquote systems which serve the same function that operate in much the same manner as the Exchange's own system. These systems generally employ the same general mathematical formulas for determining the quotes although with certain proprietary refinements.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The CBOE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(1) [10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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–SBOE–00–63 and should be submitted by January 3, 2001.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31683 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43686; File No. SR–DTC–00–20]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Fees for the DALI Service

December 6, 2000.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on December 5, 2000, 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 by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish fees for DTC's DALI service.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It 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 such statements.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] DALI is a tax service that will be available on or about January 1, 2001, for the transmission of information used in calculating and reporting U.S. withholding tax on payments made to non-U.S. persons. For further explanation of the DALI service, refer to Securities Exchange Act Release No. 43640 (Nov. 29, 2000).

[3] The Commission has modified the text of the summaries prepared by DTC.

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 establish the following fees for DTC's DALI service:

DALI Fees

Initial Registration Fee—$2,500
Annual Membership Fee—$2,500 (browser only) or $10,000 (File Transfer Protocol and browser)
Transaction Fee—$0.33 per billable message

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act [4] and the rules thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions by equitably allocating fees among users of the DALI service.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC 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 comments from DTC's participants concerning the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The propose rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [5] and Rule 19b–4(f)(2) [6] thereunder because the proposed rule change establishes a fee. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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.,

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

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, 450th Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at DTC's principal office. All submissions should refer to File No SR–DTC–00–20 and should be submitted by January 3, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31717 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43680; File No. SR–EMCC–00–04]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Membership Criteria for Inter-dealer Brokers Regulated by the Securities and Futures Authority Limited

December 6, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 3, 2000, the Emerging Markets Clearing Corporation (''EMCC'') 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 EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

EMCC is proposing to amend its rules to establish membership criteria for brokers or dealers that act as inter-dealer brokers (''IDBs'') and that are regulated by the Securities and Futures Authority Limited (''SFA'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, EMCC's Rules only provide for U.S. registered broker-dealers to act as an inter-dealer broker. The purpose of this proposed rule change is to establish admission criteria for brokers or dealers who are regulated by the SFA and act as IDBs. EMCC's membership criteria for broker-dealers acting as IDBs that are registered by the SFA will mirror the requirements of U.S. registered broker-dealers acting as IDBs except SFA regulated IDBs will be required to maintain ''excess financial resources'' of $10,000,000 as opposed to excess net capital of $10,000,000.

EMCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[4] and the rules and regulations thereunder because the proposal should encourage IDBs' regulated by the SFA to become participants in EMCC and therefore facilitate the prompt and accurate clearance and settlement of emerging market securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

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

(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 EMCC. All submissions should refer to File No. SR–EMCC–00–04 and should be submitted by January 3, 2001.

[7] CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] EMCC's filing will be available for inspection and copying in the Commission's Public Reference Section or through EMCC.

[3] The Commission has modified the text of the summaries prepared by EMCC.

[4] 15 U.S.C. 78q–1

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31680 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43675; File No. SR–EMCC–00–01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Financial Statements Prepared in Accordance With International Accounting Standards or United Kingdom Generally Accepted Accounting Principles

December 5, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 29, 2000, the Emerging Markets Clearing Corporation (''EMCC'') filed a proposed rule change with the Securities and Exchange Commission (''Commission'') and on October 26, 2000, and on November 15, 2000, amended it proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would permit EMCC to accept financial statements from an applicant prepared in accordance with International Accounting Standards (''IAS'') or United Kingdom Generally Accepted Accounting Principles (''UK GAAP'') without requiring the applicant to provide a discussion of the material variations of such accounting principles from United States Generally Accepted Accounting Principles (''US GAAP'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Rule 2, Section 3(b) of EMCC's Rules and procedures requires applicants to provide audited financial statements for the two fiscal years immediately preceding the year the application is made. To the extent such financial statements are not prepared in accordance with US GAAP, applicants must provide EMCC with a discussion of the material variations of such accounting principles from US GAAP.

When membership requirements were initially established in 1996, EMCC had minimal experience in analyzing non-U.S. financial statements. Therefore, it was deemed prudent to require applicants submitting audited financial statements prepared on a basis other than US GAAP to provide a discussion of the material differences. Since that time, EMCC's staff's familiarity with, understanding, and expertise in evaluating financial statements not prepared in accordance with US GAAP has significantly increased.

Pursuant to the proposed rule change, EMCC would have the authority to determine that a discussion of the material variations between US GAAP and another financial accounting standard used in a preparing an applicant's audited financial statement is unnecessary. Also under EMCC's proposal, EMCC is seeking Commission approval of its determination that with respect to audited financial statements prepared in accordance with IAS or UK GAAP, it will not require an applicant to provide a discussion of such material variations from US GAAP. EMCC retains the right to require any applicant not submitting audited financial statements prepared according to US GAAP to provide a discussion of such material variations if EMCC in its sole discretion determines that circumstances warrant the applicant providing such a discussion.

Moreover, when assessing an applicant's qualifications for EMCC membership, the audited financial statements comprise only a portion of the materials provided to and reviewed by the company. Such materials include, but are not limited to, reports filed with the applicant's primary regulator, interim financial, and a detailed questionnaire. To demonstrate to EMCC the applicant's financial responsibility and operational capability is sufficient for membership, EMCC may also require an applicant to make its books and records available to EMCC. Thus, EMCC has the ability to seek information it deems necessary or relevant to sufficiently assess and review an applicant's qualifications and capability for membership.

EMCC believes that the proposed rule change will not adversely affect the safeguarding of securities or funds in the custody or control EMC or for which it is responsible and is therefore consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impact or impose a burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

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

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the propose rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to File No. SR–EMCC–00–01 and should be submitted by January 3, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31685 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43679; File No. SR–NYSE–00–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Regarding the Listing and Trading of Exchange Traded Funds

December 5, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2000, the New York Stock Exchange, Inc. (''NYSE'' 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. Amendment No. 1 was filed on December 5, 2000.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is amending certain rules and adopting other rules relative to listing and trading of investment company units (''ICUs''), also known as exchange traded funds. The text of the proposed rule change is available at the Office of the Secretary, the Exchange or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has rules in Section 703.16, Investment Company Units, of the Listed Company Manual (''LCM'') related to the listing of ICUs.[4] Subsequent to the adoption of those rules, the Commission determined to allow the adoption of ''generic'' listing standards that permit listing and trading of new derivative products pursuant to Rule 19b–4(e) under the Act.[5] The Exchange is proposing to amend its listing standards in Section 703.16 of the LCM to adopt generic standards to permit the trading of ICUs pursuant to Rule 19b–4(e).

The Exchange's proposed generic listing criteria are intended to ensure that a substantial portion of the weight of an index or portfolio underlying an ICU is composed of securities with substantial market capitalization and trading volume. Under the proposal, the Exchange may approve a series of ICUs for listing or trading pursuant to Rule 19b–4(e) under the following criteria. Upon the initial listing of a series of ICUs, component stocks accounting for at least 90% of the weight of the underlying index or portfolio have a minimum market value of at least $75 million. In addition, the component stocks representing at least 90% of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

Under the Exchange's proposed generic listing standard, the most heavily weighted component stock in an underlying index or portfolio cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot together exceed 65% of the weight of the index or portfolio. The index or portfolio must include a minimum of 13 stocks, and all securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including The Nasdaq SmallCap Market).

To comply with generic listing standards, the Exchange proposed that the underlying index or portfolio must be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer must erect a ''fire-wall'' around the personnel who have access to information concerning changes and adjustments to the index or portfolio, and the index must be calculated by a third party who is not a broker-dealer.

The proposed generic listing standards specify that the current index value must be disseminated every 15 seconds over the consolidated tape, as well as an estimate of the net asset value per share of the ICU. A minimum of 100,000 shares of an ICU must be outstanding at the time trading begins. The minimum trading variation for an ICU will be 1/16, 1/32 or 1/64 of $1.00, as determined by the Exchange for a specific series. The Exchange will shortly move to decimals, after which the minimum trading variation for an ICU is expected to be the same as for other stocks generally on the Exchange, which is one penny.

The Exchange will implement written surveillance procedures for the ICUs that it trades pursuant to the generic listing standards. In addition, the Exchange will comply with the record-keeping requirements of Rule 19b–4(e), and will file Form 19b–4(e) for each ICU within five business days of commencement of trading.

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[3] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made several technical corrections to the rule text and clarified that the Exchange will issue a circular to members highlighting the characteristics of purchases in ICUs, prior to the commencement of trading in ICUs. *See* Letter to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission from James E. Buck, Corporate Secretary, NYSE dated December 5, 2000 (received by facsimile) (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996).

[5] 17 CFR 240.19b–4(e). Rule 19b–4(e) permits self-regulatory organizations (''SROs'') to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b). *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

Outside of the proposed generic listing standards, the rules will specify that a fund will be required to have such number of units outstanding on listing as determined by the Exchange in connection with the specific fund. ICUs will also be permitted to be in book-entry-only format, without certificates, to bring them in line not only with ICUs listed on other marketplaces, but with ordinary open-end mutual funds as well.

In addition to the proposed generic rules, the Exemption is proposing other ICU rules under proposed NYSE Rule 1100. A discreet section in the rulebook will centralize certain ICU-related rules and provide cross references to other related rules. Under proposed NYSE Rule 1100, specific limitations of liability are provided to protect the Exchange, index proprietors, calculators and vendors. The proposed rules also state that there are no express or implied warranties with respect to ICUs. These provisions are based on similar provisions already contained in the rules of the Exchange regarding other similar activities, such as those that were enacted a number of years ago in connection with Exchange trading in standardized options and Exchange Stock Baskets.[6]

Furthermore, prior to the commencement of trading in ICUs, the Exchange will issue a circular to members highlighting the characteristics of purchases in ICUs.[7] The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other issues, will discuss what ICUs are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing ICUs prior to or concurrently with the confirmation of a transaction, applicable Exchange Rules, dissemination information, trading information, and the applicability of suitability rules.[8]

The Exchange also will require its members to provide all purchasers of newly issued ICUs with a prospectus. For those ICUs that will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1993[9] applies to all investors in ICUs, including secondary market purchases on the Exchange in ICUs.

With respect to series of ICUs that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under section 24(d) of the Investment Company Act of 1940,[10] the proposal provides that the Exchange will inform members and member organizations regarding disclosure obligations with respect to a particular series of ICUs by means of an Information Circular prior to commencement of trading in such series.

The proposal provides that the Exchange will require that members and members organizations provide to all purchasers of a series of ICUs a written description of the terms and characteristics of such securities, in a form prepared or approved by the Exchange, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of ICUs that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of ICUs as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Investment Company Units] has been prepared or approved by the New York Stock Exchange and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Investment Company Units]. In addition, upon request you may obtain from your broker a prospectus for [the series of Investment Company Units].''

A member or member organizations carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of ICUs for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for the particular series of ICUs.

The Exchange also proposes to retain the authority to prescribe trading hours that extend until 4:15 p.m. for particular ICUs. This will be done in all probability only for those ICUs that are based on indexes that are also the subject of a futures contract. In those cases the Exchange believes it is appropriate to match the trading hours of the related futures contract.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the act[11] in general and furthers the objectives of section 6(b)(5) of the Act[12] 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, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received 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 persons, 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 above-mentioned self-regulatory organization. All submissions should refer to File No.

[6] *See* NYSE Rule 702(b) and Rule 814.

[7] *See supra* note 3.

[8] *Id.*

[9] 15 U.S.C. 77a, *et seq.*

[10] 15 U.S.C. 80a–24(d).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78F(b)(5).

SR–NYSE–00–46 and should be submitted by January 3, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[13] The Commission believes that the Exchange's proposal to amend its rules relative to the listing and trading of ICUs will provide investors with a convenient and efficient way of participating in the securities markets. The Exchange's proposal should also provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security, at negotiated prices throughout the business day that replicates the performance of an index or a portfolio of stocks. In addition, the Commission finds that the Exchange's proposal to establish generic standards to permit the trading of ICUs pursuant to Rule 19b–4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the act. Thus, by establishing generic standards, the proposal should reduce the Exchange's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly.[14] Accordingly, as discussed below, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[15]

In general, ICUs represent an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or similar entity. ICUs represent interests in a registered investment company that typically holds security which comprise or are otherwise based on or represent an investment in an index or portfolio. Each ICU is intended to provide investors with an instrument that closely tracks the underlying securities index or portfolio, that trades like a share of common stock, and that pays holders a periodic cash payment proportionate to the dividends paid, on the underlying portfolio of securities, less certain expenses, as described in the applicable prospectus. As noted above, the Commission has previously approved NYSE Section 703.16, Investment Company Units, of the LCM that permit the listing and trading of ICUs.[16] In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the NYSE rules that govern their trading.

The Commission previously concluded that ICUs trading under the existing Exchange rules would allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities.[17] The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed additional listing standards and the proposed generic listing standards for ICUs, in proposed NYSE Rule 1100 and Section 703.16 of the LCM, should produce the same benefits to investors.

The Commission notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which an ICU is based. The proposal requires that, in such circumstances, the broker-dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index and that the index value be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading ICUs. ICUs listed under the generic standards will be subject to a prospectus delivery requirement or, for series that have been granted relief from the prospectus delivery requirements of the Investment Company Act of 1940,[18] a product description delivery requirement. The requirement extends to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. Finally, a member or member organization must deliver a prospectus to a customer upon request.

The Commission also notes that upon the initial listing, or trading of ICUs, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases of ICUs. The circular also will inform members of their responsibilities under the Exchange's rules in connection with customer transactions in these securities. The Commission believes that these requirements ensure adequate disclosure to investor about the terms and characteristics of a particular series and is consistent with section 6(b)(5) of the Act.[19]

The proposal also provides that the Exchange can prescribe that the trading hours for a particular ICU extend until 4:15 p.m.; ICUs be entered in book-entry-only format; and the Exchange can determine the number of units required to be outstanding on listing a specific ICU. The Commission believes each of these requirements afford investors flexibility in satisfying their investment needs in purchasing and selling ICUs, while providing for a fair and orderly market. Further, the proposal would establish certain limitations related to liability and warranties. The Commission believes that such provisions are reasonable and foster cooperation and coordination in facilitating transactions in securities.

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class

[13] 15 U.S.C. 78f(b)(5). 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).

[14] The Commission notes that while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

[15] 15 U.S.C. 78f(b)(5).

[16] *See supra* note 4.

[17] *See supra* note 4.

[18] 15 U.S.C. 80a–1, *et seq.*

[19] 15 U.S.C. 78f(b)(5).

that include the new derivative securities product and the SRO has a surveillance program for the product class.[20] The Commission believes that the NYSE' proposal contains adequate rules and procedures to govern the trading of ICUs under Rule 19b–4(e).

All series of ICUs listed under the generic standards will be subject to the full panoply of NYSE rules and procedures that now govern the trading of existing ICUs on the Exchange. In addition, the Exchange has established that upon initial listing, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio must have a minimum market value of at least $75 million. Further the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio. The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The index or portfolio must include a minimum of 13 stocks, and all securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock Market.

Moreover, any series seeking to list under the generic standards must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust or fund. The Commission believes that these criteria should serve to ensure that the underlying securities of these indexes and portfolios are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new series of ICUs under Rule 19b–4(e). These listing criteria also will make certain that new ICUs do not contain features that are likely to impact adversely the U.S. securities markets.

In addition, the Exchange has developed specific listing criteria for ICUs qualifying for Rule 19b–4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. Specifically, the proposed generic listing standards require that a minimum of 100,000 shares of ICUs are outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid Exchange market at the commencement of trading.

In addition, as previously noted, all series of ICUs listed or traded under the generic standards will be subject to the Exchange's existing continuing listing criteria under Section 703.16 of the LCM. This requirement allows the Exchange to consider the suspension of trading and the delisting of a series if an event occurs that makes further dealings in such securities inadvisable. The Commission believes that this will give the Exchange flexibility to delist ICUs if circumstances warrant such action.

Furthermore, the Commission finds that the Exchange's proposal to trade ICUs in minimum fractional increments of 1/16, 1/32, or 1/64 of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations, all of which benefit the investor. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in ICUs, thereby protecting customers and the public interest consistent with section 6(b)(5) of the Act.[21]

The Exchange represents that the current underlying index value as well as an estimate of the value per share of the ICU will be disseminated over the consolidated tape every 15 seconds. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series.

The Exchange has developed surveillance procedures for the ICUs listed under the generic standards that incorporate and rely upon existing surveillance procedures governing ICUs and equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading ICUs under the generic standards. The Exchange further represents that it will file Form 19b–4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b–4(e) record keeping requirements. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with section 6(b)(5) of the Act.[22]

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act. The Commission notes that the proposed rule change is based on the listing standards of several other exchanges, which the Commission previously approved after soliciting public comment on the proposals pursuant to section 19(b) of the Act.[23] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the other filings. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by these new instruments by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[24] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NYSE–00–46), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland

Deputy Secretary

[FR Doc. 00–31679 Filed 12–11–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43664; File No. SR–NYSE–00–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., To Revise Its Fee Schedule for Equity Transaction Fees

December 4, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

[20] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(5).

[23] *See e.g.,* Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (approval of American Stock Exchange generic listing standards).

[24] 15 U.S.C. 78s(b)(5).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

(''Act'')[1] and Rule 19b–4[2] thereunder, notice hereby is given that on November 29, 2000, the New York Stock Exchange, Inc. (''NYSE'' 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to revise its fee schedule for Equity Transaction Fees to be effective January 1, 2001. This fee revision would raise the monthly transaction fee cap to $500,000 per member firm and increases the rate for the first 5,000 shares of a trade to $.0023 from $.0019 per share. The proposed rule change is available at the principal office of the NYSE and at the Commission's Public Reference Room.

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 NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

In 1996, the NYSE established a cap on transaction charges of $400,000 per month per firm.[3] According to the Exchange, it initially planned to increase the cap each year in proportion to the increase in trading volume. Had it invoked the indexing provision each year, the cap for 2001 would be approximately $1,100,000. The increase in volume during 2000 compared with 1999 is about 24 percent.

Commencing January 1, 2001, the Exchange proposes to establish the cap at $500,000 per firm per month, representing an increase in proportion to the above described increase in trading volume. The Exchange also proposes, effective January 1, 2001, to increase the rate charged for transactions in the 5,000 share and under category from $.0019 per share to $.0023 per share. The $.0019 rate was also established in 1996 and has not been changed since then. This increase is roughly in the same proportion as the increase in the cap and ensures that the firms that do and do not reach the cap will be treated equitably.

2. Statutory Basis

The NYSE believes that the basis under the Act for the proposed rule change is the requirement under section 6(b)(4)[4] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change would 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 NYSE has neither solicited nor received written comments on the proposed rule change. The NYSE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective on filing pursuant to section 19(B)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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–NYSE–00–50 and should be submitted by January 3, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31684 Filed 12–12–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36465 (November 8, 1995), 60 FR 57473 (November 15, 1995) (File No. SR–NYSE–95–38).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Report of New System of Records and Routine Uses

AGENCY: Social Security Administration.

ACTION: New system of records and routine uses.

SUMMARY: In accordance with the Privacy Act, 5 U.S.C. 552a(e)(4) and (e)(11), we are issuing public notice of our intent to establish a new system of records. The proposed system of records is entitled Records of Individuals Authorized Entry into Secured Areas by Digital Lock Systems, Electronic Key Card Systems or Other Electronic Access Devices, SSA/RO 60–0270. The proposed system will maintain records on individuals authorized to enter secured areas in SSA regional offices, field offices, teleservice centers, program service centers, hearing offices and satellite facilities. We invite public

comments on the proposed system and the routine uses.

DATES: We filed a report of the proposed system with the Chairman, Committee on Government Reform and Oversight, House of Representatives, the Chairman, Committee on Governmental Affairs, United States Senate, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget on December 4, 2000. We have requested OMB to waive the 40-day advance notice period. If OMB does not waive the 40-day advance period, we will not implement the proposed system until January 15, 2001, unless we receive comments on or before that date that would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available at the above address for public inspection and photocopying between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Cetta Ruzicka, Social Insurance Policy Specialist, Office of Disclosure Policy, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone (410) 965–1743.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Proposed System

SSA is responsible for ensuring the safety of personnel and for safeguarding government records and property in its facilities. Through the use of digital lock systems, electronic key card systems or other electronic access devices, SSA is able to monitor and control the access to its facilities. The digital lock systems, electronic key card systems and other electronic access devices have the capacity to maintain entry and exit data, such as the name and/or personal identification number (PIN) of the individual entering the secured area, the location of the secured area, the date of the entry and the time of the entry and exit. Data in the system is used for security purposes and may be used in a disciplinary action.

II. Collection and Maintenance of Data in the Proposed System

SSA security personnel will assign a PIN to each individual who is authorized to enter secured areas. For electronic key card systems, the name of the individual and assigned PIN will be encoded on the key card. Security personnel will maintain a computer file of the name of the individual and the assigned PIN.

To enter secured areas, an individual manually enters his or her PIN into the digital or electronic access device, or in the case of an electronic key card system, the individual uses his or her key card to facilitate entry. These systems maintain a record of the name and/or PIN of the individual, the entry point, the date of the entry and the time of the entry. Some digital lock systems and electronic lock system are connected to computer systems that maintain the information in computer files. Information will be retrieved by individuals' names and/or PINs.

Only authorized SSA personnel will download and print information from computer files, digital lock systems, electronic key card systems or other electronic access devices. The information will be maintained in file folders and disclosed to Agency personnel on a need-to-know basis or to other individuals or entities consistent with the routine uses below.

III. Proposed Routine Uses of Information in the System

We are proposing to establish routine uses of information that will be maintained in the system as discussed below.

1. To disclose pertinent information to the appropriate Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule or regulation, or order when the Agency becomes aware of an indication of a violation of civil or criminal law or regulations pertaining to this system of records.

We contemplate disclosing information under this routine use to law enforcement entities that are responsible for investigating alleged violations of civil or criminal statutes or alleged violations of Standards of Conduct governing Federal employees.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of the record.

We contemplate disclosing information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in an SSA matter on his or her behalf. Information will be disclosed when the congressional representative makes an inquiry and presents evidence that he or she is acting on behalf of the individual whose record is requested.

3. To the Department of Justice (DOJ), a court or other tribunal (including an adjudicative or administrative body, or other third-party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is a party to litigation or has an interest in such litigation; and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation.

We contemplate disclosing information under this routine use, as necessary, to enable the Department of Justice to effectively defend SSA, its components or employees. We contemplate disclosing information under this routine use when SSA has an interest in litigation involving the proposed systems of records and/or the records contained therein.

4. Nontax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904 with promulgating standards, procedures and guidelines regarding records management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

IV. Compatibility of Proposed Routine Use

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose which is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to assist in carrying out SSA

programs. Section 401.120 of the regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1–3 above will ensure efficient administration of Social Security programs; the disclosures that would be made under routine use number 4 is required by Federal law. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

V. Records Storage Medium and Safeguards

We will maintain information in digital lock systems, electronic key card systems, or other electronic access devices, computer memory (including floppy diskettes) and paper form. Only SSA security personnel who have a need for the information in the performance of their official duties will be permitted to retrieve information.

VI. Effect of the System on Individuals

The proposed system will maintain information that could lead to administrative, civil or criminal action. This action would occur only after an investigation. Individuals will be afforded all appropriate due process and appeal rights. Thus, we do not anticipate that the proposed system will have any unwarranted adverse effect on the privacy of individuals.

Dated: December 4, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

Social Security Administration Notice of System of Records Required by the Privacy Act of 1974

System number: SSA, RO–60–0270.

System name: Records of Individuals Authorized Entry into Secured Areas by Digital Lock Systems, Electronic Key Card Systems or Other Electronic Access Devices, SSA.

Security classification: None.

System Location: Social Security Administration, Offices of the Regional Commissioners.

Categories of individuals covered by the system: Those individuals who are authorized entry into secured areas in regional offices, field offices, teleservice centers, program service centers, hearings offices and satellite facilities.

Categories of records in the system: This system of records contains the name and/or personal identifying number(s) for each individual who is authorized to enter secured areas in regional offices, field offices, teleservice centers, program service centers, hearing offices and satellite facilities. The system also contains the entry point, the date of entry and the time of entry.

Authority for maintenance of the system: 42 U.S.C. 902 and 1302; 5 U.S.C. 552a(e)(10); 41 CFR 101–20.302.

Purpose(s): The principal purpose is to maintain a record of individuals who entered secured areas in the Social Security Administration's facilities and to ensure the security of personnel and property. The system of record may also be used in a disciplinary action.

Routine uses of records maintained by the system, including categories of users and the purposes of such uses: Disclosure may be made for routine uses as indicated below:

1. To disclose pertinent information to the appropriate Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule or regulation, or order when the Agency becomes aware of an indication of a violation of civil or criminal law or regulations pertaining to this system of records.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of the record.

3. To the Department of Justice (DOJ), a court or other tribunal, (including an adjudicative or administrative body) or other third-party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is a party to litigation or has an interest in such litigation: and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation.

4. Nontax return information which is not restricted from disclosure by federal law may be disclosed to the General Services (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System

Storage: Records in this system are stored in the digital lock systems, electronic key card systems, other electronic access devices, computer memory (including floppy diskettes) and paper form.

Retrievability: Records in this system may be retrieved by name of the individual, by assigned personal identifying number(s), by date, by time period, and by entry point.

Safeguards: Only authorized SSA personnel have access to this system of records. Employees who are authorized to retrieve records will be assigned a personal identification number (PIN) and passwords. The information will be processed in a manner that will protect confidentiality and in such a way that unauthorized individuals cannot retrieve it by means of computer, remote terminal or other means. The paper records that result from the digital lock or other electronic access systems are kept in locked cabinets or in otherwise secure areas. All SSA employees, including contractor personnel, having access to data in the system of records are required to adhere to SSA rules concerning safeguards, access, and use of the data. They also are informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system of records.

Retention and disposal: SSA retains records in this system up to 3 years following the expiration of an individual's authority to enter into secured areas. SSA destroys a paper record by shredding and a non-paper record by deleting-wiping it from the digital, magnetic and/or computer memory.

System manager(s) and address: The systems manager will be the Regional Security Officer (or his/her designee) in those Regions where SSA purchases digital lock systems, electronic key card systems or other electronic access devices.

Region I—Boston: Social Security Administration, Regional Security Officer, Room 1975, JFK Federal Building, Boston, Massachusetts 02203–1101, Telephone: (617) 565–2852.

Region II—New York: Social Security Administration, Regional Security Officer, 26 Federal Plaza, Room 4011, New York, New York 10278, Telephone: (212) 264–1716.

Region III—Philadelphia: Social Security Administration, P.O. Box 8788, Philadelphia, Pennsylvania 19101, Telephone: (215) 597–8531.

Region IV—Atlanta: Social Security Administration, Atlanta Regional Security Office, Security and Integrity Team, P.O. Box 10085, Birmingham, Alabama 35202, Telephone: (205) 801–1300.

Region V—Chicago: Social Security Administration, Center for Material Resources, Security and Integrity Section, Box 87479, Chicago, Illinois 60680, Telephone: (312) 353–1224.

Region VI—Dallas: Social Security Administration, MB–1 Room 1400, Management and Budget, ATTN: RSO, 1200 Main Tower Building, Suite M110 Dallas, Texas 75202–4324, Telephone: (214) 767–4331.

Region VII—Kansas City: Social Security Administration, MAMPSC, SIS, 601 East Twelfth Street, P.O. Box 15625, Kansas City, Missouri 64106, Telephone: (816) 426–3095.

Region VIII—Denver: Social Security Administration /M&B/BFS, Attn: Regional Security Office, 1961 Stout Street, Room 325, Denver, Colorado 80294–3538, Telephone: (303) 844–3347.

Region IX—San Francisco: Social Security Administration, FHFB, Field Facilities Team, P.O. Box 4205, Richmond, California 98402, Telephone: (510) 970–8340.

Region X—Seattle: Social Security Administration, Security and Integrity Team, Suite 2900, M/S–291B, 701 Fifth Avenue, Seattle, Washington 98104–7006, Telephone: (206) 615–2150.

Notification procedure: An individual may determine if this system contains a record about him or her by writing to the systems manager. When requesting notification, the individual should provide his or her name and/or personal identifying number(s) and refer to this system.

Record access procedures: Same as notification procedures. Requestors should also reasonably specify the contents of the record being sought.

Contesting record procedures: Same as notification procedures. Requestors should also reasonably: identify the particular record; specify whether he/she is seeking an addition to or a deletion or substitution of the record; and state his/her reason(s) for requesting corrective action or amendment to the record (*e.g.*, why it is not accurate, timely, complete, relevant or necessary).

Record source categories: SSA obtains information in this system from the individuals who are covered by the system or the security personnel.

Systems exempted from certain provisions of the Privacy Act: None.

[FR Doc. 00–31655 Filed 12–12–00; 8:45 am]

BILLING CODE 4190–11–P

DEPARTMENT OF STATE

[Public Notice 3502]

Bureau of Diplomatic Security, Office of Foreign Missions, Tax and Customs Unit; Information Collection Under Emergency Review: Form DS–1504, Request for Customs Clearance of Merchandise

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency.

Originating Office: DS/OFM/VTC/TC.

Title of Information Collection: Request for Customs, Clearance of Merchandise.

Frequency: As needed.

Form Number: DS–1504.

Respondents: The foreign diplomatic and consular community in the United States; certain international organizations; and the Office of the President.

Estimated Number of Respondents: approx. 6,100.

Average Hours Per Response: one half hour.

Total Estimated Burden: 3,463.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by 12/15/00. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until the date of the 60th day from the date of publication of this notice in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- 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 any practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to U.S. Department of State, DS/OFM/VTC/TC, State Annex 33, Room 212, Washington, DC 20520. Tele. no. 202 895–3618.

Dated: December 1, 2000.

Theodore Strickler,

Deputy Assistant Secretary of State, U.S. Department of State, Bureau of Diplomatic Security, Office of Foreign Missions.

[FR Doc. 00–31739 Filed 12–12–00; 8:45 am]

BILLING CODE 4710–43–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 20–144, Recommended Method for FAA Approval of Aircraft Fire Extinguishing System Components

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 20–144, Recommended Method for FAA Approval of Aircraft Fire Extinguishing System Components. This AC provides guidance on the various aspects that should be considered in the FAA approval process of fire extinguishing system components manufactured under a Production Certificate, components to be FAA approved under the Part Manufacturer Approval process, or design changes to components originally approved by either method. This AC does not constitute a regulation, however, it provides a method, but not the only method, for obtaining approval of aircraft fire extinguishing system components. This is intended to enhance the standardization of all FAA Aircraft Certification Offices and Manufacturing Inspection District Offices in the approval process of the critical components of an aircraft fire extinguishing system.

DATES: Advisory Circular 20–144 was issued by the Acting Manager, Aircraft Engineering Division, AIR–100, on September 22, 2000.

How To Obtain Copies: A paper copy of AC 25.335–1A may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or faxing your request to the warehouse at 301–386–5394. The AC also will be available on the Internet at *http://www.faa.gov/avr/air/airhome.htm,* at the link titled ''Advisory Circulars'' under the ''Available Information'' down-drop menu.

Issued in Renton, Washington, on November 16, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–31688 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Waterville Robert LaFleur Airport, Waterville, Maine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments. Notice of intent of waiver with respect to land.

SUMMARY: The FAA is considering a proposal that a portion of airport property (approximately 16 acres located West and North of the airport along Airport Road Extension) is no longer needed for aeronautical use, as shown on the Airport Layout Plan. There appear to be no impacts to the airport by allowing the disposal of the property. The land was acquired under FAA Project Nos. 6–23–0047–06, 6–23–0047–07 and 6–23–0047–08 (portion of parcels 7, 8, and 9).

In accordance with section 47107(h) of title 49, united States Code, this notice is required to be published in the **Federal Register** thirty (30) days before modifying the land-use assurance which requires that the property be used for an aeronautical purpose. The purpose of the release of land will allow development of an industrial park associated with an Economic Development Administration grant and access to a designated Federal free trade zone.

DATES: Comments must be received on or before January 12, 2001.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone No. 781–238–7624/Fax 781–238–7608. Documents reflecting the proposed FAA action may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts or Mr. Gregory Brown, Public Works Director, City of Waterville, Maine, 1 Common Street, Waterville, Maine.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA in considering the release of the subject airport property at Waterville Robert LaFleur Airport, Waterville, Maine. The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Burlington, Massachusetts on December 1, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00–31708 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2000–8493]

Notice of Request for the Reinstatement of an Expired Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collections:

(1) 49 U.S.C. Section 5310—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Section 5311—Nonurbanized Area Formula Program

(2) Americans with Disabilities Act

(3) Pre-Award and Post Delivery Review Requirements

DATES: Comments must be submitted before February 12, 2001.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT:

49 U.S.C. Section 5310—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Section 5311—Nonurbanized Area Formula Program: Ms. Sue Masselink, Office of Program Management, (202) 366–2053.

Americans with Disabilities Act: Mr. Arthur Andrew Lopez, Director, Office of Civil Rights, (202) 366–4018.

Pre-Award, Post-Delivery Review Requirements: Spiro Colivas, Office of Program Management (202) 366–6009.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Section 5310—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Section 5311 Nonurbanized Area Formula Program (OMB Number: 2132–0500)

Background: The Capital Assistance Program for Elderly Persons and Persons with Disabilities provides financial assistance for the specialized transportation service needs of elderly persons and persons with disabilities. The program is administered by the States and may be used in all areas (urbanized, small urban, and rural). The Nonurbanized Area Formula Program provides financial assistance for the provision of public transportation services in nonurbanized areas. This program is also administered by the States. 49 U.S.C. sections 5310 and 5311 authorize FTA to review applications for federal financial assistance to

determine eligibility and compliance with statutory and administrative requirements. Information collected during the application stage includes the project budget, which identifies funds requested for project implementation; a program of projects, which identifies subrecipients to be funded, the amount of funding that each will receive, and a description of the projects to be funded; the project implementation plan; a list of annual certifications and assurances; and public hearings notice, certification and transcript. The applications must contain sufficient information to enable FTA to make the findings required by law to enforce the program requirements. Information collected during the project management stage includes an annual financial report, an annual program status report, and pre-award and post-delivery audits. The annual financial report and program status report provide a basis for monitoring approved projects to ensure timely and appropriate expenditure of federal funds by grant recipients.

Respondents: State and local government and non-profit institutions.

Estimated Annual Burden on Respondents: 102.44 hours for each of the respondents.

Estimated Total Annual Burden: 11,370 hours.

Frequency: Annual.

Title: Americans with Disabilities Act (OMB Number: 2132–0555)

Background: On July 26, 1990, the President signed into law civil rights legislation entitled, ''The Americans with Disabilities Act of 1990'' (ADA) (Pub.L. 101–336). It contains sweeping changes for individuals with disabilities in every major area of American life. One key area of the legislation addresses transportation services provided by public and private entities. Some of the requirements under the ADA are: (1) No transportation entity shall discriminate against an individual with a disability in connection with the provision of transportation service; (2) All new vehicles purchased by public and private entities after August 25, 1990, must be readily accessible to and usable by persons with disabilities, including individuals who use wheelchairs; (3) Public entities that provide fixed route transit must provide complementary paratransit service for persons with disabilities, who are unable to use the fixed route system, that is comparable to the level of service provided to individuals without disabilities; and (4) Public entities operating light, rapid or commuter rail systems must designate key stations which were to be made accessible by July 26, 1993, unless the operator received a statutory time extension.

If FTA reasonably believes that an entity may not be in compliance, FTA may require periodic reports on a quarterly or annual basis. The information collected provides FTA with a basis for monitoring compliance. In addition, public entities, including recipients of FTA funds, are required to provide information during triennial reviews, complaint investigations, resolutions of complaints, and compliance reviews.

Respondents: State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

Estimated Annual Burden on Respondents: 100 hours for 50 respondents and 50 hours for 700 recipients.

Estimated Total Annual Burden: 40,000 hours.

Frequency: Annual.

Title: Pre-Award and Post-Delivery Review Requirements (OMB Number: 2132–0544)

Background: Under the Federal Transit Laws, at 49 U.S.C. 5323(l), grantees must certify that pre-award and post-delivery reviews will be conducted when using FTA funds to purchase revenue service vehicles. FTA regulation 49 CFR Part 663 implements this law by specifying the actual certificates that must be submitted by each bidder to assure compliance with the Buy America, contract specification, and vehicle safety requirements for rolling stock. The information collected on the certification forms is necessary for FTA grantees to meet the requirements of 49 U.S.C. 5323(l).

Respondents: State and local government, business or other for-profit institutions, non-profit institutions, and small business organizations.

Estimated Annual Burden on Respondents: 3 hours for each of the 700 respondents.

Estimated Total Annual Burden: 1,729 hours.

Frequency: Annual.

Issued: December 7, 2000.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 00–31709 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No NHTSA–2000–8171]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal Agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal Agencies must solicit public comment on proposed information collections, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 12, 2001.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, SW., Plaza 401, Washington, DC 20590. Docket No. NHTSA–2000–8171.

FOR FURTHER INFORMATION CONTACT: Marvin Levy, Ph.D., Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), Washington, DC 20590, telephone (202) 366–5597.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing for a 60-day comment period and to allow for consultation with affected agencies and members of the public concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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 technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In response to these requirements, NHTSA asks for public comment on the following proposed collection of information:

National Survey of Drinking and Driving Attitudes and Behavior

Type of Request: New information collection requirement.

OMB Clearance Number: None.

Form Number: This collection of information uses no standard forms.

Requested Expiration Date of Approval: February 28, 2002.

Summary of the Collection of Information

An agency goal is to reduce the number of alcohol related fatalities from 15,786, in 1999, to 11,000 by the year 2005. In support of this goal, NHTSA has conducted over the past decade a series of bi-annual surveys of the driving-aged public (aged 16 or older) to identify patterns and trends in public attitudes and behaviors towards drinking and driving and public reaction to alcohol countermeasures aimed at reducing the occurrence of drinking and driving and alcohol related crashes. The proposed study, to be administered in the 3rd quarter of 2001, and the sixth in this series of biennial surveys, will collect data on topics included in the first five studies (and several additional topics), including: frequency of drinking and driving and of riding with an impaired driver, ways to prevent drinking and driving, enforcement of drinking and driving laws including the use of sobriety checkpoints, understanding of BAC levels and legal limits, and crash and injury experience.

The survey will be administered by telephone to a national probability sample of the driving age public (aged 16 years or older as of their last birthday). Participation by respondents is voluntary. The interview is anticipated to average approximately 20–25 minutes; for non-drinkers and non-drivers the interview will average below 20 minutes, while for drinker-drivers it will average slightly over 20 minutes. Interviewers will use computer assisted telephone interviewing to reduce survey administration time and to minimize data collection errors. A Spanish-language questionnaire and bi-lingual interviewers will be used to reduce language barriers to participation. All respondents' results will remain anonymous and completely confidential. Participant names are not collected during the interview and the telephone number used to reach the respondent is separated from the data record prior to its entry into the analytical database.

Description of the Need for and Proposed Use of the Information

More than 308,000 persons were reported injured and nearly 16,000 persons died in alcohol-related motor vehicle crashes in 1999 (NHTSA-National Center for Statistics and Analysis). NHTSA is committed to the development of effective programs to reduce the incidence of these crashes. In order to properly plan and evaluate programs directed at reducing alcohol-impaired driving, the agency needs to periodically update its knowledge and understanding of the public's attitudes and behaviors with respect to drinking and driving.

The findings from this proposed collection will assist NHTSA in addressing the problem of alcohol-impaired driving and in formulating programs and recommendations to Congress. NHTSA will use the findings to help focus current programs and activities to achieve the greatest benefit, to develop new programs to decrease the likelihood of drinking and driving behaviors, and to provide informational support to states, localities, and law enforcement agencies that will aid them in their efforts to reduce drinking and driving crashes and injuries.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

Under this proposed collection, a telephone interview averaging approximately 20 minutes in length would be administered to each of 6,000 randomly selected members of the general public age 16 and older. The respondent sample would be selected from all 50 states plus the District of Columbia. Interviews would be conducted with persons at residential phone numbers selected using random digit dialing. No more than one respondent per household would be selected, and each sample member would complete just one interview. Businesses are ineligible for the sample and would be not be interviewed.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting From the Collection of Information

NHTSA estimates that respondents in the sample would require an average of 20 minutes to complete the telephone interview. Thus, estimated reporting burden on the general public would be a total of 2000 hours for the proposed survey. The respondents would not incur any reporting or record keeping cost from the information collection.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration.

[FR Doc. 00–31676 Filed 12–12–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33945]

Boot Hill & Western Railway Co., L.C.—Acquisition Exemption—Dodge City Ford & Bucklin Railroad Co.

Boot Hill & Western Railway Co., L.C. (BHWR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 25.73 miles of rail line from the Dodge City Ford & Bucklin Railroad Company. The line is located between milepost 347.9, at Bucklin, KS, and milepost 373.63, at Dodge City, KS. In conjunction with the acquisition of the rail line, BHWR will also acquire approximately 1.5 miles of incidental overhead trackage rights over a rail line owned by Union Pacific Railroad Company between Engineer Station 11+88 and Engineer Station 52+84.9, at Dodge City. The purpose of the trackage rights is to enable BHWR to interchange traffic with The Burlington Northern and Santa Fe Railway Company at Dodge City. BHWR certifies that its projected revenues as a result of this transaction will not result in its becoming a Class II or Class I rail carrier, and further certifies that its annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or shortly after December 6, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance

Docket No. 33945, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, BALL, JANIK LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our website at ''*www.stb.dot.gov.*''

Decided: December 5, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31472 Filed 12–12–00; 8:45 am]

BILLING CODE 4915–00–P

Federal Register

Wednesday,
December 13, 2000

Part II

Commodity Futures Trading Commission

17 CFR Part 1 et al.

A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations; Rules Relating to Intermediaries of Commodity Interest Transactions; A New Regulatory Framework for Clearing Organizations; Exemption for Bilateral Transactions; Final Rules

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, 15, 36, 37, 38, 100, 170 and 180

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A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is promulgating a new regulatory framework to apply to multilateral transaction execution facilities, to market intermediaries and to clearing organizations. This new framework constitutes a broad exemption under the authority of section 4(c) of the Commodity Exchange Act (Act or CEA) from many of the current rules applicable to designated contract markets. In addition, the new framework relies more heavily on disclosure rather than merit regulation. It establishes three new market categories, including the category of exempt multilateral transaction execution facility and two categories of Commission-recognized and regulated multilateral transaction execution facilities. In companion releases published in this edition of the **Federal Register**, the Commission also is adopting new rules for intermediaries and entities that clear derivative transactions. These final rules make fundamental and far-reaching changes to Federal regulation of commodity futures and option markets. However, nothing in these rules alters or diminishes the Commission's responsibility for overseeing and enforcing compliance by self-regulatory organizations, Commission registrants and market participants with the provisions of the Act.

The Commission in a companion release published in this edition of the **Federal Register** also is expanding and clarifying the operation of the current swaps exemption. Nothing in these releases, however, would affect the continued vitality of the Commission's exemption for swaps transactions under part 35 of its rules, or any of its other existing exemptions, policy statements or interpretations. Moreover, nothing in the final rules would affect the application of any statutory exclusion, including in particular, the applicability of the exclusion under section 2(a)(1)(A)(ii), known as ''the Treasury Amendment.''

EFFECTIVE DATE: February 12, 2001.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

The Commission, on June 22, 2000, proposed a new regulatory framework to apply to multilateral transaction execution facilities that trade contracts of sale of a commodity for future delivery or commodity options. 65 FR 38986. The Commission proposed this new framework to ''promote innovation, maintain U.S. competitiveness, and at the same time reduce systemic risk and protect customers.'' *Id.* The framework provides U.S. futures exchanges greater flexibility with which to respond to the competitive challenges brought about by new technologies.

Specifically, the framework proposed to replace the current ''one-size-fits-all'' regulation for futures markets with broad, flexible ''core principles,'' and to establish three regulatory tiers for markets: recognized futures exchanges (RFEs), derivatives transaction facilities (DTFs) and exempt multilateral transaction execution facilities (exempt MTEFs). The proposed core principles were tailored to match the degree and manner of regulation to the varying nature of the products and the participants permitted to trade on a facility.

In general, the framework proposed a lower level of regulatory oversight where access to an exchange or facility is restricted to eligible participants or commercial participants or where the nature of the underlying commodity poses a relatively low susceptibility to manipulation. This reflects the reduced need to monitor closely such markets. The Commission also proposed, however, that markets serving a price discovery function, irrespective of the product traded or market participants, provide a degree of price transparency. The proposed framework therefore balanced the public interests of market and price integrity, protection against manipulation and customer protection with the need to permit exchanges and other trading facilities to operate more flexibly in today's competitive environment. As noted in the Notice of Proposed Rulemaking, the President's Working Group on Financial Markets and the chairmen of the Commission's Congressional oversight committees encouraged the Commission to consider proposing such major revisions to the regulatory framework.[1] 65 FR at 38987.

B. The Proposed Rules

Under the proposed framework, current U.S. futures exchanges would be included automatically in the RFE category.[2] These exchanges would be permitted greater business flexibility through compliance with core principles rather than the prescriptive regulations now in place. In addition to achieving greater flexibility in their current operations, the exchanges, as a business choice, also could operate as a DTF or as an exempt MTEF, as appropriate.

The proposed DTF market would be subject to an intermediate level of regulation. DTFs, like RFEs, would be Commission-recognized markets. As proposed, DTFs would be geared either to mainly institutional traders or to only commercial traders. Specific requirements proposed for DTFs differ somewhat depending upon whether a DTF is an institutional or a commercial market.

The Commission proposed that institutional-participant DTFs may provide a trading platform for transactions involving those commodities listed in the rules that are eligible for such an intermediate level of regulation.[3] Additional commodities,

[1] Recognizing the importance of the OTC derivatives markets, the Chairmen of the Senate and House Agriculture Committees asked the President's Working Group on Financial Markets (PWG) to conduct a study of OTC derivatives markets. After studying the existing regulatory framework for OTC derivatives, recent innovations, and the potential for future developments, the PWG on November 9, 1999, reported to Congress its recommendations. *See*, Over-the-Counter Derivatives Markets and the Commodity Exchange Act, Report of the President's Working Group. The PWG report focused on promoting innovation, competition, efficiency, and transparency in OTC derivatives markets and in reducing systemic risk. Although specific recommendations about the regulatory structure applicable to exchange-traded futures were beyond the scope of its report, the PWG suggested that the Commission review existing regulatory structures (particularly those applicable to markets for financial futures) to determine whether they were appropriately tailored to serve valid regulatory goals.

[2] Products subject to the special procedural provisions of section 2(a)(1)(B)(ii) of the Act, however, must continue to be designated and regulated by the Commission as contract markets.

[3] The eligible commodities are those that are listed as eligible for trading on an exempt MTEF.

including agricultural commodities, would be eligible to trade on an institutional-participant DTF on a case-by-case determination. The Commission would make that determination based upon the depth and liquidity of the cash market and on the surveillance history of the commodity based on its actual trading history.

Although institutional-participant DTFs would be intended primarily for institutional traders, the proposed rules provide individual DTFs with the flexibility to decide whether or not to permit access by non-institutional traders. The Commission proposed, therefore, to permit access to a DTF by non-institutional traders only through a registered futures commission merchant (FCM) that is a member of a recognized clearing organization and that has $20 million of adjusted net capital. Those FCMs would be required to provide their non-institutional customers trading on a DTF with additional disclosures and other protections.

In addition, the rules proposed an intermediate level of oversight for commercial-participant DTFs. Only commercial participants trading for their own accounts would have access to these facilities. Commercial-participant DTFs may trade any commodity other than the agricultural commodities enumerated in section 1a(3) of the Act, government securities and commodities subject to the provisions of section 2(a)(1)(B)(ii) of the Act. Such commercial traders generally would have both the financial ability and the physical means to deliver tangible commodities or otherwise be involved in trading that commodity in connection with their line of commerce. Accordingly, certain requirements that were proposed to apply to institutional-participant DTFs would not be applicable to commercial-participant DTFs.

The Commission also proposed a market tier exempt from all Commission regulation, subject only to the Act's anti-fraud and anti-manipulation provisions and a requirement that, if performing a price discovery function, the market provide pricing information to the public. This exemption was proposed for facilities on which transactions would be entered into among institutional traders in contracts based upon a specified list of commodities.[4] The Commission proposed to exempt counterparties to such transactions from a claim in a private right of action that a violation of the terms of the exemption renders the transactions void. These exempt markets could not hold themselves out as being regulated by the Commission. As noted above, existing futures markets, where appropriate, would have the opportunity to operate under the terms of this exemption, if they so choose.

C. Overview of Comments

The Commission received a total of 71 comments from a wide range of commenters on the proposed new regulatory framework for multilateral transaction execution facilities.[5] The commenters included 24 trade associations, six commodity exchanges, two government agencies, four financial institutions, three attorneys, two institutional study organizations, one agri-business firm, a self-regulatory organization, and several energy and communication firms or markets.

In addition to comment letters, the Commission received oral and written statements during a public meeting held at the Commission's headquarters on June 27 and 28, 2000. At that meeting, members of the public had an opportunity to address the Commission and to respond to questions.[6] During the meeting, several panels of industry experts, representing the U.S. futures exchanges, the over-the-counter derivatives markets, emerging information and technology providers, market intermediaries and clearing organizations discussed the proposals in the context of current market structures and future trends. The proposed rules were also discussed and public comments received at a July 19, 2000, meeting of the Commission's Agricultural Advisory Committee (AAC).[7]

The overwhelming majority of the comments expressed general support for the Commission's proposed framework, and provided specific suggestions for its improvement. Many commenters described the Commission's initiative as a bold or important departure from the status quo which recognizes the beginnings of a new financial market landscape. In general, the commenters supported the framework's innovative concepts of providing greater regulatory flexibility by substituting core principles for prescriptive, one-size-fits-all regulations, and of tiered regulations tailored to the particular nature of the market. They also generally supported the Commission's initiative as providing greater legal certainty to various types of instruments.

Four commenters, however, strongly disagreed with the Commission's approach, albeit for opposing reasons. One institutional study organization argued that the proposal would take regulatory reform too far. In contrast, a second institutional study organization, an investment banking firm and an attorney expressed serious reservations, contending that the framework provided neither significant regulatory relief nor greater legal certainty. The substance of individual comments is discussed in greater detail below.

II. Final Rules

A. Exempt Multilateral Transaction Execution Facilities (Exempt MTEFs)

As discussed above, the Commission, in revised part 36, proposed a new, self-effectuating exemption for those multilateral transaction facilities (MTEFs) to which only eligible participants have access, either trading for their own account or through another eligible participant, and only for contracts based upon: (1) A debt obligation; (2) a foreign currency; (3) an interest rate; (4) an exempt security or index thereof, as provided in section 2(a)(1)(B)(v) of the Act; (5) a measure of credit risk or quality, including instruments known as ''total return swaps,'' ''credit swaps'' or ''spread swaps''; (6) an occurrence or contingency beyond the control of the counterparties to the transaction; or (7) cash-settled, based upon an economic or commercial index or measure beyond the control of the counterparties to the transaction and not based upon prices derived from trading in a directly

The rules relating to exempt MTEFs are discussed below. A market that otherwise might be eligible to be exempt from regulation as an exempt MTEF may voluntarily become a DTF in order to be become a ''recognized'' market.

[4] The proposed list of commodities included: a debt obligation, a foreign currency, an interest rate, an exempt security, a measure of credit risk or quality, or cash-settled based upon an economic or commercial index or based upon an occurrence or contingency.

[5] A significant number of letters commenting on aspects of the regulatory framework raised in companion notices were also submitted to the Commission. In this and three companion Notices of Final Rulemaking which are being published in this edition of the **Federal Register**, comment letters (CL) are referenced by file number, letter number and page. Comments filed in response to the notice of proposed rulemaking on MTEFs, parts 36–38, are contained in file No. 21, on the notice of proposed rulemaking on intermediaries in file No. 22, on the notice of proposed rulemaking on clearing in file No. 23 and on the notice of proposed rulemaking on the part 35 exemption in file No. 24. These letters are available through the Commission internet web site, www.cftc.gov.

[6] A transcript of the proceedings was included in the Commission's comment file and is available through the Commission's internet web site.

[7] A transcript of the AAC meeting is also included in the Commission's comment file and is available on the Commission's website.

corresponding underlying cash market.[8] The Commission proposal was based upon the ''view that these commodities, when traded between or among eligible participants need not be subject to the regulatory scheme of the Act. Accord PWG Report at 17.'' 65 FR at 38988.

Many commenters strongly supported this new exemption. For example, the International Swaps and Derivatives Association, Inc. (ISDA) observed that the ''clarifications contained in the Exempt MTEF proposal are of critical importance to ISDA and its members.'' CL 21–37 at 4. Reuters Group PLC (Reuters), a provider and developer of ''electronic business-to-business transaction communities,'' stated that in its view, ''[t]his new category of Exempt MTEF provides significant legal certainty to new electronic marketplaces in the enumerated derivatives.'' CL 21–62 at 3. A group of commercial and investment banks (Coalition)[9] commented that it ''strongly supports the Commission's proposal, and believes that the proposal represents a very important initiative both to promote legal certainty and to facilitate the development by U.S. market participants of electronic trading systems and technologies and the expanded use of clearing facilities. In addition, proposed part 36 would * * * limit[] the ability of an eligible participant to repudiate unprofitable contracts based on the CEA. The Coalition strongly supports these provisions. * * *'' CL 21–65 at 9. An attorney with the firm of Covington & Burling commented that:

> Derivative transactions satisfying these three conditions would be exempt from virtually all CEA regulation * * * and *either* (1) *were* traded on a multilateral transaction execution facility (MTEF), under newly-proposed part 36 of the Commission's regulations; *or* (2) *were not* traded on an MTEF, under newly-revised part 35 of the Commission's regulations. Thus, participants * * * would obtain legal certainty about the limited scope of CEA regulation regardless of whether the means for executing transactions did or did not satisfy the technical definition of an MTEF.
>
> It is our understanding that several comments have been filed with the Commission that seek changes to the proposed regulations in ways that conceivably could affect the legal certainty described above, including the Commission's statement supporting such legal certainty. We urge the Commission not to make any changes that would affect the interrelationship between the MTEF exemption and the bilateral transactions exemption in a manner that would diminish the legal certainty provided to eligible participants trading exempt commodities.

CL 21–63 at 2–3.

A number of the comments that generally supported proposed part 36 also suggested specific modifications, relating mainly to the commodities which were proposed to be eligible for the part 36 exemption and the proposed definition of MTEF. These issues, along with three comments opposing the proposed part 36 exemption on mainly jurisdictional grounds, are discussed below.

1. Jurisdictional Issues

Three commenters objected to the part 36 exemption on jurisdictional grounds. *See,* CLs 21–28, 55 and 57. One of the three, JP Morgan Securities, Inc. (JP Morgan), objected generally to proposed part 36, and particularly to the inclusion of instruments eligible for the exemption that are ''a measure of credit risk or quality, including instruments known as 'total return swaps,' 'credit swaps,' or 'credit spread swaps,''' reasoning that:

> An Exempt MTEF is to be subject to the anti-fraud and anti-manipulation provisions of the Act, as well as to whatever future rule the Commission may enact governing information dissemination. Therefore, a proposed ''exemption'' from the CEA has the effect of extending the Commission's authority to facilities that may trade products, such as swaps, which are not the Commission's to regulate under the terms of the Act itself. A self-effectuating ''exemption'' in this instance unintentionally becomes the reverse, an assertion of CFTC jurisdiction over non-futures products.

CL 21–55 at 4.

However, JP Morgan's conclusion is erroneous. As explained in its Notice of Proposed Rulemaking (65 FR at 38989), and reiterated herein, the Commission, by providing an exemption under part 36, is not thereby making an initial determination that any particular instrument which may be trading in reliance on the exemption is or is not within the Commission's jurisdiction. The use of the Commission's section 4(c) exemptive authority in this context to provide legal certainty to novel instruments without a preliminary determination by the Commission of complex jurisdictional issues is precisely as intended by the Congress. When Congress adopted section 4(c) in 1992, the Conferees stated:

> The conferees do not intend that the exercise of exemptive authority by the Commission [under Section 4(c)] would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward.[10]

Moreover, the assertion that the Commission through this exemption would extend provisions of the Act to instruments or persons not subject to the Act misconstrues the nature and the scope of the exemption. As proposed, rule 36.3(a) provides that the anti-fraud and anti-manipulation sections of the Act ''continue to apply to transactions and persons otherwise subject to those provisions.''[11] 65 FR at 38999. Thus, it is clear that the proposed rules do not attempt to extend application of the Act to any transactions not already subject to the Act.[12]

Proposed rule 36.2(g) requires that an exempt MTEF disseminate trading volume, price ranges and other trading data, but only pursuant to a Commission determination, after notice and an opportunity for a hearing, that the facility serves as a significant source for the discovery of prices. That procedure provides the facility with an opportunity to challenge the validity of the Commission's authority to issue and enforce such an order on the grounds that the instruments being traded are not subject to the Act.[13] Nevertheless, the Regulatory Studies Program of the Mercatus Center (Mercatus) opined that, even though ''a party could contest the CFTC's assertion of jurisdiction * * * it is the mere assertion of regulatory jurisdiction by the CFTC that in the past has created the legal uncertainties that these Proposals attempt to address.'' CL 21–57 at 4.

However, proposed rule 36.3(b), the contract non-repudiation provision,

[8] It should be noted that the instruments eligible for exemption are limited by operation of section 2(a)(1)(B) of the Act, which is reserved in proposed § 36.3(a). As the Commission observed, ''[t]he reservation, and application, of this provision is consistent with the language of section 4(c) of the act which limits the Commission's authority to exempt transactions from the application of section 2(a)(1)(B) of the Act.'' 65 FR at 38988.

[9] They are: Chase Manhattan Bank; Citigroup, Inc.; Credit Suisse First Boston, Inc.; Goldman Sachs & Co.; Merrill Lynch & Co., Inc.; and Morgan Stanley Dean Witter & Co.

[10] H.R. Rep. No. 978, 102d Cong., 2d Sess. 82–83 (1992).

[11] *See also,* CL 21–57 at 4, which makes the same fundamental error.

[12] In this regard, it must be noted that sections 6(c) and 9(a)(2) of the Act prohibit manipulation of ''the market price of any commodity, in interstate commerce,'' and is not limited in application to ''contracts of sale of a commodity for future delivery.''

[13] For example, were the Chicago Mercantile Exchange (CME) to offer trading of its Eurodollar contract through an exempt MTEF, the rule provides for public notice and an opportunity for public comment in determining that the market ''serves as a significant source for the discovery of prices for an underlying commodity'' and to require that, as a consequence, it disseminate certain information to the public. *See,* PWG Report at 19.

further removes any such potential negative, collateral effects on other markets. To the extent that part 36 applies to transactions traded on a facility, the contract non-repudiation provision also applies, reinforcing the legal certainty and validity of the transactions. On the other hand, to the extent that transactions and a market are outside of the Commission's jurisdiction, the Act and Commission rules (including the part 36 exemption) are inapplicable, and hence there can be no legal uncertainty about the validity of the contracts arising from the Act or Commission rules thereunder. As the Commission explained in the Notice of Proposed Rulemaking,

> the Commission is not making a determination that any market that is eligible to be an exempt MTEF under the proposed exemption is or is not subject to the Commission's jurisdiction under the CEA. Moreover, the fact that one market may operate as an exempt MTEF in reliance upon the proposed exemption * * * does not imply that the Commission has made a determination that any firm or entity that operates in a similar manner is subject to the Commission's jurisdiction under the CEA.

65 FR at 38989 (footnote omitted). Thus, the existence and application to any particular market of the part 36 exemption carries no negative legal inference or uncertainty for any other market.

Nevertheless, Mercatus further argues that the proposed exemption ''raises a whole new area for legal uncertainty in that the broad definition of MTEF in Proposed Rule 36.1(b) would appear to cover auction markets such as eBay and all other forms of B2B trading facilities, whether electronic or not.'' CL 21–57 at 5. Similarly, an attorney with the firm of Vinson & Elkins argues that, ''multilateral transaction execution facilities—regardless of the nature of their participants or the nature of the economic activity being undertaken on those facilities—must agree to become regulated by the CFTC.'' CL 21–28 at 1. This misconstrues the operation and structure of the part 36 exemption. As noted above, the exemption in part 36 is from application of the Act. To the extent that the Act does not apply to a facility's transactions, the regulatory framework is simply inapplicable. Thus, so long as a facility auctions instruments outside of the Commission's regulatory jurisdiction under the Act, these exemptions therefrom and this framework would have no application to its business.

2. Eligible Commodities

Some commenters have suggested that the commodities eligible for this exemption should differ somewhat from those proposed by the Commission. Specifically, the United States Department of the Treasury (Treasury) recommended that government securities should be ineligible for trading on exempt MTEFs. Treasury noted that contracts eligible to trade on an exempt MTEF would have included both single government securities and baskets of government securities. It further noted that ''[s]ince the introduction of futures contracts on government securities in the late 1970s, the trading of these instruments on futures exchanges has always been subject to Commission regulation, and all dealers and brokers in the cash market for government securities have been subject to regulation since the enactment of the Government Securities Act.'' CL 21–50 at 2.

As the Commission explained in its Notice of Proposed Rulemaking, 65 FR at 38988, its determination of which commodities to include as eligible for exempt MTEF status was informed by the recommendations of the PWG, including its recommendation to exclude from the Act transactions by eligible participants on electronic trading systems in commodities other than non-financial commodities with finite supplies. Treasury, however, has concluded that, for futures and options on government securities, a higher level of regulation than trading as an exempt MTEF is necessary and appropriate in order not to ''undermine the integrity of the government securities markets.'' *Id.* As Treasury noted in its comment letter,

> [p]rior to 1986, * * * problems with these entities [government securities brokers and dealers] led to the passage of the Government Securities Act of 1986, which was amended in 1993 to address issues related to auction irregularities, short squeezes, and unfair sales practices * * *. Allowing government securities futures to trade on exempt MTEFs, where they would not be subject to the Government Securities Act or any other regulatory framework designed to address potential problems, could undermine the integrity of the government securities markets.
>
> [T]here have been a number of attempts to manipulate individual securities within the broader market. Additionally, fraud and mistreatment of customers has in the past also been a concern in the government securities market.

Id.

In deference to Treasury's expressed concern that a higher level of regulation is necessary than provided at the exempt MTEF level, the final rules adopted by the Commission do not include government securities as eligible for trading on exempt MTEFs. Specifically, the Commission has removed the reference to exempt securities and indexes thereof previously included in proposed rule 36.2(b)(4) and has amended final rule 36.2(b)(1) to make clear that eligible debt instruments do not include such exempt securities.

In contrast to Treasury's recommendation to delete government securities from the list of eligible commodities, several commenters with energy-related businesses suggested that energy-related products be added to the list of commodities eligible to trade on exempt MTEFs. *See* CLs 21–34, 37, 38, 43. Merrill Lynch Co., Inc. (Merrill Lynch), for example, opined that ''over-the-counter bilateral trading in energy products between commercial entities has been exempted * * * since 1993 * * * and that no pattern of abuses or irregularities has been identified.'' CL 21–38 at 9. It further reasoned that, ''electricity trading remains subject to oversight by the FERC and the states, including licensing standards for market participants, reporting requirements, and enforcement authority to remedy any problems that may arise.'' *Id.* at 12. Merrill Lynch also noted that action has been taken by the FERC,

> to promote open access to transmission grids for natural gas. * * * Similarly, many state legislatures and public utility commissions * * * have adopt[ed] rules to facilitate or require the unbundling of gas distribution from production and supply. [A] standardized form of contract is in widespread use in the natural gas market. Given this statutory background, it would be inconsistent with the intent of Congress and actions taken by the FERC for the Commission to impose additional regulation on natural gas trading.

Id. at 13.

However, the Commission does not require that cash markets, such as those described above, come within the regulatory framework.[14] Centralized markets to trade spot and forward agricultural commodities have long existed outside of the regulatory scheme that applies to futures and option markets. The Act, and the regulatory framework thereunder, apply to markets that trade futures or option contracts on such underlying commodities. Accordingly, there is no inconsistency between the Commission's regulation of futures markets and regulation of the underlying cash markets by other regulators, such as the FERC or the states. To the contrary, the Commission in its oversight of the futures and option

[14] *See*, CFTC Staff Letter No. 99–67, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,970 (Dec. 16, 1999), relating to a market established by the legislature of California for the trading of electricity.

markets coordinates and cooperates with the regulators of related underlying cash markets.

Moreover, although some commenters expressed the view that energy products under the regulatory framework should be eligible to trade on exempt MTEFs based on the sophistication of traders in the market,[15] eligibility for exempt MTEF treatment must also be premised upon a finding that the likelihood of manipulation is sufficiently low that regulation is not required. That case has not yet been made. Existing derivative contracts involving energy commodities typically are based on physical delivery within a relatively narrow geographic area. Delivery under these contracts can be subject to physical constraints, *e.g.*, pipeline congestion, transmission congestion in the case of electricity, weather or natural disaster related events, concentration of ownership of transmission, pipeline or storage and production capacity. Although the total supplies of a broadly defined energy commodity may be large if viewed on a global basis, only a small subset of that total supply typically would be available for delivery on a derivatives contract. As the New York Mercantile Exchange (NYMEX) pointed out in its comment,

> [t]he President's Working Group drew a distinction in its report that limited exclusion from CFTC regulatory authority to financial derivatives. The Working Group's reasoning, in part, was that financial derivatives had ''virtually inexhaustible supplies'' and that dealers in the swaps markets, * * * were subject to other forms of regulatory oversight. That is not the case with many participants in the OTC energy derivative marketplace. Because the President's Working Group focused primarily upon financial derivatives in its report, one may reasonably conclude at this time that the case has yet to be made that such wholesale exemption from CFTC regulation for energy derivatives would serve the public interest.

CL 21–47 at 3. In agreement, Williams Energy Marketing and Trading Company, a company engaged in energy marketing and trading and risk management activities, noted that it ''supports the Commission's proposal to exempt from regulation those * * * MTEFs meeting the conditions specified in the proposed rule,'' and it urged the ''Commission to stay the course of establishing the basic parameters for its new regulatory framework.'' CL 21–25 at 3, 4.

As proposed, the final rules do not make energy-related commodities eligible for trading on exempt MTEF markets at this time.[16] The Commission is making this determination based upon its surveillance experience of designated contract markets on energy-related products and upon careful consideration of the comments. In making this determination, the Commission is not foreclosing generally any subsequent reconsideration of the issue. Moreover, the Commission proposed to permit individual markets, including those offering energy-related products, to petition the Commission for exemption under the provisions of part 36. As proposed, rule 36.2(h) specifically provides that ''any person or entity may apply to the Commission for exemption for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited to, the applicability of other regulatory regimes.'' 65 FR at 38999. The New York Independent System Operator (NYISO) in its comment supported inclusion of this provision, stating that,

> [i]rrespective of whether the automatic exemption criteria are modified, NYISO supports the inclusion of a provision permitting the Commission authority to grant individual petitions for Exempt MTEF status * * *. This type of flexibility is, we believe, necessary to accommodate markets with which the Commission may not as yet be familiar as well as changing markets.

CL 21–61 at 7.

The Commission agrees that flexibility to address new and changing markets is both necessary and appropriate and is adopting proposed rule 36.2(h) as final.[17] As with other such general exemptive provisions, the rule does not limit the grounds on which such an exemption may be granted. *Compare*, 17 CFR 32.4(b) and 35.2(d). However, those petitioning for exemption should be guided by the overall principles underlying the framework, that

> the level of oversight applied to exchanges or trading facilities * * * be based on the nature of participants allowed to trade on the facility and certain characteristics of the commodities being traded. In general, where access to an exchange or facility is restricted to more sophisticated traders or commercial participants, or where the nature of the commodity being traded poses a relatively low susceptibility to manipulation, regulatory oversight would be set at a lower level, reflecting the reduced need to monitor closely such markets.

65 FR at 38988. The commodities that are eligible for exempt MTEF status enjoy nearly inexhaustible deliverable supplies or are otherwise not subject to limitation. Petitions for inclusion of additional commodities should be for commodities of a similar nature. In addition, petitioners should consider addressing the sufficiency and applicability of other regulatory schemes.

Proposed rule 36.2(b)(5) would make eligible for exemption contracts, agreements or transactions which are ''a measure of credit risk or quality, including instruments known as 'total return swaps,' 'credit swaps,' or 'spread swaps.' '' JP Morgan objected to their proposed eligibility on the grounds that:

> [t]he named swaps are commonly based upon the price of corporate equities or, in the case of credit swaps, corporate debt, which is represented by a non-exempt security. The Commission is given authority under 4(c) to exempt futures contracts. But if these particular swaps are futures, they cannot be exempted because they would run afoul of the Shad-Johnson Accord, which bans futures on non-exempt securities prices (except for indexes which have cleared a lengthy regulatory approval process). The part 36 exemption will be of no use because it specifically does not exempt such transactions from the Shad-Johnson Accord. So if the Commission has authority to exempt these transactions (which would only be the case if they are futures), it cannot do so (because the Shad-Johnson Accord prohibits such futures).

CL 21–55 at 4.

However, ''total return swaps,'' include a greater variety of instruments than just swaps on corporate equities or debt, which as JP Morgan correctly recognizes, are not exempt under part 36. Proposed rule 36.2(b) also includes instruments that are not the subject of the prohibitions of the Shad-Johnson Accord.[18] Specifically, for example,

[15] *See*, comment letter from the California Power Exchange, an exchange offering physical delivery cash forward markets for the purchase and sale of electricity between commercial parties. CL 21–34 at 3.

[16] Of course, the framework does not preclude the trading of such contracts altogether. Under the framework, contracts for these commodities may trade on an institutional-participant DTF based on a case-by-case determination by the Commission, on a commercial-participant DTF or on an RFE.

[17] ISDA suggests including a ''category of eligible commodities * * * that over time become traded in sufficient volume so as to be highly unlikely to be susceptible to manipulation.'' CL 21–37 at 4. The Commission is of the view that the petition procedure provided in part 36 would in fact provide it with the type of flexibility to respond to market developments that ISDA advocates. The Coalition recommended that this authority be delegated by the Commission to the Director of the Division of Economic Analysis. CL 21–65 at 10. The Commission is of the view that these determinations should not be delegated at this time.

[18] Moreover, the specific named types of instruments such as ''total return swaps'' in the clause beginning with the word ''including'' modify the more general description ''a measure of credit risk or quality.'' Thus ''total return swaps,'' a term which may include many different types of instruments, are included under this prong of the exemption only insofar as they are also ''a measure of credit risk or quality.'' Of course, as noted in the Notice of proposed Rulemaking and reiterated above, nothing in these rules would affect the

''total return swap'' also describes an agreement whereby one party agrees to pay the total return on a loan portfolio to its counterparty in exchange for semi-annual payments based on a floating interest rate. It is this type of contract, transaction or agreement, traded among eligible participants, that is exempt under rule 36.2(b)(5), which the Commission is adopting as proposed.[19]

Proposed rule 36.2(b)(7) provides that cash-settled contracts on any economic or commercial index or measure beyond the control of the counterparties and not based upon prices derived from trading in a directly corresponding underlying cash market are eligible to trade on an exempt MTEF. The Board of Trade of the City of Chicago (CBT) suggested that proposed rule 36.2(b)(7) be modified so that it is not limited to economic or commercial indexes not based upon prices derived from trading in a directly corresponding cash market. It argued that the requirement that the index or measure be beyond the control of the counterparties is alone sufficient to protect against manipulation. CL 21–36 at 3. However, the Commission believes that both requirements must be met to qualify for the exemption. Basing the cash settlement price of a futures contract on prices derived from trading on an underlying cash market necessarily raises issues regarding the potential ability and incentives of traders in one market to affect pricing in the other market.[20] The Commission, by adopting the rule as proposed, intends to make eligible for this broad exemption only those MTEFs on which the contract's settlement price is objectively determined based upon prices that are ''an objective measurement of an economic or commercial index.'' 65 FR at 38989. As the Commission made clear, the exemption,

> is not intended to include contracts based upon a cash-settlement price determined through cash-market trading of any physical commodity or financial instrument. * * * Finally, included in this category are contracts based on an objectively determined index value or measure of an economic or commercial index reflecting broad characteristics of the economy as a whole, or portions thereof, or material segments of commercial activity.

Id. The Notice of Proposed Rulemaking noted that the consumer price index or the gross domestic product, insurance data, bankruptcy rates, real estate rental indexes, measures of physical production or sales amounts such as housing starts or auto sales or crop yields are examples of contracts falling within this category.[21]

3. Definition of MTEF

Several comments raised issues relating to the proposed definition of MTEF. The Commission proposed in rule 36.1(b) to define ''MTEF'' as ''an electronic or non-electronic market or similar facility through which persons, for their own accounts or for the accounts of others, enter into, agree to enter into or execute binding transactions by accepting bids or offers made by one person that are open to multiple persons conducting business through such market or similar facility.'' 65 FR at 38999. As explained in the Notice of Proposed Rulemaking,

> [t]he definition as proposed does not, and is not intended to, ''preclude participants from engaging in privately negotiated bilateral transactions, even where these participants use computer or other electronic facilities, such as ''broker screens,'' to communicate simultaneously with other participants so long as they do not use such systems to enter orders to execute transactions.'' Accordingly, the definition makes clear that it does not include facilities merely used as a means of communicating bids or offers nor does it include markets in which a single market maker offers to enter into bilateral transactions with multiple counterparties who may not transact with each other.

Id. at 38989 (citation omitted).

Several commenters recommended that the definition of MTEF exclude trading systems that include a credit screen. CL 21–21 at 6; CL 21–37 at 4. One commenter, DNI Holdings, reasoned that ''this credit emphasis has always been a characteristic of swaps transactions, but has never been a characteristic of the futures exchanges.'' CL 21–21 at 5–6. However, in a companion notice of final rulemaking published in this edition of the **Federal Register**, the Commission, consistent with the amendment of part 35 to permit bilateral contracts, transactions or agreements to be cleared, is deleting individualized creditworthiness determinations as a condition for meeting its part 35 exemption for bilateral transactions.

Moreover, as technology increases the availability of electronic credit screens or filters, their use has become common in both multilateral and bilateral environments. As NYMEX notes in commenting on a different provision, which applies to multilateral trading facilities,

> this provision would appear to be premised upon the notion that the credit checking and position limit functionality would reside only within the FCM's internal systems * * *. However, * * * certain trading systems, such as NYMEX's NYMEX ACCESS'' electronic trading system maintains the credit checking functionality as a component of the host computer. Clearing Members may enter inputs into the system to set specific limits per customer.

CL 21–47 at 8.

Finally, the exemptions in part 35 and part 36, when taken together, exempt derivative instruments from regulation under the Act whether or not they are traded on an MTEF if: (1) They are traded among or between eligible counterparties; (2) they are based on the underlying commodities, instruments or measures listed in part 36; and (3) they are, if cleared, cleared by an authorized clearing organization. As correctly observed in a comment referenced above, ''participants in transactions that satisfy these three conditions would obtain legal certainty about the limited scope of CEA regulation regardless of whether the means for executing transactions did or did not satisfy the technical definition of an MTEF.'' CL 21–63 at 2. In light of the availability of the same degree of exemptive relief under either part 35 or part 36 for the specified commodities, the deletion of creditworthiness as a condition for exemption under part 35, and the use of credit screens and filters in both bilateral and multilateral environments, the final rule does not include such an exclusion.

The CBT suggested that the exclusion from the proposed MTEF definition in rule 36.1(b)(3) for ''any facility on which only a single firm may participate as market maker and participants other than the market maker may not accept

continued applicability of any existing Commission exemptions, policy statements or interpretations to such ''total return swaps,'' or to any other instrument. Moreover, the non-repudiation provision of rule 35.3(c) that the Commission is adopting in a companion release would also apply to such instruments.

[19] The rule, as proposed, referenced ''spread swaps'' rather than ''credit spread swaps,'' which were referenced correctly in the preamble at page 38988. The final rule corrects this typographic error.

[20] This is in contrast to proposed 36.2(b)(6) which applies to ''an occurrence, extent of an occurrence or contingency beyond the control of the counterparties to the transaction.'' As the Commission explained, this category is intended to include contracts:

> based upon the outcome of a contingency, such as a recurring or nonrecurring event, a specific incident, a natural phenomenon or the unambiguous results of some other condition that gives rise to a hedgeable risk.

65 FR at 38989. The Commission does not anticipate that the settlement price of such contracts could be derived from trading in a directly related cash market and has therefore not included that as a criterion.

[21] The Commission provided specific examples for each category of commodities eligible to trade on an exempt MTEF under proposed rule 36.2(b). 65 FR at 38988–89. Except for exempt securities, which are being deleted from eligibility in the final rules, each of those examples is incorporated herein by reference.

bids or offers of other non-market maker participants'' should be deleted. It reasons that ''the Commission's approach could be read to allow a futures exchange * * * to decide to use a single market-maker or specialist system, like many securities exchanges, and avoid being considered to be an MTEF.'' CL 21–36 at 4. However, under the proposed exclusion there can be but one counterparty to all market participants. That is quite different from using one or more specialists in a multilateral trading setting. In that structure, the bids and offers of non-specialists are permitted to interact with each other. The Commission believes that this is a valid and logical distinction between bilateral and multilateral trading structures and is adopting the proposed language as final.

The CBT also questioned whether the definition of MTEF in proposed rule 36.1(b) would affect the Commission's view of the scope of the Treasury Amendment exclusion in section 2(a)(1)(A)(ii) of the Act. CL 21–36–4. As the Commission stated in the Notice of Proposed Rulemaking,

> the definition of MTEF in proposed § 36.1(b) applies only to those rules in which it is cited. It is not intended to modify, alter, amend or interpret any other provision of the Act or the Commission's rules. For example, the proposed § 36.1(b) definition of MTEF does not affect the meaning or application of the statutory term, ''board of trade.'' 7 U.S.C. 1a(1). Thus, the scope and application of the statutory exclusion in section 2(a)(1)(A)(ii) of the Act, popularly known as the ''Treasury Amendment,'' which depends in part on the meaning of ''board of trade,'' is in no way affected by the Commission's proposed adoption of a definition of MTEF under § 36.1(b) for purposes of the exemptions in part 35 and part 36 of its rules.

65 FR at 38989.[22]

Finally, commenters suggested a number of technical modifications to the rules. The CBT suggested that the Commission modify the final rules to clarify that it is the participant to whom notice is provided under proposed rule 36.2(f)(1) and that the separate trading location (or pit) required for trading on exempt MTEFs under proposed rule 36.2(f)(2) may nevertheless adjoin the location wherein Commission-recognized markets are traded. CL 21–36 at 5. The Commission agrees with these suggestions and is modifying the final rules accordingly. In addition, the Minneapolis Grain Exchange (MGE), CL 21–24 at 4, suggested that the Commission modify proposed rule 36.2(e)'s requirement that an exempt MTEF be legally separate from Commission-recognized markets. Upon further consideration of the issue, and based upon the fact that many of the exchanges historically overseen by the Commission have housed both designated contract markets and markets for trading spot or forward contracts without adverse consequence, the Commission is deleting that requirement from the final rules.

B. Derivatives Transaction Facilities.

The Commission also proposed a new exemptive category, ''Derivatives Transaction Facilities,'' which provides for an intermediate level of regulation. This intermediate level of regulation was proposed to be available for two separate types of markets. Although many of the proposed rules are common to both types of markets, some of the proposed rules were tailored to apply to one or the other market.

The first type of DTF proposed by the Commission was for (primarily) ''eligible-participants.''[23] Under the provisions of proposed part 37, these markets or similar facilities, including the current boards of trades, would be eligible to become a DTF regardless of the method of transmitting bids and offers or matching system used, either on a case-by-case determination or if the contracts traded were on the list of commodities eligible to trade as an exempt MTEF.[24] The Commission proposed that such ''eligible participant DTFs'' would have the choice of whether or not to permit access to the market by non-eligible traders. If they did permit access to non-eligible traders, a number of additional requirements were proposed to apply, including enhanced disclosure and higher net capital requirements for the carrying FCM.[25]

The Commission proposed a second type of DTF under proposed part 37 for facilities that restricted participation to ''eligible commercial participants.'' This type of ''commercial-participant DTF'' would be eligible to trade contracts on all commodities other than those domestic agricultural commodities enumerated in section 1a(3) of the Act,[26] any securities or indices thereof subject to section 2(a)(1)(B)(ii) of the Act or any exempt securities or indices thereof included in section 2(a)(1)(B)(v) of the Act. This type of eligible commercials-only market structure lessens many of the regulatory concerns regarding manipulation ordinarily present with contracts for tangible commodities and the regulations that are applicable to them have been tailored to this specific type of market.[27]

Although a few commenters objected to the DTF rules on jurisdictional grounds, many more commenters supported the concept of providing for an intermediate level of regulation. These commenters included both those interested in the eligible-participant DTF as well as those interested in the commercial-participant DTF. For example, Cargill stated that the ''three-tier system seems to provide adequate regulation for a wide range of financial products and market participants depending on the relative sophistication of the participants.'' CL 21–49 at 2. The Coalition stated that it supports the Commission's efforts to create an intermediate category of regulated trading facility subject to less regulation than an RFE and more regulation than an exempt MTEF. The Coalition went on to say that the tiered approach recognizes that there is a wide range of

[22] The CBT raises the concern whether the Act's Treasury Amendment exclusion would continue to apply to an exempt MTEF without an explicit reservation in the rules of that provision of the statute. CL 21–36 at 4. As the Commission explained in the Notice of Proposed Rulemaking and reiterated herein, ''the scope and application of the statutory exclusion in section 2(a)(1)(A)(ii) of the Act * * * is in no way affected'' by this regulatory exemption. Thus, the determination of whether or not a person or facility is a ''board of trade'' for purposes of the Act, generally, and the Treasury Amendment, specifically, should be made without reference to the definition of ''multilateral transaction execution facility'' under rule 36.1(b), which operates in the context of exemptions for markets to which access is limited to eligible participants.

[23] In a companion notice of final rulemaking published in this edition of the **Federal Register** entitled ''Rules Relating to Intermediaries of Commodity Interest Transactions,'' the term ''institutional customer'' is used rather than ''eligible participant.'' These terms can be used interchangeably.

[24] The Commission also expects, however, on a case-by-case basis, that the surveillance history and the self-regulatory undertakings of a particular exchange or facility could make it possible to include a specific contract traded on that facility within the DTF category even if the underlying commodity does not meet the general eligibility criteria. An exchange or facility seeking a case-by-case determination would be recognized as a DTF for that contract or contracts only upon CFTC approval.

[25] Amendments to the Commission's rules governing intermediaries are published today in a separate release in this edition of the **Federal Register**. Although those amendments apply to all categories of intermediaries irrespective of where they choose to transact business, certain proposals differentiate between intermediation on various types of markets and for different types of customers.

[26] They are wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, potatoes, wool, wool tops, fats and oils, cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice.

[27] Many of these trading facilities are expected to replicate electronically various aspects of today's commercial markets, including trading exclusively between principals, and direct negotiation and documentation of trades. In addition, these facilities often do not provide clearing arrangements for contracts.

types of markets, trading systems and market participants, and that it will facilitate market innovation. CL 21–65 at 16. The Association for Investment Management and Research (AIMR) opined that the tiered approach to regulation recognizes different operational profiles and risks inherent to individual participants. CL 21–64 at 3.

Commenters also suggested that the Commission reconsider various specific aspects of the rules as proposed. These suggestions clustered around how various commodities, including in particular, domestic agricultural commodities, should fit within the framework, how eligible participants should be defined, under what conditions non-eligible participants should have access, how the core principles should be enforced and what further tailoring might be appropriate for regulating commercial-participant DTFs. Each of these issues is discussed in greater detail below.

1. Jurisdictional Issues.

Although contracts, agreements or transactions traded on a DTF would be exempt from many of the Act's provisions and Commission regulations,[28] the exemption is contingent upon compliance with the conditions set forth in part 37. A market that applies to the Commission for recognition, and is so recognized by the Commission, is bound to comply with applicable provisions of the Act and Commission rules as a condition of this exemption.

Notwithstanding the requirement that a market or facility must apply to the Commission for recognition in order for the part 37 exemption to pertain, Mercatus questioned how commercial markets for physical commodities would be treated in this regime, and suggested that the Commission provide further guidance on the reach of the proposed part 37 in this area. CL 21–57 at 6. As the Commission noted in proposing part 37 (65 FR at 38989), and reiterates here, in exercising its section 4(c) exemptive authority to date, the Commission has not made a determination that the transactions being exempted were, or were not, subject to the Commission's jurisdiction under the CEA.[29] Rather, the Commission has exercised its section 4(c) authority to provide legal certainty for instruments that *may* be within its jurisdiction. However, the Commission will not entertain applications for recognition from markets or facilities offering transactions that clearly are outside of its jurisdiction.

The Coalition directly addressed this issue and supports the Commission's view. It reasoned that

> the Commission would not be authorized to exercise jurisdiction over activities that are clearly outside its jurisdiction under the CEA. Examples of this would include trading in equity options and spot transactions.
>
> At the same time, the conferees to the Futures Trading Practices Act of 1992 (the ''FTPA'') expressly authorized the Commission to exercise its exemptive authority under Section 4(c)(1) of the CEA without determining whether the exempted transactions are subject to the CEA. And they authorized the Commission to do so on such terms and conditions as the Commission deems appropriate. The conferees specifically so provided to enable the Commission to act without making consequential jurisdictional determinations that might create legal uncertainty for, or imply the illegality of, other transactions.
>
> For precisely the reasons motivating the FTPA conferees, the Coalition believes that the Commission is authorized to and should accept requests by trading facilities who wish to be registered as DTFs and who request that the Commission not make any determination that the underlying transactions are futures contracts or commodity options. The Coalition agrees with the Commission's implicit judgment that this approach will minimize the adverse jurisdictional implications, and therefore the legal uncertainty, that might otherwise arise if one trading facility elects to pursue DTF registration in circumstances where other, possibly analogous trading facilities do not. However, as suggested by the immediately preceding discussion, the Commission should only so proceed in cases where a bona fide issue as to its jurisdiction exists and should not so proceed in any case where it is clear that the Commission lacks jurisdiction.

CL 21–65 at 17–18.

As the Commission noted above with regard to the application of the part 36 exemption, this framework has no applicability to markets or facilities that clearly are outside of the scope of the Act and the Commission's jurisdiction. Thus, the availability of part 37 recognition to those markets that apply in no way carries a negative legal inference or uncertainty for any other market. Accordingly, the Commission is of the view that providing legal certainty through this part 37 exemptive relief to markets or facilities that may be subject to the Act is consistent with Congress' mandate to the Commission and is in the public interest.

2. Commodities

A number of commenters recommended that the framework be modified with regard to its application to the agricultural commodities enumerated in section 1a(3) of the Act. The Commission proposed that contracts on those commodities not be permitted to trade on a commercial-participant DTF, and that they be permitted to trade on an eligible-participant DTF only on a case-by-case determination by the Commission.

The response of commenters representing various agricultural interests was divided. National Grain and Feed Association (NGFA) argued that agricultural markets should be regulated in precisely the same manner as markets for financial commodities. The American Cotton Shippers (Cotton Shippers) argued that any differences in regulation of agricultural commodities penalizes these markets by denying them the benefit of potential marketing innovations. CL 21–12 at 3–5. MGE and the National Grain Trade Council (NGTC) also argued that there should be no distinction in the regulatory framework for the enumerated agricultural commodities. CL 21–24 at 1–2; CL 21–46. An FCM, F.C. Stone, contended that agribusiness firms have substantial risk management experience and can themselves weigh the risks of using a particular trading facility. CL 21–59 at 3.

A significant number of commenters favored permitting enumerated agricultural commodities to trade on an eligible-participant DTF on a case-by-case determination, as provided in the proposed rules. In a joint comment letter, eight agricultural producer groups[30] supported a case-by-case

[28] Certain sections of the Act, including the fraud and manipulation provisions of the Act and the Commission's regulations are reserved in rule 37.8 and would continue to apply.

[29] As noted above, the legislative history states that the Commission in exercising its section 4(c) exemptive authority is not required to make an initial determination that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Accordingly, in carrying out this mandate, when the Commission exempted certain swap agreements in 1993, pursuant to section 4(c) of the Act, it stated:

> The issuance of this rule (Rule 35.2) should not be construed as reflecting any determination that the swap agreements covered by the terms hereof are subject to the Act, as the Commission has not made and is not obligated to make any such determination.

58 FR 5587, 5588 (Jan. 22, 1993). See also Order Granting the London Clearing House's Petition for an Exemption Pursuant to Section 4(c) of the Commodity Exchange Act, 64 FR 53346 (Oct. 1, 1999); Exemption for Certain Contracts Involving Energy Products, 58 FR 21286, 21288 (Apr. 20, 1993); Regulation of Hybrid Instruments, 58 FR 5580, 55821 n. 2 (Jan. 22, 1993). The Commission is following this same mandate with respect to this exemption for DTFs.

[30] The eight groups are: the American Farm Bureau Federation, American Soybean Association, National Association of Wheat Growers, National Cattlemen's Beef Association, National Corn Growers Association, National Farmers Union,

Continued

Commission determination of eligibility for DTF trading of individual agricultural commodities. They emphasized, however, that the Commission should provide notice and accept public comment as part of its deliberative process. They further cautioned that such a determination should include appropriate conditions in addition to the seven DTF core principles. CL 21–60 at 1. The NGTC concurred, suggesting that DTFs be permitted to trade agricultural commodities conditioned upon enhanced surveillance (RFE Core Principle 3), position limits (RFE Core Principle 4), and such other requirements that the Commission concludes are essential to market integrity. Cargill, while recognizing that certain agricultural commodities may be subject to manipulation, nevertheless recommended that the CFTC should retain flexibility to address this issue by spelling out criteria that would have to be met for such a commodity to achieve DTF status. CL 21–49 at 2–3.

The final rules, as proposed, provide that the Commission may determine on a case-by-case basis to permit any commodity, including the enumerated agricultural commodities, to trade on an eligible-participant DTF. The Commission remains convinced, as do many commenters, that this strikes the appropriate balance between caution and flexibility to respond to future developments. Moreover, the commenters' suggestions that any case-by-case determination include particular, tailored conditions to the general core principles are well-taken. In this regard, the Commission is of the view that, at a minimum, any DTF trading a commodity on a case-by-case basis will be required to retain the large trader reporting system that pertains to RFEs. The Commission will determine additional requirements, if any, during each individualized determination. In this regard, the procedures to be used by the Commission in such case-by-case determinations will indeed include public notice and an opportunity for public comment.[31]

Commission rule 37.2(a)(2)(i) provides that commodities eligible through a case-by-case determination to trade on a DTF ''have a sufficiently liquid and deep cash market and a surveillance history based on actual trading experience to provide assurance that the contract is highly unlikely to be manipulated.'' The Global TeleExchange (GTX) commented that the Commission should articulate the standards that it will use to judge whether there is a ''sufficiently liquid and deep cash market'' to warrant approving a contract for DTF trading. CL 21–40 at 4. The Commission is not establishing quantitative thresholds or criteria for DTF inclusion *a priori,* because the appropriate standards necessarily would differ across markets and time, and the adoption of specific, detailed standards would deny the Commission and applicants needed flexibility.[32]

In making a determination whether a contract is highly unlikely to be manipulated and thus eligible for DTF trading through an individualized determination, the Commission will consider both the liquidity and depth of the underlying cash market *and* the actual trading experience of the contract, including, where relevant, the facility's surveillance history in monitoring the market and in addressing market problems. Sufficient liquidity and depth of the underlying commodity can be demonstrated by looking at a number of specific factors. These include: (1) A high level of liquidity; (2) bid-ask spreads that are narrow relative to traded values; (3) relatively frequent transactions involving participants that represent major segments of the industry; (4) the absence of material impediments to participation by commercial entities; (5) transfer of ownership that is easily and readily accomplished at minimal cost; and (6) a pattern of pricing that exhibits continuity and the absence of frequent, sharp price changes such that a person cannot readily move materially the price of the product in normal cash market channels. Facilities seeking recognition as a DTF should provide to the Commission information on these factors. Actual trading experience acceptable for DTF eligibility can be based upon a history that the contract terms and conditions provide for a deliverable supply that is adequate to minimize the threat of market abuses such as price manipulation and distortions, congestion, and defaults,[33] and by having in place appropriate procedures effectively to oversee the market, including a large trader system, as well as a history of active surveillance to prevent or mitigate market problems.[34]

3. Access by Non-Eligible Participants

Only eligible participants (*i.e.,* institutional traders) would have unrestricted access to an eligible-participant DTF. Non-eligible participants may access the market, but only through a registered FCM with $20 million in net capital that is a clearing member of a contract market or RFE. *See,* rule 37.2(a)(2)(ii). A number of commenters opposed this requirement. The CBT contended that this requirement is overly burdensome and does not further the Commission's stated goal that DTF transactions ''be transacted through FCMs that are more capable of properly maintaining such accounts and handling the associated risk.'' CL 21–36 at 7. It further reasoned that net capital is a poor proxy for an FCM's trading capabilities or level of regulatory compliance and that the rule favored large FCMs at the expense of smaller FCMs. *Accord,* CL 21–24. The CME disagreed with the premise of the rule that transactions on a DTF entail a higher degree of financial risk than do transactions on an RFE, especially in the context of futures based on liquid financial instruments carrying little risk of manipulation. CL 21–51 at 8. NGTC also questioned the relationship between an FCM's capitalization and its fitness to handle retail accounts on a DTF and argued that the $20 million threshold requirement was inconsistent with other CFTC capital requirements. CL 21–46 at 4–6.

Although adjusted net capital may be an imprecise measure of an FCM's capability to service accounts, the Commission nevertheless believes that the capital requirement proposed to be required of FCMs who trade on DTFs for non-institutional customers is appropriate at this time. Because of the absence of restrictions on the type of

National Grain Sorghum Producers and National Pork Producers Council, and will be referred to hereafter as ''agricultural producer groups.''

[31] Treasury similarly commented with respect to whether government securities should be permitted to trade on a DTF. It recommended that continued application of the segregation of customer funds requirements, certain adjustments to capital requirements for FCMs executing trades for retail customers and large trader reporting be conditions of permitting government securities to trade on a DTF. The Commission will certainly consider these views if any such request to trade government securities on a DTF is received. Moreover, consistent with current practice under the Act, the Commission will continue to keep Treasury apprised of new contracts involving government securities to be listed on both DTFs and RFEs.

[32] GTX also added that, in its view, telecommunication minutes and other telecommunication products should qualify as such a market. The Commission is not making such a determination in this rulemaking. That decision is better made as an individualized determination where a factual record can be developed and public comment specifically sought on the issue.

[33] In this regard, deliverable supply represents the amount of the commodity meeting the contract's specifications at the delivery locations that is available for delivery at its economic value in normal cash marketing channels.

[34] This requirement is not intended to preclude a market experienced in the trading of only cash or other instruments from making the necessary demonstrations. Such facilities may rely on that market experience in making the necessary demonstration.

trading mechanisms that could be used by a DTF, and the possibility of a greater number of such competing markets trading similar products, filling non-institutional customer orders at the best price would likely require the FCM to have a more extensive and sophisticated infrastructure and greater trading resources than an FCM operating in a traditional setting. Accordingly, the Commission, at this time, is adopting the capital-related access restriction as proposed. The Commission will consider further appropriate measures to permit additional FCMs to handle non-institutional customers' access to DTFs as experience is gained under the rules.

The Managed Funds Association (MFA) argued that customers trading through registered CTAs should have trading access to DTFs without regard to their individual financial qualifications. In particular, MFA suggested that a CTA with at least $25 million under management should be permitted to engage in transactions on behalf of their clients on all eligible-participant DTFs. CL 21–31 at 5. Although the Commission is not prepared at this time to treat a CTA's customers as eligible participants without limitation on the basis of the CTA's management of the account, the Commission does recognize that CTAs provide expertise and professional management to their customers. In recognition of this role, the Commission is revising proposed rule 37.2(a)(2)(ii) to permit CTAs, with at least $25 million under management and having non-institutional clients, to access DTFs that permit non-institutional participants on behalf of both their institutional and non-institutional customers through accounts carried by *any* registered FCM. The Commission will reconsider this issue when it looks more broadly at revising current rules applicable to CTAs and commodity pool operators.

NYMEX expressed concern that the proposed requirement that non-eligible traders access a DTF through an FCM may not address adequately electronic systems with direct customer order entry on which FCM credit filters are resident. The Commission agrees, and is modifying 37.2(a)(2)(ii) to make it clear that while the accounts of non-eligible traders must be carried by registered FCMs, they may have direct trading access to the DTF if a credit filter is required to be used by the FCM, regardless of where the filter is resident.

4. Commercial-Participant DTF

The Commission proposed that an intermediate level of regulation also apply to commercial-participant DTFs. The proposed rules applicable to commercial-participant DTFs, although having common elements with eligible-participant DTFs, also have a number of special features. For example, the proposed core principles for DTFs may include two alternatives, with the proviso that they apply to the market ''as applicable.'' *See, e.g.,* Core Principle 2, rule 37.4(b). Only one of the alternatives may be appropriate for a particular facility, and should be understood to apply in that manner.

One commenter, a company beginning an electronic platform for trading ''physical commodities and derivative products * * * among commercial participants,'' opined that ''the overall approach * * * will result in the imposition of excessive and unwarranted burdens on Commercial DTFs.'' Intercontinental Exchange, LLC (Intercontinental) CL 21–22 at 2. A second letter from a group of oil and gas producers, refiners, processors, and marketers and electric utilities and marketers (Energy Group) raised many of the same issues as did Intercontinental. CL 21–23. Specifically, these letters suggested that the Commission provide for a streamlined review procedure for recognition of a DTF within a fixed time period. The letters further stated that the DTF may not have ''exchange-style memberships or rules. Any substantive review of commercial DTFs, their owners or operators, therefore, or any review of rules or principles applicable to trading on or through such facilities would be inappropriate and unwarranted and will render the DTF framework completely unworkable.'' CL 21–22 at 3. They also noted that electronic platforms may have ''trading protocols, product descriptions, fee schedules, user guides and similar trading or transaction related documents or information'' rather than trading rules. *Id.*

The proposed rules, however, recognized this distinction and provided that the facility have rules *or terms and conditions* governing trading procedures. *See, e.g.,* proposed rule 37.3(a)(2). The reference to ''terms and conditions'' was intended to apply to trading platforms that did not have exchange-style rules and instead incorporated their trading procedures as terms of their operating agreements. However, ''terms and conditions'' is already a defined term under Commission rule 1.41(a)(2). To provide greater clarity of the Commission's intent, the final rules refer to ''rules, which may be trading protocols.'' Trading protocols include the methods and conditions for trading that may be included in a user's guide or operator's manual, customer agreements, screen trading prompts or other similar documents or writings.[35]

Intercontinental also opined that the reservation of various sections of the Act in proposed rule 37.5(a) potentially would subject a DTF to a number of additional obligations beyond those included in the rules themselves. CL 21–22 at 4. The Commission's intent, however, in reserving various sections of the Act in part 37 was not to import additional regulatory obligations into the part 37 rules. Rather, its reservation of various sections of the Act is to establish legal authority for promulgating these regulatory requirements. By reserving these sections of the Act, the Commission does not intend to incorporate regulatory requirements for DTFs beyond those specified in part 37. Moreover, the Commission intends that the reserved sections of the Act be interpreted as applying to DTFs as the difference in the contexts require. Some of the Act's provisions, such as section 4c(a) of the Act are reserved ''as applicable,'' depending upon the particular characteristics of a trading facility. The Commission will confirm whether that section of the Act applies to a particular facility in its Order granting recognition to the facility.

In contrast to the reservation of provisions of the Act effectuating the regulatory conditions of the exemption, the Commission has deleted from the final rules in parts 37, 38, and 39 specific reservation of various enforcement provisions that it had proposed specifically to retain. The Commission has determined that such specific reservations are unnecessary. Rather, such specific reservations do not affect the Commission's existing authority to investigate violations and to bring enforcement actions. *See,* section 4(d) of the Act.

In order to conform the regulatory requirements of the commercial-participant DTF more closely to cash market practices, the Commission is deleting the proposed requirement that participants respond to special calls for information about their trading activities. The Commission will rely instead on its investigative authority, which also applies to a person's cash market activities. Moreover, the Commission is not requiring that a non-U.S. participant appoint an agent for receipt of service of process within the United States or that the DTF act in that

[35] In addition, the Commission is amending the definition of ''rules'' under Commission rule 1.41(a)(1) specifically to include the term ''trading protocols.''

capacity. Instead, the Commission is requiring that the commercial-participant DTF provide notice to its non-U.S. participants of communications from the Commission. In the event that a non-U.S. participant fails to comply with such a Commission communication, the Commission may direct recognized DTFs to deny the participant further trading access. *Compare,* 17 CFR 21.03. By modifying the final rules in this way, the Commission is bringing the rules for commercial-participant DTFs into closer alignment with the operation of related cash markets, and the requirements on participants on commercial-participant DTFs, by and large, will be no greater or no different than is applicable to cash market trading.

Finally, both comment letters suggested that the rules applicable to DTFs be located entirely within part 37 without cross-referencing other rules. The Commission has modified the final rules to reduce the number of cross-references within part 37. Accordingly, the final rules have been reorganized to include a new rule 37.5 relating to information requirements (formerly in proposed part 20) and has divided the requirements for recognition into two sections. These modifications to the final rules change the substance of the rules only as discussed above. A number of voluntary provisions remain as cross-references to other rules.

Several commenters raised issues regarding the proposed definition of ''eligible commercial participant.'' Both NYMEX and the Commodity Floor Brokers and Traders Association expressed concern that exchange locals were not included within the category of eligible commercial participants. They reasoned that locals provide the same market making function as do dealers, a category included within the definition of eligible commercial participant. NYMEX noted that professional floor traders provide approximately 43–49% of the trading volume in NYMEX energy contracts. CL 21–47 at 4. NYMEX further noted that unless floor traders were included, the commercial-participant DTF model would ''be used to exclude * * * another business model [exchanges] that is generally comparable but for the sharing of market making responsibilities among a group of professional market makers rather than concentration of this function in a single dealer.'' *Id.* at 10. The CBT concurred, stating that ''[c]ertainly floor brokers and floor traders that trade regularly on exchange markets should be considered to be as sophisticated as any market participants. For that reason, in the Commission's current part 36 rules, floor brokers and traders are defined to be eligible participants without regard to any total or net asset test.'' CL 21–36 at 6. The Commission agrees that Commission registrants, particularly floor brokers and floor traders should be included as eligible to trade in a DTF with a guarantee of their obligations by a futures commission merchant, as suggested by NYMEX.[36]

These rules establish an intermediate level of regulation for DTFs appropriate to the commodities traded and the participants trading thereon. DTFs have great flexibility in determining the trading systems and mechanisms that they will use. Accordingly, and in light of their institutional nature, participants trading on DTFs are expected to exercise the appropriate degree of understanding in making use of these facilities. Notwithstanding part 37's greater degree of regulatory flexibility, the Commission retains its enforcement responsibility to ensure compliance with the fundamental regulatory goals of the Act, as included within these rules. The Commission believes that it has retained the tools necessary to accomplish this mandate and by adopting a more flexible regulatory approach is not thereby indicating any diminishment in its resolve effectively to enforce compliance.

5. Procedures for Recognition

A board of trade, facility, or entity seeking recognition as a derivatives transaction facility would be deemed to be recognized thirty days after the Commission received the application if the application met the conditions for recognition pursuant to §§ 37.3 and 37.4 and the applicant and/or its rules or procedures do not violate the Act or the Commission's regulations.[37] An entity seeking recognition as a DTF may request that the Commission approve its initial set of rules, which may be trading protocols, and any subsequent rules or rule amendments under section 5a(a)(12)(A) of the Act and Commission regulations thereunder. However, the DTF is only required to notify the Commission of rules and rule amendments, which include trading protocols, in the same manner that it notifies market participants, but no later than close of business on the day preceding implementation.

Several commenters raised issues regarding the procedures for recognition. Kiodex, a risk management services firm, suggested that the applicant have an opportunity to correct a deficiency before the ''Commission convert the review into a full-scale designation proceeding.'' CL 21–29 at 4. However, proposed rule 37.4(c) merely provided that upon termination of review under the thirty-day period, the application would be subject to the ''procedures specified in section 6 of the Act.'' That provision merely incorporates the time periods and other procedures from section 6; it is not intended to convert the application or its review into one for contract market designation.

On a related point, the CBT suggested a technical modification to clarify that a board of trade or other entity that files for recognition as a DTF by certification is not required to demonstrate that it satisfies conditions for recognition under part 37. CL 21–36 at 10. As both the proposed and final rules provide, however, the filing by a facility which is already a designated contract market need only include the DTF's rules and its certification that it meets the conditions for recognition as a DTF under the part 37 rules.

Intercontinental suggested that the Commission specifically retain the flexibility to grant recognition to new facilities at various stages of readiness. CL 21–22 at 1–3. The Commission agrees, and has modified rule 37.4 as proposed to provide that the Commission may determine to recognize a DTF upon conditions. These might relate either to additional regulatory undertakings by a particular facility, or to recognition of a facility pending its subsequent fulfillment of a regulatory requirement. This flexibility will enable new entrants to apply for recognition before development of their trading system is complete and to be recognized contingent upon their

[36] This determination is based on the important role that floor brokers and floor traders, which are Commission registrants, may fulfill in trading on a Commission-recognized market under the part 37 exemption. For this reason, the Commission does not agree, as NYMEX suggests, that floor trades or floor brokers should be eligible participants for purposes of parts 35 and 36 under conditions other than currently provided.

[37] The Commission has made clear in the rule 37.1(a) scope provision that the part 37 rules apply to a ''a board of trade operating as a derivatives transaction facility.'' Moreover, DTFs, as a condition of the part 37 rules, generally would be considered under proposed rule 37.1(a) to be subject to the Act's provisions as though the DTF were a ''designated contract market'' under the Act. As a board of trade within the meaning of that term under the Act (and as a contract market by operation of part 37), a DTF on which futures transactions are traded would be covered by the provisions of Subchapter IV of Chapter 7, Title 11 of the Bankruptcy Code. Similarly, DTFs should be considered ''contract markets'' for the purpose of, for example, Sections 556 and 761 of the Bankruptcy Code, and 12 U.S.C. 4402. The Commission has modified final rule 38.1(b) to make a similar clarification relating to RFEs.

meeting all of the recognition requirements.[38]

6. Enforcement of Core Principles

Several letters raised concerns regarding the interpretation, enforcement and oversight of core principles. NYMEX suggested that the guidance with respect to Core Principle 6 which provides that rule 1.31 is the acceptable practice should be amended to read ''an acceptable but non-exclusive means regarding the form and manner for keeping records.'' CL 21–47 at 11. The Commission appreciates that the current wording does not appear to offer a high degree of flexibility in meeting this core principle. However, rule 1.31 was recently amended (64 FR 28910) and in its amended form provides a degree of flexibility in compliance. Moreover, rule 1.31's provisions are consistent with the record-keeping requirements of the Securities and Exchange Commission (SEC). In light of the importance of recordkeeping to the Commission's ability to fulfill its oversight function and the high number of Commission registrants that must also comply with similar SEC requirements, the Commission is adopting the guidance as proposed and will provide further guidance on acceptable record-keeping practices after additional study of the issue.

The CBT opined that ''safeguards should be provided to ensure that flexible standards do not become a license for the CFTC to dictate to exchanges.'' CL 21–1 at 2–3. In contrast, Mercatus objected to the use of core principles as too vague. *See* CL 21–57 at 7, 10. *See also* CL 21–45 at 3. The Commission finds both of these arguments unpersuasive. First, the core principles are specifically designed to afford flexibility to trading facilities to design innovative trading mechanisms in an expeditious manner. Second, this flexibility should not be confused with vagueness. While not like typical prescriptive regulations, the core principles nevertheless do set forth specific standards to be satisfied by those seeking to gain and maintain recognition. Finally, any interpretative advice, assistance or direction provided by the Commission would constitute guidance only. It does not preclude any facility from complying with the core principle in some other manner.

Accordingly, the framework does not place the burden of proof upon those covered by the framework to demonstrate why a particular practice that differs from the specific guidance offered in a statement of acceptable practices complies with a particular core principle. See, CL 21–57 at 7. If, as a practical matter, a disagreement on the interpretation of any core principle could not be addressed through informal mechanisms, the burden of proof to establish a violation of a core principle would not differ from the Commission's current burden, and would rest with the Commission in any formal regulatory or enforcement proceeding.

Nevertheless, the CBT and CME called for a ''mechanism'' for resolving disagreements over interpretation of core principles short of the CFTC taking punitive action. CL 21–51 at 5. CBT suggested, for example, that all adjectives, such as ''appropriate,'' ''periodically,'' ''proper,'' and ''timely'' be removed from the core principles and that the Commission ''structure an alternative dispute resolution mechanism to resolve disagreements about the application of core principles.'' CL 21–36 at 10. The Commission appreciates the concerns of these commenters. By moving from prescriptive rules to more general core principles, self-regulatory organizations will have not only greater flexibility in how they meet the regulatory requirements, but more responsibility, as well. Purging the core principles of adjectives will not address the issue of whether the self-regulatory organizations act in a manner consistent with these internationally accepted norms for the conduct of trading facilities. The Commission fully expects that as self-regulators, the entities covered by the framework will strive to act at the highest ethical and professional standards for the protection of customers and the integrity of the market.

Finally, trading facilities must recognize that the requirements contained in the core principles may involve many interested parties, not just a facility's members or owners. Accordingly, as FIA suggested, when issuing interpretative guidance having industry-wide application, the Commission will follow the notice and public comments procedures of the Administrative Procedure Act, as appropriate. CL 21–45 at 5.[39]

C. Recognized Futures Exchanges

The Commission further proposed to recognize all currently designated contract markets, except for those designated as contract markets in section 2(a)(1)(B) commodities, as ''Recognized Futures Exchanges'' under proposed part 38. To provide recognized futures exchanges with greater operational flexibility, part 38, as proposed, would replace many prescriptive rules with performance-based rules, or core principles. Moreover, Commission review would not be required for new contracts or for rules and rule amendments prior to listing or implementation, except for the terms and conditions of agricultural commodities enumerated in section 1a(3) of the Act. Furthermore, the exchanges would not be required to be responsible for auditing intermediaries' sales practices. Instead, enforcement could be the responsibility of a registered futures association.[40]

The preamble to proposed part 38 noted that RFE markets can list for trading contracts on any commodity, including those having potentially a greater risk of price manipulation. In addition, because they could permit unconditioned access to both institutional and non-institutional traders, they raise greater concerns regarding customer protection than do DTFs. 65 FR at 38991. Therefore, as the preamble noted, the proposed rules in part 38 preserve a higher level of market surveillance, position reporting obligations, customer protections and financial safeguards than do the proposed rules for DTFs. *Id.* A number of commenters questioned these requirements as incorporated in the core principles that are applicable to RFEs.

1. RFEs as a Means of Regulatory Reform

As was the case with commenters on the proposed DTF category, many commenters supported the general concept of changing from prescriptive regulations to broad, flexible core principles for RFEs.[41] Some

[38] The Commission has modified the final application guidances to make clear that DTFs and RFEs must disclosure limitations of liability, if any. Such limitations of liability, consistent with longstanding Commission policy, may not limit liability for violations of the Act or Commission rules, fraud, or wanton or willful misconduct.

[39] The National Futures Association (NFA) advocated that its member rules be the primary means of developing best practice or other interpretative guidance for core principles applying the framework. The Commission appreciates the NFA's willingness to assist in interpreting Commission rules and in certain instances, where the parts of the framework involve NFA's member rules, the Commission may ask for NFA's interpretative assistance. However, it would be inappropriate for NFA to assume that role for areas of the framework that do not involve its membership, particularly for example, where a trading facility does not permit intermediation.

[40] As pointed out in the Federal Register release proposing part 38, the NFA currently is the only such registered organization. *See* 65 FR at 38991.

[41] Specifically, for example, Cargill supported the basic structure of the regulatory relief for organized

Continued

commenters expressed concern, however, that the RFE proposal would permit greater deregulation than appropriate for these commodities and market participants. For example, the Silver Users Association (SUA) maintained that any change in the regulatory structure for silver trading must provide clear assignment of responsibility for trading facility operators, and procedures for market participants to obtain redress for improper actions.[42] The agricultural producer groups urged that new agricultural contracts and amendments to such contracts continue to be subject to Commission review prior to their trading. CL 21–60 at 1. Two commenters, Mercatus and CBT, questioned whether the proposed framework for RFEs was sufficiently deregulatory in nature. CL 21–36 at 12.

The Commission remains convinced, and most commenters agreed, that the use of core principles supplemented by statements of acceptable practices strikes the right balance between the need for appropriate regulation and for flexibility. The proposed rules for RFEs are not intended to remove internationally accepted standards for market or financial integrity or for the protection of customers trading on futures exchanges. Rather, they are intended to offer U.S. exchanges greater flexibility in meeting those requirements. As the Commission noted:

> [t]hese proposed rules * * * [are] intended to provide greater flexibility in meeting technological and competitive challenges. At the same time, the Commission will retain its oversight authority to ensure the integrity of markets and prices, to deter manipulation, to protect the markets' financial integrity, and to protect customers.

65 FR at 38987. This approach, although providing exchanges a high degree of flexibility to meet these challenges, is not intended to relieve U.S. exchanges from their obligations to comply with the policies and requirements of the Act, nor to operate in a manner that fails to meet ''internationally-accepted guidance regarding appropriate regulatory measures for exchange-traded derivatives markets.''[43] 65 FR at 38987.

2. Comments Concerning the Core Principles

A number of commenters offered suggested changes to the core principles. The Commission has considered these comments within the overall goal that the core principles establish broad, flexible requirements, that at the same time are specific enough to provide notice of the required performance by the recognized entity. In this regard, the final version of Appendix A to part 38 herein, clarifies that the guidance offered on the means of complying with the core principles is for illustrative purposes only and is not intended to be a mandatory checklist for compliance.

Specifically, AIMR suggested that Core Principle 3 (Position Monitoring and Reporting) should simply require exchanges to have the process and rules necessary to deter market manipulation. CL 21–64 at 4. That formulation, however, fails to capture the breadth of an RFE's responsibility under the Act. Both prevention of price manipulation and assurance of market and price integrity are fundamental public policy interests of the Act. Accordingly, the Commission believes that it is vital that RFEs have more than just rules and a process to deter manipulation, as suggested by AIMR. The Commission therefore is retaining the language of Core Principle 3, which requires an RFE to monitor ''on a routine and non-routine basis as necessary to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process.''[44]

NYBOT and CBT expressed concerns about Core Principle 7, which relates to transparency. NYBOT raised the concern that the required level of transparency under Core Principle 7 should be appropriate to the method of order execution, explaining that some aspects of transparency are affected by whether trading is electronic or open-outcry (*e.g.*, bids and offers are not automatically captured in open-outcry trading). CL 21–7 at 3, CL 21–27 at 2. However, technology is rapidly transforming futures markets and the core principles are intended to be understood broadly and applied flexibly in each particular market context. Accordingly, the Commission believes that the transparency requirement, as proposed, provides the necessary guidance for both open-outcry and electronic markets. The CBT suggested that the Commission revise the DTF Transparency Core Principle to mirror the proposed RFE Transparency Core Principle, commenting that DTFs appear to have the more onerous transparency burden. CL 21–36 at 10. The material difference between the two core principles is that the DTF Transparency Core Principle requires disclosure of information to both market participants and the public. That requirement is particularly necessary at the DTF level in light of the framework's greater reliance on disclosure rather than merit-type regulation.

Upon further consideration, however, the Commission believes that the Transparency Core Principle proposed to apply to DTFs should be applied at the RFE level, as well. The RFE Transparency Core Principle as proposed could result in permitting an inappropriate reduction in the information currently available to market participants. Therefore, under the final Transparency Core Principle, both RFEs and DTFs must provide information to market participants, on a fair, equitable and timely basis, regarding prices, bids and offers, as well as other pertinent information as appropriate to the market. This additional language is not intended to interfere with the current practice of futures exchanges of selling price and other market information through various information vendors.

FIA suggested in its comment that the guidance regarding price and reporting time as it relates to block trading should be eliminated from Appendix A, Core Principle 8.[45] CL 21–45 at 6–7. The

futures exchanges. CL 21–49 at 2. NYMEX strongly supported the overall design of the proposal. CL 21–47 at 1. CME strongly supported the Commission's approach in moving from prescriptive regulations to core principles. CL 21–51 at 5. NYBOT stated that the proposed framework struck a measured balance between self-regulation and federal oversight in many respects. CL 21–27 at 1.

[42] The SUA expressed the additional concern that if liquidity in silver trading at RFEs using open-outcry diminishes due to interest in electronic platforms, procedures should be in place for making pricing data from electronic trading platforms available to the public on a timely basis. CL 21–39 at 3.

[43] Under Rule 38.3(f), as modified in the final rules, RFEs are required to carry out international financial and surveillance information sharing arrangements. The Commission points out that, at this time, the International Information Sharing Agreement and Memorandum of Understanding developed by the FIA Global Task Force on Financial Integrity is one such arrangement.

[44] AIMR also suggested that Core Principle 4 (Position Limits) be modified only to require RFEs to hold members accountable for their positions. However, position limits are a necessary tool for preventing market manipulation or distortion in many markets and the Commission therefore declines to modify the core principle as proposed. However, the Commission in its proposed statement of acceptable practices specifically determined that exchange position accountability rules are an acceptable means of meeting the core principle for various types of markets. 65 FR at 39005.

[45] Core Principle 8 requires an RFE to ''provide a competitive, open and efficient market.'' A primary goal of the Commission's framework is to ensure that prices discovered in futures and derivatives markets are accurate and reflective of current supply and demand conditions in the markets. Core Principle 8 specifically includes the concept of ''efficient'' markets in order to make clear that trading systems that discover prices reflective of the forces of supply and demand and accurately reflect publicly held information may include certain practices, such as block trades, that permit large traders to enter the market with a single trade as opposed to having to execute

Commission understands the difficulties in implementing both the ''fair and reasonable price'' and ''transparency'' guidance. Nevertheless, current block trading provisions meet both such criteria, and the Commission believes it appropriate to retain them at this time. In this regard, the Commission notes that the reporting time provision is not the ''specific timing requirement'' referred to by FIA, but a provision for transparency of the block trade, directing that the trade be reported ''within a reasonable period of time.''(emphasis added). 65 FR at 39006. Without such transparency, the market's price discovery role would be harmed. The Commission may reconsider this guidance in the future if, in practice, these criteria prove to be unworkable.[46]

NYBOT suggested that requiring all RFEs on which intermediaries trade to have relevant rules under Core Principle 10 (Financial Standards) would impose a new, onerous burden, and might result in conflicting rules being implemented at different RFEs. NYBOT states that segregation of customer and proprietary funds and custody and investment of customer funds are currently governed by Commission rules implemented under the auspices of a designated self-regulatory organization. CL 21–7 at 2. The adoption of Core Principle 10 is not intended to impose a ''new, onerous burden'' on exchanges, to change current systems in place for the oversight of intermediaries nor to discourage the voluntary harmonization of rules by the exchanges through the operation of organizations such as the Joint Audit Committee.

The Commission has modified Core Principle 15 in response to concerns that it inadvertently could impose a duty different in form or degree from the antitrust statutes and court decisions construing them. *See, e.g.,* comment of the Board of Trade Clearing Corporation, CL 21–20 at 13. Final Core Principle 15 requires that RFEs operate in a manner consistent with the public interest to be protected by the antitrust laws. The Commission itself remains subject to the requirements of section 15 of the Act, and will continue to take into consideration the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives of the Act in requiring or approving any bylaw, rule or regulation of any facility recognized under this framework.[47]

3. New Products and Rules and Amendments Thereof

The Commission proposed that alteration by RFEs of the terms and conditions of futures contracts on the enumerated agricultural contracts be subject to prior review and approval by the Commission. The NYBOT, MGE, CBT, and CME opposed this provision, arguing that RFEs should be permitted to alter the terms or conditions of agricultural contract terms and conditions by self-certification, the same process permitted for contracts on all other commodities.[48] In contrast to the exchange commenters, a number of commenters representing agricultural interests specifically supported retention of the proposed 45-day prior approval requirement for changes to the terms and conditions of existing agricultural contracts.[49] Concern was also raised by the National Cotton Council and the agricultural producers groups regarding the certification process for new contracts. CL 21–54 at 1. They suggested that Commission prior approval under a 45-day review period be required for new agricultural contracts, as well as for alterations of existing contracts.[50] CL 21–60 at 2.

The Commission concurs with the agricultural producers groups that, as ''agricultural futures markets serve as the price discovery mechanism for agricultural commodities, any changes to these markets can have a significant impact on farmers and ranchers.'' CL 21–60 at 2. In light of their reliance on the existing futures markets for price discovery, the Commission concurs that agricultural producers, processors and merchants have an interest in commenting on significant alterations to the terms of contracts prior to their implementation. Accordingly, the Commission is adopting the prior approval provision for amendments to contract terms and conditions, as proposed. However, the Commission does not agree that the same opportunity for comment is necessary for new contracts, upon which producers have not previously relied. The success of a new contract will rest on its attractiveness to market participants and the marketplace will determine whether the terms and conditions of a new contract offer a reliable price discovery mechanism. Accordingly, the Commission has decided to permit an RFE to list new agricultural contracts by self-certification, as proposed.

Several commenters opposed Commission authority to stay the effectiveness of rules implemented by exchange certification during a Commission action to disapprove those rules. *See,* rule 1.41(c)(4) as amended.[51] They argued that such stays could disrupt the marketplace.[52] However, under the rule, the Commission would only be able to stay a proposed rule incident to disapproval proceedings and the stay determination would not be delegable to Commission staff. The Commission anticipates that it will stay implementation of an RFE rule only in limited and egregious situations, where, for example, one or more core principles

numerous small trades. By including ''efficiency'' in addition to open and competitive markets, the Commission is promoting a flexible standard that protects the price discovery process of the markets while permitting a variety of trading practices.

[46] AIMR recommended that the Commission reword Core Principle 8 as an RFE should not only provide for, but should also facilitate the appearance of, a competitive, open and efficient market (trading system). CL 21–64 at 4. The final version of Core Principle 8 does not include the additional language proposed by AIMR. The Commission believes that provision of an open and competitive market would also promote the appearance of such a market, without the need explicitly to so require.

[47] Section 15 of the Act is also reserved under rule 38.6(a). Section 15 of the Act requires the Commission to take into consideration the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives of the Act in issuing any order, adopting any regulation, or approving any rule.

[48] *See* CL 21–7 at 2, 4; CL 21–24 at 3–4; CL 21–36 at 11; CL 21–51 at 5.

[49] *See* CL 21–52 at 1–2 (National Cattlemen's Beef Association); CL 21–54 at 1 (The National Cotton Council of America, ''National Cotton Council''); CL 21–60 at 1–2 (agricultural producers groups).

[50] The comment letter stated that the agricultural organizations were concerned that exchanges could use the ability to offer a new contract with one day's notice to avoid prior review and approval for amendments and changes to agricultural contracts. It could also cause market fragmentation, since new trading facilities might test new contracts on the market without a thorough prior business analysis.

[51] Amendments to Commission rule 1.41 were proposed as part of the new regulatory framework. These amendments, appearing in the final version in this **Federal Register** release, allow an RFE to make modifications to its rules (other than terms or conditions of contracts on the commodities enumerated in section 1a(3) of the Act) by certification to the Commission that the new or amended rule does not violate the Act or the Commission's regulations. Upon the adoption of the attached amendments to Commission rule 1.41, the Commission's earlier certification proposal, published as a proposed rule on November 26, 1999 (64 FR 55428), will be unnecessary. Therefore, the Commission is withdrawing proposed rule 1.41(z) at this time.

[52] *See, e.g.,* CL 21–24 at 4 (assertions by MGE that rules should not be stayed absent sufficient evidence that market participants will suffer material harm). *See also* CL 21–27 at 3 (conclusions by NYBOT that staying a rule pending a proceeding to disapprove or amend it could take months, and the uncertainty thus created would deter traders); CL 21–36 at 11–12 (statement by CBT that it could be detrimental for the Commission to retain authority to impose a stay during a proceeding to disapprove, alter, or amend an RFE rule as stays could disrupt the marketplace); CL 21–51 at 5 (observation by CME that the Commission should not retain authority to stay operation of an exchange rule as, in an emergency situation, the Commission could act under section 8a(9) of the Act, without advance notice or a hearing).

were being violated, but that the Commission's emergency authority would not apply.[53] In such serious situations, the Commission believes that the unavailability of a stay could cause significantly more disruptive effects than imposition of a stay in appropriate situations. In those rare instances, the absence of a stay could cause significantly greater harm to the market than its use. The Commission has determined that this authority is central to its ability to oversee the operation of RFEs consistent with its responsibilities under the Act.

4. Bankruptcy Status

Several commenters requested that the Commission clarify that transactions on both DTFs and RFEs continue to enjoy the same Bankruptcy Code status as transactions on a designated contract market.[54] As noted above, recognized RFEs and DTFs are both ''boards of trade'' within the meaning of the Act, and pursuant to these regulations, are deemed to be subject to all provisions of the Act and Commission rules applicable to a ''designated contract market.'' *See, e.g.,* rule 38.1(b). Moreover, final part 38 explicitly reserves the applicability of part 190 to part 38 transactions. Accordingly, as explained in footnote 37 above, as a board of trade within the meaning of that term under the Act (and as a contract market by operation of part 38), transactions on RFEs (and DTFs) would be covered by the provisions of Subchapter IV of Chapter 7, Title 11 of the Bankruptcy Code, which apply to futures contracts (or options) traded on or subject to the rules of a board of trade or contract market.[55]

III. Section 4(c) Findings

These rule amendments are being promulgated under section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may by rule, regulation or order exempt any class of agreements, contracts or transactions, either unconditionally or on stated terms or conditions from any of the requirements of any provision of the Act. For any exemption granted pursuant to 4(c), the Commission must find that the exemption would be consistent with the public interest. For any exemption granted pursuant to 4(c) from the requirements of section 4(a), the Commission must further find that the section 4(a) requirement(s) should not be applied to the agreement, contract or transaction to be exempted, that the exemption would be consistent with the public interest and the purposes of the Act, that the agreement, contract, or transaction to be exempted would be entered into solely between appropriate persons and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.[56]

The Commission specifically requested the public to comment on these issues. The Commission finds and the commenters overwhelmingly concurred that the proposed regulatory framework would be in the public interest. As explained above, these proposed rules establish a new regulatory framework. The proposed framework is intended to promote innovation and competition in futures trading and to permit the markets the flexibility to respond to technological and structural changes. Consequently, the Commission finds that section 4(a) requirements should not be applied to agreements, contracts or transactions executed pursuant to parts 36, 37 or 38 except as provided for in each part, respectively. Moreover, the proposed framework establishes three regulatory tiers with regulations tailored to the nature of the commodities traded and the nature of the market participant. As the Commission explained above, access to each of the tiers is dependent upon the appropriateness of the participant.

Accordingly, and for the reasons detailed above, the Commission finds that each class of participant eligible to participate in a specific tier is appropriate for that exemptive relief. Finally, the exemptions for parts 37 and 38 are upon stated terms. As detailed above, these terms include application of regulatory and self-regulatory requirements tailored to the nature of the market. In light of these conditions, this exemptive relief would have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act and the exemptions are consistent with the purposes of the Act.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* (1994 & Supp. II 1996), requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules adopted herein would affect contract markets, FCMs, CTAs, Floor Brokers and Floor Traders. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[57] In its previous determinations, the Commission has concluded that contract markets and registered FCMs are not small entities for the purpose of the RFA.[58] With respect to CTAs, Floor Brokers and Floor Traders, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all of the affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule. In this regard, the rules being adopted herein would allow qualifying CTAs, floor brokers and floor traders to access trading in less regulated futures markets than is currently the case; consequently, these rules should not have any, or result in only a de minimus, increase in the regulatory requirements that apply to CTAs, Floor Brokers and Floor Traders. Accordingly, the Commission does not expect the rules, as adopted herein, to have a significant economic impact on a substantial number of small entities. Furthermore, no comments were received from the public on the RFA and its relation to the proposed rules. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

These parts 15, 37, 38 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13,

[53] For example, a rule that altered a trade matching algorithm to give one class of participants a significant and improper ongoing advantage over another or that had a continuing significant adverse affect on customers could be the subject of a stay. In contrast, such a rule might not be a proper basis for a market emergency, as it might not result in a situation where action was necessary to ensure that the market accurately reflected the forces of supply and demand. The term ''emergency'' as defined in the Act means, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. *See* section 8a(9) of the Act.

[54] *See, e.g.,* CL 21–65 at 22.

[55] Similarly, the Commission believes that transactions on recognized DTFs and RFEs should be subject to the same tax treatment as transactions on formally designated contract markets.

[56] *See* 7 U.S.C. 6(c).

[57] 47 FR 18618–21 (Apr. 30, 1982).

[58] 47 FR 18618, 18619 (discussing contract markets); 47 FR 18619–20 (discussing FCMs and CPOs).

1996)), the Commission has submitted a copy of these proposed parts to the Office of Management and Budget (OMB) for its review (44 U.S.C. 3504(h)). No comments were received in response to the Commission's invitation in the NPRM to comment on any potential paperwork burden associated with these regulations.

List of Subjects

17 CFR Part 1

Commodity futures, Consumer protection, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 5

Authority delegations (Government agencies), Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 15

Commodity futures, Contract markets, Reporting and recordkeeping requirements.

17 CFR Part 36

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 37

Authority delegations (Government agencies), Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 100

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 170

Authority delegations (Government agencies), Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 180

Claims, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4, 4c, 4i, 5, 5a, 6 and 8a thereof, 7 U.S.C. 6, 6c, 6i, 7, 7a, 8, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.37 is amended by adding paragraphs (c) and (d) to read as follows:

§ 1.37 Customer's or option customer's name, address, and occupation recorded; record of guarantor or controller of account.

* * * * *

(c) Each recognized futures exchange shall keep a record in permanent form which shall show the true name; address; and principal occupation or business of any foreign trader executing transactions on the facility or exchange, as well as the name of any person guaranteeing such transactions or exercising any control over the trading of such foreign trader.

(d) Paragraph (c) of this section shall not apply to a recognized futures exchange on which transactions in futures or option contracts of foreign traders are executed through and the resulting transactions are maintained in accounts carried by a registered futures commission merchant or introducing broker subject to the provisions of paragraph (a) of this section.

* * * * *

3. Section 1.41 is amended as follows:

a. By revising paragraph (a)(1),

b. By removing and reserving paragraph (b), and removing paragarphs (i) through (t),

c. By redesignating paragraph (e) as paragraph (i) and revising it,

d. By revising paragraphs (c) and (d) and adding (e), and

e. By amending paragraphs (f) and (g) by adding the words ''or recognized futures exchange'' after the words ''contract market'' each time they appear, to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

(a) * * *

(1) The term rule of a contract market means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, term and condition, trading protocol, agreement or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, or by the governing board thereof or any committee thereof.

* * * * *

(b) [Reserved]

(c) *Exemption from the rule review procedure requirements of section 5a(a)(12)(A) of the Act and related regulations.* Notwithstanding the rule approval and filing requirements of section 5a(a)(12) of the Act, designated contract markets, recognized futures exchanges and recognized clearing organizations may place a rule into effect without prior Commission review or approval if:

(1) The rule is not a term or condition of a contract for future delivery of an agricultural commodity listed in section 1a(3) of the Act;

(2) The entity has filed a submission for the rule, and the Commission has received the submission at its Washington, D.C. headquarters and at the regional office having jurisdiction over the entity by close of business on the business day preceding implementation of the rule; and

(3) The rule submission includes:

(i) The label, ''Submission of rule by self-certification;'

(ii) The text of the rule (in the case of a rule amendment, brackets must indicate words deleted and underscoring must indicate words added);

(iii) A brief explanation of the rule including any substantive opposing views not incorporated into the rule; and

(iv) A certification by the eligible entity that the rule does not violate any provision of the Act and regulations thereunder.

(4) The Commission retains the authority to stay the effectiveness of a rule implemented pursuant to paragraph (c)(1) of this section during the pendency of Commission proceedings to disapprove, alter or amend the rule. The decision to stay the effectiveness of a rule in such circumstances may not be delegable to any employee of the Commission.

(d)(1) *Voluntary submission of rules for fast-track approval.* A designated contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization may submit any rule or proposed rule (which may be terms or conditions of trading or trading protocols), except those submitted to the Commission under paragraph (f) of this section, for approval by the Commission pursuant to section 5a(a)(12)(A) of the Act, whether or not so required by section 5a(a)(12) of the Act under the following procedures:

(i) One copy of each rule submitted under this section shall be furnished in hard copy or electronically in a format specified by the Secretary of the Commission to the Commission at its Washington, DC headquarters. If a hard copy is furnished for submissions under appendix A to part 5 of this chapter, two additional hard copies shall be furnished to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Each submission under this paragraph (d)(1) shall be in the following order:

(A) Label the submission as ''Submission for Commission rule approval'';

(B) Set forth the text of the rule or proposed rule (in the case of a rule amendment, brackets must indicate words deleted and underscoring must indicate words added);

(C) Describe the proposed effective date of a proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(D) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, how the rule fits into the contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization's framework of self-regulation, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the submitting entity, set forth the pertinent text of any such rule and describe the anticipated effect;

(E) Note and briefly describe any substantive opposing views expressed with respect to the proposed rule which were not incorporated into the proposed rule prior to its submission to the Commission; and

(F) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret in order to approve or allow into effect the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the change.

(ii) All rules submitted for Commission approval under paragraph (d)(1)(i) of this section shall be deemed approved by the Commission under section 5a(a)(12)(A) of the Act, forty-five days after receipt by the Commission, unless notified otherwise within that period, if:

(A) The submission complies with the requirements of paragraphs (d)(1)(i) (A) through (F) of this section or, for dormant contracts, the requirements of § 5.3 of this chapter;

(B) The submitting entity does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period; and

(C) The submitting entity has not instructed the Commission in writing during the review period to review the proposed rule under the 180 day review period under section 5a(a)(12)(A) of the Act.

(iii) The Commission, within forty-five days after receipt of a submission filed pursuant to paragraph (d)(1)(i) of this section, may notify the entity making the submission that the review period has been extended for a period of thirty days where the proposed rule raises novel or complex issues which require additional time for review or is of major economic significance. This notification shall briefly describe the nature of the specific issues for which additional time for review is required. Upon such notification, the period for review shall be extended for a period of thirty days, and, unless the entity is notified otherwise during that period, the rule shall be deemed approved at the end of the enlarged review time.

(iv) During the forty-five day period for fast-track review, or the thirty-day extension when the period has been enlarged under paragraph (d)(1)(iii) of this section, the Commission shall notify the submitting entity that the Commission is terminating fast-track review procedures and will review the proposed rule under the 180 day review period of section 5a(a)(12)(A) of the Act, if it appears that the proposed rule may violate a specific provision of the Act, regulations, or form or content requirements of this section. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulations, or form or content requirements of this section that the proposed rule appears to violate. Within fifteen days of receipt of this termination notification, the designated contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization may:

(A) Withdraw the rule;

(B) Request the Commission to review the rule pursuant to the one hundred and eighty day review procedures set forth in section 5a(a)(12)(A) of the Act; or

(C) Request the Commission to render a decision whether to approve the proposed rule or to institute a proceeding to disapprove the proposed rule under the procedures specified in section 5a(a)(12)(A) of the Act by notifying the Commission that the submitting entity views its submission as complete and final as submitted.

(2) *Voluntary submission of rules for expedited approval.* Notwithstanding the provisions of paragraph (d)(1) of this section, changes to terms and conditions of a contract that are consistent with the Act and Commission regulations and with standards approved or established by the Commission in a written notification to the market or clearing organization of the applicability of this paragraph (d)(2) shall be deemed approved by the Commission at such time and under such conditions as the Commission shall specify, provided, however, that the Commission may at any time alter or revoke the applicability of such a notice to any particular contract.

(e)(1) *Notification of rule amendments.* Notwithstanding the rule approval and filing requirements of section 5a(a)(12) of the Act and of paragraphs (c) and (d) of this section, designated contract markets, recognized futures exchanges and recognized clearing organizations may place the following rules into effect without prior notice to the Commission if the following conditions are met:

(i) The designated contract market, recognized futures exchange, or recognized clearing organization provides to the Commission at least weekly a summary notice of all rule changes made effective pursuant to this paragraph during the preceding week. Such notice must be labeled ''Weekly Notification of Rule Changes'' and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished in hard copy or electronically in a format specified by the Secretary of the Commission to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; and

(ii) The rule change governs:

(A) *Nonmaterial revisions.* Corrections of typographical errors, renumbering, periodic routine updates to identifying information about

approved entities and other such nonsubstantive revisions of contract terms and conditions that have no effect on the economic characteristics of the contract;

(B) *Delivery standards set by third parties.* Changes to grades or standards of commodities deliverable on futures contracts that are established by an independent third party and that are incorporated by reference as terms of the contract, provided that the grade or standard is not established, selected or calculated solely for use in connection with futures or option trading;

(C) *Index contracts.* Routine changes in the composition, computation, or method of selection of component entities of an index other than a stock index referenced and defined in the contract's terms, made by an independent third party whose business relates to the collection or dissemination of price information and that was not formed solely for the purpose of compiling an index for use in connection with a futures or option contract;

(D) *Transfer of membership or ownership.* Procedures and forms for the purchase, sale or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership or dues or assessments; or

(E) *Administrative procedures.* The organization and administrative procedures of a contract market's governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements and procedures or requirements or procedures relating to conflicts of interest.

(2) *Notification of rule amendments not required.* Notwithstanding the rule approval and filing requirements of section 5a(a)(12) of the Act and of paragraphs (c) and (d) of this section, designated contract markets, recognized futures exchanges and recognized clearing organizations may place into effect without notice to the Commission, rules governing:

(i) *Administration.* The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays, and changes to facilities housing the market, trading floor or trading area; or

(ii) *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, visitors, but not the establishment of penalties for violations of such rules.

* * * * *

(i) *Membership lists.* Upon request of the Commission each designated contract market, recognized futures exchange or recognized clearing organization shall promptly furnish to the Commission a current list of the facility's or entity's members or owners subject to fitness requirements.

§§ 1.43, 1.45 and 1.50 [Removed]

4. In part 1, §§ 1.43, 1.45, and 1.50 are proposed to be removed and reserved.

5. Part 5 is amended as follows:

PART 5—PROCEDURES FOR LISTING NEW PRODUCTS

a. The authority citation for part 5 continues to read as follows:

Authority: 7 U.S.C. 6(c), 6c, 7, 7a, 8 and 12a.

b. The heading of part 5 is revised as set forth above and §§ 5.1 through 5.3 are revised to read as follows:

§ 5.1 Listing contracts for trading by exchange certification.

(a) Notwithstanding the provisions of section 4(a)(1) of the Act or § 33.2 of this chapter, a board of trade that has been recognized by the Commission as a recognized futures exchange under part 38 of this chapter may list for trading contracts of sale of a commodity for future delivery or commodity option contracts, if the recognized futures exchange:

(1) Lists for trading at least one contract which is not dormant within the meaning of § 5.3;

(2) In connection with the trading of the contract complies with all requirements of the Act and Commission regulations thereunder applicable to the recognized futures exchange under part 38 of this chapter;

(3) Files with the Commission at its Washington, D.C., headquarters either in electronic or hard-copy form a copy of the contract's initial terms and conditions and a certification by the recognized futures exchange that the contract's initial terms and conditions do not violate any requirement of part 38 of this chapter, any applicable provision of the Act or of the rules thereunder, and the filing is received no later than the close of business of the business day preceding the contract's initial listing; and

(4) Identifies the contract in its rules as listed for trading pursuant to exchange certification.

(b) The provisions of this section shall not apply to:

(1) A contract subject to the provisions of section 2(a)(1)(B) of the Act;

(2) A contract to be listed initially for trading that is the same or substantially the same as one for which an application for Commission review and approval pursuant to § 5.2 was filed by another board of trade while the application is pending before the Commission; or

(3) A contract to be listed initially for trading that is the same or substantially the same as one which is the subject of a pending Commission disapproval proceeding under section 6 of the Act, to disapprove a term or condition under section 5a(a)(12) of the Act, to alter or supplement a term or condition under section 8a(7) of the Act, to amend terms or conditions under section 5a(a)(10) of the Act, to declare an emergency under section 8a(9) of the Act, or to any other proceeding the effect of which is to disapprove, alter, supplement, or require a contract market or a recognized futures exchange to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

§ 5.2 Voluntary submission of new products for Commission review and approval.

(a) *Cash-settled contracts.* A new contract to be listed for trading by a recognized futures exchange under part 38 of this chapter or a recognized derivatives transaction facility under part 37 of this chapter shall be deemed approved by the Commission ten business days after receipt by the Commission of the application for contract approval, unless notified otherwise within that period, if:

(1) The submitting entity labels the submission as being submitted pursuant to Commission rule 5.2—Fast Track Ten-Day Review;

(2)(i) The application for approval is for a futures contract providing for cash settlement or for delivery of a foreign currency for which there is no legal impediment to delivery and for which there exists a liquid cash market; or

(ii) For an option contract that is itself cash-settled, is for delivery of a foreign currency that meets the requirements of paragraph (a)(2)(i) of this section or is to be exercised into a futures contract which has already been designated as a contract market or approved under this section;

(3) The application for approval is for a commodity other than those enumerated in section 1a(3) of the Act or one that is subject to the procedures of section 2(a)(1)(B) of the Act;

(4) The submitting entity trades at least one contract which is not dormant within the meaning of this part;

(5) The submission complies with the requirements of Appendix A of this part—Guideline No. 1;

(6) The submitting entity does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period; and

(7) The submitting entity has not instructed the Commission in writing during the review period to review the application for designation under the usual procedures under section 6 of the Act.

(b) *Contracts for physical delivery.* A new contract to be listed for trading by a recognized futures exchange under part 38 of this chapter or by a derivatives transaction facility under part 37 of this chapter shall be deemed approved by the Commission forty-five days after receipt by the Commission of the application for contract approval, unless notified otherwise within that period, if:

(1) The submitting entity labels the submission as being submitted pursuant to Commission rule 5.2—Fast Track Forty-Five Day Review;

(2) The application for contract approval is for a commodity other than those subject to the procedures of section 2(a)(1)(B) of the Act;

(3) The submitting entity lists for trading at least one contract which is not dormant within the meaning of this part;

(4) The submission complies with the requirements of Appendix A to this part—Guideline No. 1;

(5) The submitting entity does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period; and

(6) The submitting entity has not instructed the Commission in writing during the forty-five day review period to review the application for designation under the usual procedures under section 6 of the Act.

(c) *Notification of extension of time.* The Commission, within ten days after receipt of a submission filed under paragraph (a) of this section, or forty-five days after receipt of a submission filed under paragraph (b) of this section, may notify the submitting entity that the review period has been extended for a period of thirty days where the application for approval raises novel or complex issues which require additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraphs (a) and (b) of this section shall be extended for a period of thirty days.

(d) *Notification of termination of fast-track procedures.* During the fast-track review period provided under paragraphs (a) or (b) of this section, or of the thirty-day extension when the period has been enlarged under paragraph (c) of this section, the Commission shall notify the submitting entity that the Commission is terminating fast-track review procedures and will review the proposed contract under the usual procedures of section 6 of the Act, if it appears that the proposed contract may violate a specific provision of the Act, regulations, or form or content requirements of Appendix A to this part. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation, or form or content requirement of Appendix A to this part that the proposed contract appears to violate. Within ten days of receipt of this termination notification, the submitting entity may request that the Commission render a decision whether to approve the designation or to institute a proceeding to disapprove the proposed application for designation under the procedures specified in section 6 of the Act by notifying the Commission that the exchange views its application as complete and final as submitted.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Economic Analysis or to the Director's delegatee, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to request under paragraphs (a)(6) and (b)(5) of this section that the recognized futures exchange or derivatives transaction facility amend the proposed contract or supplement the application, to notify a submitting entity under paragraph (c) of this section that the time for review of a proposed contract term submitted for review under paragraphs (a) or (b) of this section has been extended, and to notify the submitting entity under paragraph (d) of this section that the fast-track procedures of this section are being terminated.

(2) The Director of the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in paragraph (e)(1) of this section.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

§ 5.3 Dormant contracts.

(a) *Definitions.* For purposes of this section:

(1) The term *dormant contract* means any commodity futures or option contract:

(i) In which no trading has occurred in any future or option expiration for a period of six complete calendar months; or

(ii) Which has been certified by a recognized futures exchange or a recognized derivatives transaction facility to the Commission to be a dormant contract market.

(2) [Reserved]

(b) *Listing of additional futures trading months or option expiration by certification.* A contract that has been listed for trading initially under the procedures of either §§ 5.1 or 5.2 that has become dormant may be relisted for trading additional months pursuant to the procedures of § 1.41(c) of this chapter by filing the bylaw, rule, regulation or resolution to list additional trading months or expirations with the Commission as specified in that section. Upon relisting, the contract must be identified by the recognized futures exchange as listed for trading by exchange certification.

(c) *Approval for listing of additional futures trading months or option expirations.* A contract that has been initially approved by the Commission under § 5.2 and that has become dormant may be relisted for trading additional months pursuant to the procedures of § 1.41(d) of this chapter by filing the bylaw, rule, regulation or resolution to list additional trading months or expirations with the Commission as specified in that section.

(1) Each such submission shall clearly designate the submission as filed pursuant to Commission Rule 5.3; and

(2) Include the information required to be submitted pursuant to § 5.3 or an economic justification for the listing of additional months or expirations in the dormant contract market, which shall include an explanation of those economic conditions which have changed subsequent to the time the contract became dormant and an explanation of how any new terms and conditions which are now being proposed, or which have been proposed for an option market's underlying futures contract market, would make it reasonable to expect that the futures or

option contract will be used on more than an occasional basis for hedging or price basing.

(d) *Exemptions.* No contract shall be considered dormant until the end of sixty (60) complete calendar months:

(1) Following initial listing; or

(2) Following Commission approval of the contract market bylaw, rule, regulation, or resolution to relist trading months submitted pursuant to paragraph (c) of this section.

Appendices C and D [Removed and Reserved]

c. Appendices C and D are removed and reserved.

PART 15—REPORTS—GENERAL PROVISIONS

6. The authority citation for Part 15 is revised to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6(c), 6a, 6c(a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21.

7. Section 15.05 is amended by revising the heading and by adding paragraphs (e) through (h) to read as follows:

§ 15.05 Designation of agent for foreign brokers, customers of a foreign broker and foreign traders.

* * * * *

(e) Any derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange that permits a foreign broker to intermediate transactions in futures or option contracts on the facility or exchange, or permits a foreign trader to effect transactions in futures or option contracts on the facility or exchange shall be deemed to be the agent of the foreign broker and any of its customers for whom the transactions were executed, or the foreign trader for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader with respect to any futures or option contracts executed by the foreign broker or the foreign trader on the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange. Service or delivery of any communication issued by or on behalf of the Commission to a derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange pursuant to such agency shall constitute valid and effective service upon the foreign broker, any of its customers, or the foreign trader. A derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange which has been served with, or to which there has been delivered, a communication issued by or on behalf of the Commission to a foreign broker, any of its customers, or a foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the foreign broker, any of its customers or the foreign trader.

(f) It shall be unlawful for any derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange to permit a foreign broker, any of its customers or a foreign trader to effect transactions in futures or option contracts unless the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange prior thereto informs the foreign broker, any of its customers or the foreign trader in any reasonable manner the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange deems to be appropriate, of the requirements of this section.

(g) The requirements of paragraphs (e) and (f) of this section shall not apply to any transactions in futures or option contracts if the foreign broker, any of its customers or the foreign trader has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange prior to effecting any transactions in futures or option contracts on the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange. This agreement must authorize the person domiciled in the United States to serve as the agent of the foreign broker, any of its customers or the foreign trader for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader and must provide an address in the United States where the agent will accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange prior to permitting the foreign broker, any of its customers or the foreign trader to effect any transactions in futures or option contracts. Unless otherwise specified by the Commission, the agreements required to be filed with the Commission shall be filed with the Secretary of the Commission at Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. A foreign broker, any of its customers or a foreign trader shall notify the Commission immediately if the written agency agreement is terminated, revoked, or is otherwise no longer in effect. If the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange knows or should know that the agreement has expired, been terminated, or is no longer in effect, the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange shall notify the Secretary of the Commission immediately. If the written agency agreement expires, terminates, or is not in effect, the derivatives transaction facility eligible under § 37.2(a)(2) of this chapter or recognized futures exchange and the foreign broker, any of its customers or the foreign trader are subject to the provisions of paragraphs (e) and (f) of this section.

(h) The provisions of paragraphs (e), (f) and (g) of this section shall not apply to a derivatives transaction facility or recognized futures exchange on which all transactions in futures or option contracts of foreign brokers, their customers or foreign traders are executed through and the resulting transactions are maintained in accounts carried by a registered futures commission merchant or introducing broker subject to the provisions of Rules 15.05(a), (b), (c) and (d).

* * * * *

8. Part 36 is revised to read as follows:

PART 36—EXEMPTION OF TRANSACTIONS ON MULTILATERAL TRANSACTION EXECUTION FACILITIES

Sec.
36.1 Definitions. As used in this part:
36.2 Exemption.
36.3 Enforceability.

Authority: 7 U.S.C. 2, 6, 6c, and 12a.

§ 36.1 Definitions.

As used in this part:

(a) *Eligible participant* means and shall be limited to the parties or entities listed in § 35.1(b)(1) through (11) of this chapter; and

(b) *Multilateral transaction execution facility* means an electronic or non-electronic market or similar facility through which persons, for their own accounts or for the accounts of others,

enter into, agree to enter into or execute binding contracts, agreements or transactions by accepting bids or offers made by one person that are open to multiple persons who conduct business through such market or similar facility, but does not include:

(1) A facility whose participants individually negotiate (or have individually negotiated) with counterparties the material terms applicable to contracts, agreements, or transactions between them, including contracts, agreements, or transactions conducted on the facility, and which are subject to subsequent acceptance by the counterparties;

(2) Any electronic communications system on which the execution of a contract, agreement or transaction results from the content of bilateral communications exchanged between the parties and not by the interaction of multiple orders within a predetermined, non-discretionary automated trade matching algorithm; or

(3) Any facility on which only a single firm may participate as market maker and participants other than the market maker may not accept bids or offers of other non-market maker participants.

§ 36.2 Exemption.

A contract, agreement or transaction traded on a multilateral transaction execution facility as defined in § 36.1(b) is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to such contract, agreement or transaction is exempt for such activity from all provisions of the Act (except in each case the provisions enumerated in § 36.3(a)) provided the following terms and conditions are met:

(a) Only eligible participants, either trading for their own account or through another eligible participant, have trading access to the multilateral transaction execution facility;

(b) The contract, agreement or transaction listed on or traded through the multilateral transaction execution facility is based upon:

(1) A debt obligation other than an exempt security under section 3 of the Securities Act of 1933 or section 3a(12) of the Securities Exchange Act of 1934;

(2) A foreign currency;

(3) An interest rate;

(4) A measure of credit risk or quality, including instruments known as ''total return swaps,'' ''credit swaps'' or ''credit spread swaps'';

(5) An occurrence, extent of an occurrence or contingency beyond the control of the counterparties to the transaction; or

(6) An economic or commercial index or measure which is beyond the control of the counterparties to the transaction, and is not based upon prices derived from trading in a directly corresponding underlying cash market and for which the related contract, agreement or transaction is cash settled;

(c) If cleared, the submission of such contracts, agreements or transactions for clearance and/or settlement must be to a clearing organization that is authorized under § 39.2 of this chapter: *Provided, however,* that nothing in this paragraph precludes:

(1) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment or delivery obligations resulting from such contracts, agreements, or transactions; or

(2) Arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments or deliveries resulting from such contracts, agreements or transactions;

(d) The multilateral transaction execution facility on or through which such contracts, agreements or transactions are traded and the parties to, participants in, or intermediaries in such a facility that is exempt under this section are prohibited from claiming that the facility is regulated, recognized or approved by the Commission; and

(e) The facility:

(1) If an electronic system that also lists for trading products pursuant to parts 37 or 38 of this chapter, must provide notice to participants of the agreements, contracts or transactions traded on the facility pursuant to this part 36 and that such transactions are not subject to regulation under the Act; or

(2) If providing a physical trading environment, must provide that products trading pursuant to parts 37 or 38 of this chapter be traded in a location separate from, but which may adjoin, the location for products traded pursuant to this part 36.

(f) If the Commission determines by order, after notice and an opportunity for a hearing through submission of written data, views and arguments, that the facility serves as a significant source for the discovery of prices for an underlying commodity, the facility must on a daily basis disseminate publicly trading volume and price ranges and other trading data appropriate to that market as specified in the order.

(g) Any person or entity may apply to the Commission for exemption from any of the provisions of the Act (except section 2(a)(1)(B)) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including, but not limited to, the applicability of other regulatory regimes.

§ 36.3 Enforceability.

(a) Notwithstanding the exemption in § 36.2, sections 2(a)(1)(B), 4b, and 4o of the Act and § 32.9 of this chapter as adopted under section 4c(b) of the Act, and sections 6(c) and 9(a)(2) of the Act to the extent they prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, continue to apply to transactions and persons otherwise subject to those provisions.

(b) A party to a contract, agreement or transaction that is with a counterparty that is an eligible participant (or counterparty reasonably believed by such party at the time the contract, agreement or transaction was entered into to be an eligible participant) shall be exempt from any claim, counterclaim or affirmative defense by such counterparty under section 22(a)(1) of the Act or any other provision of the Act:

(1) That such contract, agreement or transaction is void, voidable or unenforceable, or

(2) To rescind, or recover any payment made in respect of, such contract, agreement or transaction, based solely on the failure of such party or such contract, agreement or transaction to comply with the terms or conditions of the exemption under this part.

9. Chapter I of 17 CFR is amended by adding new Part 37 as follows:

PART 37—EXEMPTION OF TRANSACTIONS ON A DERIVATIVES TRANSACTION FACILITY

Sec.

37.1 Scope and definitions.
37.2 Exemption.
37.3 General conditions for recognition as a derivatives transaction facilities.
37.4 Conditions for recognition as a derivatives transaction facility, compliance with core principles.
37.5 Additional conditions for recognition as a derivative transaction facility.
37.6 Information relating to transactions on derivative transaction facilities.
37.7 Procedures for recognition.
37.8 Enforceability.
37.9 Fraud in connection with part 37 transactions.
Appendix A to Part 37—Application Guidance.

Authority: 7 U.S.C. 2, 6, 6c, 6(c), 6(i) and 12a.

§ 37.1 Scope and definitions.

(a) *Scope.* (1) A board of trade operating as a recognized derivatives transaction facility and the products listed for trading thereon under this exemption shall be deemed to be subject to all of the provisions of the Act and Commission regulations thereunder which are applicable to a ''board of trade,'' ''board of trade licensed by the Commission,'' ''exchange,'' ''contract market,'' ''designated contract market,'' or ''contract market designated by the Commission'' as though those provisions were set forth in this section and included specific reference to contracts listed for trading by recognized derivatives transaction facilities pursuant to this section.

(2) The provisions of this section shall not apply to a commodity or a contract subject to the provisions of section 2(a)(1)(B) of the Act.

(b) *Definitions.* As used in this part:

(1) *Eligible participant* means, and shall be limited to, the parties or entities listed in § 35.1(b)(1) through (11) of this chapter, *Provided, however,* that notwithstanding the proviso of § 35.1(b)(10), a floor broker or floor trader that is a natural person or proprietorship shall be considered to be an eligible participant for transactions on a derivatives transaction facility recognized under § 37.7 if the floor broker or floor trader is registered in such a capacity under the Act and its trading obligations on the derivatives trading facility are guaranteed by a futures commission merchant.

(2) ''Eligible commercial participant'' means, and shall be limited to, a party or entity listed in §§ 35.1(b)(1), (b)(2), (b)(3), (b)(6) and (b)(8) of this chapter that in connection with its business, makes and takes delivery of the underlying commodity and regularly incurs risks in addition to price risk related to such commodity, is a dealer that regularly provides hedging, risk management or market-making services to the foregoing entities, or is a registered floor trader or floor broker trading for its own account, whose trading obligations are guaranteed by a futures commission merchant.

§ 37.2 Exemption.

Notwithstanding § 37.1(a)(1), a contract, agreement or transaction traded on a multilateral transaction execution facility as defined in § 36.1(b) of this chapter, the facility and the facility's operator are exempt from all provisions of the Act and from all Commission regulations thereunder for such activity, except for those provisions of the Act and Commission regulations which, as a condition of this exemption, are reserved in § 37.8(a), provided the following terms and conditions are met:

(a)(1) *Commercial-participant derivatives transaction facility.* Only eligible commercial participants trading for their own account have trading access to the derivatives transaction facility for contracts, agreements or transactions in any commodity except for those listed in section 1a(3) of the Act or an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934; or

(2)(i) *Eligible-participant derivatives transaction facility.* The contract, agreement or transaction listed on or traded through the multilateral transaction execution facility meets the requirements set forth in § 36.2(b) of this chapter or has been found by the Commission on a case-by-case determination to have a sufficiently liquid and deep cash market and a surveillance history based on actual trading experience to provide assurance that the contract is highly unlikely to be manipulated; and

(ii) *Non-eligible participants.* Participants that are not eligible participants as defined in § 37.1(b)(1) may have trading access only through:

(A) A registered futures commission merchant that operates in accordance with the provisions of § 1.17(a)(1)(ii) of this chapter and that carries such participant's account, including access directly through any credit filter on which the futures commission merchant affirmatively imposes credit standards; or

(B) A commodity trading advisor that operates in accordance with § 4.32 of this chapter, where the participant's account is carried by any registered futures commission merchant;

(b) The multilateral transaction execution facility through which the contract, agreement or transaction is entered into has been recognized by the Commission as a derivatives transaction facility pursuant to § 37.7;

(c) A multilateral transaction execution facility that applies to be, and is, a recognized derivatives transaction facility must comply with all of the conditions of this part 37 exemption and must disclose to participants transacting on or through its facility that transactions conducted on or through the facility are subject to the provisions of this part 37;

(d)(1) If intermediated, the transactions of eligible participants must be carried in accounts at a registered futures commission merchant;

(2) If cleared, the submission of such contracts, agreements or transactions for clearance and/or settlement must be to a clearinghouse that is recognized by the Commission under § 39.4 of this chapter. *Provided, however,* that nothing in this paragraph (d)(2) precludes:

(i) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment or delivery obligations resulting from such contracts, agreements, or transactions; or

(ii) Arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments or deliveries resulting from such contracts, agreements or transactions; and

(e) The products if traded on an electronic system must be clearly identified as traded on a recognized derivatives transaction facility or if traded in a physical trading environment must be traded in a location separate from, but which may adjoin the location for, the trading of products pursuant to contract market designation, or to parts 36 and 38 of this chapter.

§ 37.3 General conditions for recognition as a derivatives transaction facility.

To be recognized as a derivatives transaction facility, the facility initially must have:

(a) Rules, which may be trading protocols, relating to trading on its facility, including, depending on the nature of the trading mechanism:

(1) Rules, which may be trading protocols, to deter trading abuses, and adequate power and capacity to detect, investigate and take action against violation of its trade rules or trading protocols including arrangements to obtain necessary information to perform the functions in this paragraph (a)(1), or

(2) Use of technology that provides participants with impartial access to transactions and captures information that is available for use in determining whether violations of its rules or trading protocols have occurred;

(b) Rules, which may be trading protocols, defining, or specifications detailing, the operation of the trading mechanism or electronic matching platform; and

(c) Rules, which may be trading protocols, detailing the financial framework applying to the transactions or ensuring the financial integrity of transactions entered into by, or through, its facilities.

§ 37.4 Conditions for recognition as a derivatives transaction facility, compliance with core principles.

To be recognized as a derivatives transaction facility, the facility, initially and on a continuing basis, must meet and adhere to the following core principles:

(a) *Enforcement.* Effectively monitor and enforce its rules, which may be trading protocols, including, if applicable, limitations on access.

(b) *Market oversight.* As appropriate to the market and the contracts traded:

(1) Monitor markets on a routine and nonroutine basis as necessary to ensure fair and orderly trading, and have, and where appropriate exercise, authority to maintain a fair and orderly market; or

(2) Provide information to the Commission as requested by the Commission to satisfy its obligations under the Act.

(c) *Operational information.* Disclose to regulators and to market participants, as appropriate, information concerning trading terms, trading protocols, contract terms and conditions, trading mechanisms, financial integrity arrangements or mechanisms, as well as other relevant information.

(d) *Transparency.* Provide to market participants on a fair, equitable and timely basis information regarding prices, bids and offers, and other information appropriate to the market and, as appropriate to the market, make available to the public with respect to actively traded products, to the extent applicable, information regarding daily opening and closing prices, price range, trading volume and other related market information.

(e) *Fitness.* Have appropriate fitness standards for members, operators or owners with greater than 10 percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations.

(f) *Recordkeeping.* Keep full books and records of all activities related to its business as a recognized derivatives transaction facility, including full information relating to data entry and trade details sufficient to reconstruct trading, in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

(g) *Competition.* Operate in a manner consistent with the public interest to be protected by the antitrust laws.

§ 37.5 Additional conditions for recognition as a derivative transaction facility.

To be recognized as a derivatives transaction facility, initially and on a continuing basis, the facility must:

(a) *Products.* Notwithstanding the provisions of section 4(a)(1) of the Act or § 33.2 of this chapter, notify the Commission of the listing of new contracts for trading, posting of new product descriptions, terms and conditions or trading protocols or providing for a new system product functionality, by filing with the Commission at its Washington, D.C. headquarters, a submission labeled ''DTF Notice of Product Listing'' that includes the text of the contract's terms or conditions, product description, trading protocol or description of the system functionality or by electronic notification of the foregoing at the time traders or participants in the market are notified, but in no event later than the close of business on the business day preceding initial listing, posting or implementation of the trading protocol or system functionality;

(b) *Material modifications.* Notwithstanding the rule approval and filing requirements of section 5a(a)(12)(A) of the Act, notify the Commission prior to placing a material rule, term or condition or trading protocol into effect or amending a material rule, term or condition or trading protocol, by filing with the Commission at its Washington, D.C. headquarters a submission labeled, ''DTF Rule Notice'' which includes the text of the rule or rule amendment, term and condition or trading protocol (brackets must indicate words deleted and underscoring must indicate words added) or by electronic notification of the rule, term and condition or trading protocol to be placed into effect or to be changed, at the time and in the manner traders or participants in the market are notified, but in no event later than the close of business on the business day preceding implementation of the rule, term and condition or trading protocol. The derivatives transaction facility must maintain documentation regarding all changes to rules, terms and conditions or trading protocols;

(c) *Identify participants.* Keep a record in permanent form which shall show the true name; address; and principal occupation or business of any foreign trader executing transactions on the facility or exchange, as well as the name of any person guaranteeing such transactions or exercising any control over the trading of such foreign trader. *Provided, however,* this paragraph shall not apply to a derivatives transactions facility insofar as transactions in futures or option contracts of foreign traders are executed through and the resulting transactions are maintained in accounts carried by a registered futures commission merchant or introducing broker subject to § 1.37 of this chapter; and

(d) *Identify persons subject to fitness.* Upon request by the Commission, furnish to the Commission a current list of persons subject to the fitness requirements in accordance with § 37.4(e).

§ 37.6 Information relating to transactions on derivative transaction facilities.

(a) *Special calls for information from derivatives transaction facilities.* Upon special call by the Commission, a derivatives transaction facility shall provide to the Commission such information related to its business as a derivatives transaction facility, including information relating to data entry and trade details, in the form and manner and within the time as specified by the Commission in the special call.

(b) *Notification of communications.* (1) Upon receipt of any communications issued by or on behalf of the Commission to any person who resides or is domiciled outside of the United States, its territories, or possessions, relating to contracts, agreements, or transactions effected on or through a derivatives transaction facility, the derivatives transaction facility shall promptly notify such foreign person of, and transmit the communication to such foreign person, in a manner reasonable under the circumstances, or as specified by the Commission.

(2) If the Commission has reason to believe that a person has not complied with a communication issued by or on behalf of the Commission pursuant to paragraph (b)(1) of this section, the Commission in writing may direct the derivatives transaction facility on or through which the person is or has traded to deny that person further trading access either directly or, if applicable, through an intermediary or, as applicable, to permit that person access to trade for liquidation only.

(3) Any person that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (b)(2) of this section, shall have the opportunity for a prompt hearing after the Commission acts pursuant to paragraph (b)(2) of this section under the procedures provided in § 21.03(g) of this chapter.

(c) *Special calls for information from futures commission merchants.* Upon special call by the Commission, each

person registered as a futures commission merchant that carries or has carried an account for a customer on a derivatives transaction facility shall provide information to the Commission concerning such accounts or related positions carried for the customer on that or other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

(d) *Special calls for information from participants.* Upon special call by the Commission, any person who enters into or has entered into a contract, agreement or transaction on a derivatives transaction facility eligible under § 37.2(a)(2) shall provide information to the Commission concerning such contracts, agreements, or transactions or related positions on other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

(e) *Delegation of authority.* The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraphs (a) through (d) of this section to the Directors of the Division of Economic Analysis and the Division of Trading and Markets to be exercised separately by each Director or by such other employee or employees as the Director may designate from time to time. The Director of the Divisions of Economic Analysis and Trading and Markets may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

§ 37.7 Procedures for recognition.

(a) *Recognition by certification.* A board of trade, facility or entity that is designated under sections 4c, 5, 5a(a) or 6 of the Act as a contract market in at least one commodity which is not dormant within the meaning of § 5.2 of this chapter will be recognized by the Commission as a derivatives transaction facility upon receipt by the Commission at its Washington, D.C. headquarters of a copy of the derivatives transaction facility's rules, which may be trading protocols, and a certification by the board of trade, facility or entity that it meets the conditions for recognition under this part.

(b) *Recognition by application.* A board of trade, facility or entity shall be recognized or, as determined by the Commission, recognized upon conditions as a derivatives transaction facility thirty days after receipt by the Commission of an application for recognition as a derivatives transaction facility unless notified otherwise during that period, if:

(1) The application demonstrates that the applicant satisfies the conditions for recognition under this part;

(2) The submission is labeled as being submitted pursuant to this part 37;

(3) The submission includes a copy of:

(i) The derivatives transaction facility's rules, which may be trading protocols;

(ii) Any agreements entered into or to be entered into between or among the facility, its operator or its participants, technical manuals and other guides or instructions for users of such facility, descriptions of any system test procedures, tests conducted or test results, and descriptions of the trading mechanism or algorithm used or to be used by such facility, to the extent such documentation was otherwise prepared; and

(iii) To the extent that compliance with the conditions of recognition is not self-evident, a brief explanation of how the rules or trading protocols satisfy each of the conditions for recognition under §§ 37.3 and 37.4;

(4) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period; and

(5) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to procedures under section 6 of the Act.

(6) Appendix A to this part provides guidance to applicants on how the conditions for recognition enumerated in §§ 37.3 and 37.4 could be satisfied.

(c) *Termination of part 37 review.* During the thirty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking recognition that the Commission is terminating review under this section and will review the proposal under the procedures of section 6 of the Act, if it appears that the application fails to meet the conditions for recognition under this part. This termination notification will state the nature of the issues raised and the specific condition of recognition that the application appears to violate, is contrary to or fails to meet. Within ten days of receipt of this termination notification, the applicant seeking recognition may request that the Commission render a decision whether to recognize the derivatives transaction facility or to institute a proceeding to disapprove the proposed submission under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking recognition views its submission as complete and final as submitted.

(d) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Directors of the Division of Trading and Markets and the Division of Economic Analysis or their delegatees, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to notify the entity seeking recognition under paragraph (b) of this section that review under those procedures is being terminated or to recognize the entity as a derivatives transaction facility upon conditions.

(2) The Directors of the Division of Trading and Markets or the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) *Request for Commission approval of rules and products.* (1) An entity seeking recognition as a derivatives transaction facility may request that the Commission approve any or all of its rules and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the facility, at the time of recognition or thereafter, under section 5a(a)(12) of the Act and §§ 1.41(d) and 5.2 of this chapter, as applicable. A derivatives transaction facility may label a product in its rules as, ''Listed for trading pursuant to Commission approval,'' if the product's terms or conditions have been approved by the Commission.

(2) An entity seeking recognition as a derivatives transaction facility may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies, including both operational rules and the terms or conditions of products listed for trading, at the time of recognition or thereafter.

(f) *Request for withdrawal of application for recognition or withdrawal of recognition.* A recognized derivatives transaction facility may withdraw an application to be a recognized derivatives transaction facility or, once recognized, may withdraw from Commission recognition by filing with the Commission at its Washington, D.C., headquarters such a request. Withdrawal from recognition

shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was recognized by the Commission.

§ 37.8 Enforceability.

(a) Notwithstanding the exemption in § 37.2, the following provisions of the Act and Commission regulations thereunder are reserved, and shall continue to apply: sections 1a, 2(a)(1), 4, 4b, 4c(a) as applicable to the market, 4c(b), 4g, 4i, 4o, 5(6), 5(7), 5a(a)(1), 5a(a)(2), 5a(a)(8), 5a(a)(16), 5a(a)(17), 5a(b), 6(a), 6(c) to the extent it prohibits manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, 8a(9), 8c(a) as applicable to the market, 9(a)(2), 9(a)(3), 9(f), 14, 15, 20 and 22 of the Act and §§ 1.3, 1.31, 1.41, 5.2, 15.05 as applicable to the market, § 33.10, this part 37 and part 190 of this chapter; and for derivatives transaction facilities eligible under § 37.2(a)(2), in addition to the foregoing, the rule disapproval procedures of section 5a(a)(12) of the Act, section 9(a)(1) of the Act, and sections 8c(b), 8c(c) and 8c(d) of the Act and parts 15 through 21 of this chapter as applicable to the market.

(b) For purposes of section 22(a) of the Act, a party to a contract, agreement or transaction is exempt from a claim that the contract, agreement or transaction is void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable solely for failure of the parties to a contract, agreement or transaction, or the contract, agreement or transaction itself, to comply with the terms and conditions for the exemption under this part or as a result of:

(1) A violation by the recognized derivatives transaction facility of the provisions of this part 37; or

(2) Any Commission proceeding to disapprove a rule, term or condition under section 5a(a)(12) of the Act, to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to disapprove, alter, supplement, or require a recognized derivatives transaction facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

§ 37.9 Fraud in connection with part 37 transactions.

It shall be unlawful for any person, directly or indirectly, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of any transaction entered into pursuant to this part—

(1) To cheat or defraud or attempt to cheat or defraud any person;

(2) Willfully to make or cause to be made to any person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

Appendix A to Part 37—Application Guidance

This appendix provides guidance to applicants for recognition as derivatives transaction facilities under §§ 37.3 and 37.4. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the conditions for recognition. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of the derivatives transaction facilities rules or terms, the application should include an explanation or other form of documentation demonstrating that the applicant meets the conditions for recognition.

Core Principle 1: Enforcement: Effectively monitor and enforce its rules, which may be trading protocols, including, if applicable, limitations on access.

(a) A derivatives transaction facility should have arrangements and resources and authority for effectively and affirmatively enforcing its rules, including the authority and ability to collect or capture information and documents on both a routine and non-routine basis and to investigate effectively possible rule violations.

(b) This should include the authority and ability to discipline, and limit or suspend a member's or participant's activities and/or the authority and ability to terminate a member's or participant's activities or access pursuant to clear and fair standards.

Core Principle 2: Market Oversight. As appropriate to the market and the contracts traded: (1) Monitor markets on a routine and nonroutine basis as necessary to ensure fair and orderly trading, and have, and where appropriate exercise, authority to maintain a fair and orderly market; or (2) Provide information to the Commission as requested by the Commission to satisfy its obligations under the Act.

(a) Arrangements and resources for effective market surveillance programs should facilitate, on both a routine and nonroutine basis, direct supervision of the market. Appropriate objective testing and review of any automated systems should occur initially and periodically to ensure proper system functioning, adequate capacity and security. The analysis of data collected should be suitable for the type of information collected and should occur in a timely fashion. A derivatives transaction facility should have the authority to collect the information and documents necessary to reconstruct trading for appropriate market analysis as it carries out its market surveillance programs. The derivatives transaction facility also should have the authority to intervene as necessary to maintain an open and competitive market. In carrying out this responsibility, the facility should address access to, and use of, material non-public information by members, owners or operators, participants or facility employees.

(b) Alternatively, and as appropriate to the market, a derivatives transaction facility may choose to satisfy Core Principle 2 by providing information to the Commission as requested by the Commission to satisfy its obligations under the Act. The derivatives transaction facility should have the authority to collect or capture and retrieve all necessary information.

(c) The Commission will collect reporting data from eligible participants trading in a derivatives transaction facility eligible under § 37.2(a)(2) only upon Special Call as provided in § 37.6(d).

Core Principle 3: Operational Information: Disclose to regulators and to market participants, as appropriate, information concerning trading terms, trading protocols, contract terms and conditions, trading mechanisms, financial integrity arrangements or mechanisms, as well as other relevant information.

A derivatives transaction facility should have arrangements and resources for the disclosure and explanation of trading terms, trading protocols, contract terms and conditions, trading mechanisms, system functioning, system capacity, system security, system testing and review, financial integrity arrangements or mechanisms. The facility must also disclose any limitations of liability (which may not include limitations of liability for violations of the Act or Commission rules, fraud, or wanton or willful misconduct. Such information may be made publicly available through the operation of a website by the derivatives transaction facility.

Core Principle 4: Transparency: Provide to market participants on a fair, equitable and timely basis information regarding prices, bids and offers, and other information appropriate to the market and, as appropriate to the market, make available to the public with respect to actively traded products, to the extent applicable, information regarding daily opening and closing prices, price range, trading volume and other related market information.

All market participants should have information regarding prices, bids and offers, or other information appropriate to the market readily available on a fair and equitable basis. The derivatives transaction facility should provide to the public information regarding daily opening and closing prices, price range, trading volume, open interest and other related market information for actively traded products. Provision of information could be through such means as provision of the information to a financial information service or by placement of the information on a facility's web site.

Core Principle 5: Fitness: Have appropriate fitness standards for members, operators or

owners with greater than 10 percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations.

A derivatives transaction facility should have appropriate eligibility criteria for the categories of persons set forth in the Core Principle which would include standards for fitness and for the collection and verification of information supporting compliance with such standards. Minimum standards of fitness are those bases for refusal to register a person under section 8a(2) of the Act. or a history of serious disciplinary offenses, such as those which would be disqualifying under § 1.63 of this chapter. A demonstration of the fitness of the applicant's members, operators or owners may include providing the Commission with registration information for such persons, certification to the fitness of such persons, an affidavit of such persons' fitness by the facility's Counsel or other information substantiating the fitness of such persons.

Core Principle 6: Recordkeeping: Keep full books and records of all activities related to its business as a recognized derivatives transaction facility, including full information relating to data entry and trade details sufficient to reconstruct trading, in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

Commission rule 1.31 constitutes the acceptable practice regarding the form and manner for keeping records.

Core Principle 7: Competition: Operate in a manner consistent with the public interest to be protected by the antitrust laws.

An entity seeking recognition as a derivatives transaction facility may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules, which may be trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time of recognition or thereafter. The Commission intends to apply Section 15 of the Act to its consideration of issues under the Competition Core Principle in a manner consistent with that previously applied to contract markets.

10. Chapter I of 17 CFR is amended by adding new Part 38 as follows:

PART 38—EXEMPTION OF TRANSACTIONS ON A RECOGNIZED FUTURES EXCHANGE

Sec.
38.1 Scope.
38.2 Exemption.
38.3 General conditions for recognition as a recognized futures exchange.
38.4 Conditions for recognition as a recognized futures exchange, compliance with core principles.
38.5 Procedures for recognition.
38.6 Enforceability
38.7 Fraud in connection with part 38 transactions.
Appendix A to Part 38—Guidance for Applicants and Acceptable Practices

Authority: 7 U.S.C. 2, 6, 6c, and 12a.

§ 38.1 Scope.

(a) Except for commodities subject to paragraph (c) of this section, the provisions of the exemption in § 38.2 shall apply to every board of trade that has been designated as a contract market in a commodity under section 6 of the Act. *Provided, however*, nothing in this provision affects the eligibility of designated contract markets for exemption under parts 36 or 37 of this chapter.

(b) A board of trade operating as a recognized futures exchange and the products listed for trading thereon under this exemption shall be deemed to be subject to all of the provisions of the Act and Commission regulations thereunder which are applicable to a ''board of trade,'' ''board of trade licensed by the Commission,'' ''exchange,'' ''contract market,'' ''designated contract market,'' or ''contract market designated by the Commission'' as though those provisions were set forth in this section and included specific reference to contracts listed for trading by recognized futures exchanges pursuant to this section.

(c) The provisions of this section shall not apply to a commodity or a contract subject to the provisions of section 2(a)(1)(B) of the Act.

§ 38.2 Exemption.

Notwithstanding § 38.1(b), a contract, agreement or transaction traded on a multilateral transaction execution facility as defined in § 36.1(b) of this chapter, the facility and the facility's operator is exempt from all provisions of the Act and from all Commission regulations thereunder for such activity, except for those provisions of the Act and Commission regulations which, as a condition of this exemption, are reserved in § 38.6(a), provided the following terms and conditions are met:

(a) The multilateral transaction execution facility on which the contract, agreement or transaction is entered into has been recognized by the Commission as a recognized futures exchange pursuant to § 38.5;

(b) A multilateral transaction execution facility that applies to be, and is, a recognized futures exchange must comply with all of the conditions of this part 38 exemption and must disclose to participants transacting on or through its facilities that transactions conducted on or through the facility are subject to the provisions of part 38;

(c)(1) If intermediated, the transactions of participants must be carried in accounts at a registered futures commission merchant;

(2) If cleared, the submission of such contracts, agreements or transactions for clearance and/or settlement must be to a clearinghouse which is recognized by the Commission under part 39 of this chapter. *Provided, however*, that nothing in this paragraph precludes:

(i) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment or delivery obligations resulting from such agreements; or

(ii) Arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments or deliveries resulting from such agreements; and

(d) The products if traded on an electronic system must be clearly identified as traded on a recognized futures exchange or if traded in a physical trading environment must be traded in a location separate from, but which may adjoin the location for, the trading of products pursuant to parts 36 and 37 of this chapter;

§ 38.3 General conditions for recognition as a recognized futures exchange.

To be recognized as a recognized futures exchange, the exchange must demonstrate initially that it has:

(a) A clear framework for conducting programs of market surveillance, compliance, and enforcement, including having procedures in place to make use of collected data for real-time monitoring and for post-event audit and compliance purposes to prevent market manipulation;

(b) Rules relating to trading on the exchange, including rules to deter trading abuses, and adequate power and capacity to detect, investigate and take action against violations of its trading rules, and a dedicated regulatory department or delegation of that function to an appropriate entity;

(c) Rules defining, or specifications detailing, the manner of operation of the trading mechanism or electronic matching platform and a trading mechanism or electronic matching platform that performs as articulated in the operational rules or specifications;

(d) A clear framework for ensuring the financial integrity of transactions entered into by or through the exchange;

(e) Established procedures for impartial disciplinary committee(s) or other similar mechanisms empowered to discipline, suspend, and expel members, or to deny access to participants or, if provided for, discipline participants; and

(f) Arrangements to obtain necessary information to perform the functions in this section, including the capacity and arrangements to share financial and surveillance information with other derivative exchanges, both domestic and international, and a mechanism to provide to the public ready access to its rules and regulations.

§ 38.4 Conditions for recognition as a recognized futures exchange, compliance with core principles.

To be recognized as a futures exchange, the exchange initially, and on a continuing basis, must meet and adhere to the following core principles:

(a) *Rule enforcement.* Effectively monitor and enforce its rules.

(b) *Products.* List contracts for trading that are not readily susceptible to manipulation.

(c) *Position monitoring and reporting.* Monitor markets on a routine and nonroutine basis as necessary to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process.

(d) *Position limits.* Adopt position limits on trading where necessary and appropriate to lessen the threat of market manipulation or congestion during delivery months.

(e) *Emergency authority.* Exercise authority to intervene to maintain fair and orderly trading, including, where applicable, authority to liquidate or transfer open positions, to require the suspension or curtailment of trading, and to require the posting of additional margin.

(f) *Public information.* Make information concerning the contract terms and conditions and the trading mechanism, as well as other relevant information, readily available to market authorities, users and the public.

(g) *Transparency.* Provide market participants on a fair, equitable and timely basis information regarding, as appropriate to the market, prices, bids and offers, and other appropriate information, and make available to the public information regarding daily opening and closing prices, price ranges, trading volume, open interest and other related market information.

(h) *Trading system.* Provide a competitive, open and efficient market.

(i) *Audit trail.* Have procedures to ensure the recording of full data entry and trade details sufficient to reconstruct trading, the quality of the data captured, and the safe storage of such information, and have systems to enable information to be used in assisting in detecting and deterring customer and market abuse.

(j) *Financial standards.* Have, monitor, and enforce rules regarding the financial integrity of the transactions that have been executed on the exchange and, where intermediaries are permitted, rules addressing the financial integrity of the intermediary and the protection of customer funds, as appropriate, and a program to enforce those requirements.

(k) *Customer protection.* Have, monitor and enforce rules for customer protection.

(l) *Dispute resolution.* Provide for alternative dispute resolution mechanisms appropriate to the nature of the market.

(m) *Governance.* Have fitness standards for members, owners or operators with greater than ten percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations. The recognized futures exchange must have a means to address conflicts of interest in making decisions and access to, and use of, material non-public information by the foregoing persons and by exchange employees. For mutually owned futures exchanges, the composition of the governing board must reflect market participants.

(n) *Recordkeeping.* Keep full books and records of all activities related to its business as a recognized futures exchange in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

(o) *Competition.* Operate in a manner consistent with the public interest to be protected by the antitrust laws.

§ 38. 5 Procedures for recognition.

(a) *Recognition by prior designation.* A board of trade, facility or entity that is designated under sections 4c, 5, 5a(a) or 6 of the Act as a contract market on February 12, 2001 in at least one commodity which is not dormant within the meaning of § 5.3 of this chapter is recognized by the Commission as a recognized futures exchange and each of the contracts traded thereon that has been designated by the Commission as a designated contract market in a commodity may be labeled in the recognized futures exchange's rules as listed for trading pursuant to Commission approval.

(b) *Recognition by application.* A board of trade, facility or entity shall be recognized or, as determined by the Commission, recognized upon conditions as a recognized futures exchange sixty days after receipt by the Commission of an application for recognition unless notified otherwise during that period, if:

(1) The application demonstrates that the applicant satisfies the conditions for recognition under this part;

(2) The submission is labeled as being submitted pursuant to this part 38;

(3) The submission includes a copy of the applicant's rules and, to the extent that compliance with the conditions for recognition is not self-evident, a brief explanation of how the rules satisfy each of the conditions for registration under §§ 38.3 and 38.4;

(4) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period; and

(5) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to procedures under section 6 of the Act.

(6) Appendix A to this part provides guidance to applicants on how the conditions for recognition enumerated in §§ 38.3 and 38.4 could be satisfied.

(c) *Termination of part 38 review.* During the sixty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking recognition that the Commission is terminating review under this section and will review the proposal under the procedures of section 6 of the Act, if it appears that the application fails to meet the conditions for recognition under this part. This termination notification will state the nature of the issues raised and the specific condition of recognition that the application appears to violate, is contrary to or fails to meet. Within ten days of receipt of this termination notification, the applicant seeking recognition may request that the Commission render a decision whether to recognize the futures exchange or to institute a proceeding to disapprove the proposed submission under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking recognition views its submission as complete and final as submitted.

(d) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Directors of the Division of Trading and Markets and the Division of Economic Analysis or their delegatees, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to notify the entity seeking recognition under paragraph (b) of this section that review under those procedures is being

terminated or to recognize the entity as a recognized futures exchange upon conditions.

(2) The Directors of the Division of Trading and Markets or the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) *Request for Commission approval of rules and products.* (1) An entity seeking recognition as a recognized futures exchange may request that the Commission approve any or all of its rules and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the exchange, at the time of recognition or thereafter, under section 5a(a)(12) of the Act and §§ 1.41 and 5.2 of this chapter, as applicable. A product the terms or conditions of which have been approved by the Commission may be labeled in its rules as listed for trading pursuant to Commission approval. In addition, rules of the recognized futures exchange not submitted pursuant to § 38.5(b)(3) shall be submitted to the Commission pursuant to § 1.41.

(2) An entity seeking recognition as a recognized futures exchange may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies, including both operational rules and the terms or conditions of products listed for trading, at the time of recognition or thereafter.

(f) *Request for withdrawal of application for recognition or withdrawal of recognition.* An entity may withdraw an application to be a recognized futures exchange or once recognized, may withdraw from Commission recognition by filing with the Commission at its Washington, D.C. headquarters such a request. Withdrawal from recognition shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the exchange was recognized by the Commission.

§ 38.6 Enforceability.

(a) Notwithstanding the exemption in § 38.2, the following provisions of the Act and the Commission's regulations thereunder are reserved and shall continue to apply, as applicable: sections 1a, 2(a)(1), 4, 4a, 4b, 4c, 4g, 4i, 4o, 5(6), 5(7), 5a(a)(1), 5a(a)(2), 5a(a)(8), the rule disapproval procedures of 5a(a)(12), 5a(a)(16), 5a(a)(17), 5a(b), 6(a), 6(c) to the extent it prohibits manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, 8a(7), 8a(9), 8c(a), 8c(b), 8c(c), 8c(d), 9(a), 9(f), 14, 15, 20 and 22 of the Act and §§ 1.3, 1.31, 1.38, 1.41, 33.10, part 5, part 9, parts 15 through 21, part 38 and part 190 of this chapter.

(b) For purposes of section 22(a) of the Act, a party to a contract, agreement or transaction is exempt from a claim that the contract, agreement or transaction is void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of:

(1) A violation by the recognized futures exchange of the provisions of this part 38; or

(2) Any Commission proceeding to disapprove a rule, term or condition under section 5a(a)(12) of the Act, to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to disapprove, alter, supplement, or require a recognized futures exchange to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

§ 38.7 Fraud in connection with part 38 transactions.

It shall be unlawful for any person, directly or indirectly, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of any transaction entered pursuant to this part:

(a) To cheat or defraud or attempt to cheat or defraud any person;

(b) Willfully to make or cause to be made to any person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(c) Willfully to deceive or attempt to deceive any person by any means whatsoever.

Appendix A to Part 38—Guidance for Applicants and Acceptable Practices

1. This appendix provides guidance and acceptable practices for the core principles found in Part 38. Guidance to applicants for recognition as recognized futures exchanges under §§ 38.3 and 38.4 is offered under subsection (a) following a core principle. This appendix is only illustrative of the types of matters an applicant may address, as applicable, and is not intended to be a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the conditions for recognition. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of the recognized futures exchange's rules or terms, the application should include an explanation or other form of documentation demonstrating that the applicant meets the conditions for recognition.

2. Acceptable practices meeting the requirements of the core principles are set forth in subsection (b). Recognized futures exchanges that follow specific practices outlined under subsection (b) for any core principle in this appendix will meet the applicable core principle. Except where otherwise provided, subsection (b) is for illustrative purposes only, and does not state the exclusive means for satisfying a core principle.

Core Principle 1: Rule Enforcement: Effectively monitor and enforce its rules.

(a) *Application Guidance.*

(1) A recognized futures exchange should have arrangements and resources for effective trade practice surveillance programs, with the authority to collect information and documents on both a routine and non-routine basis including the examination of books and records kept by members/participants of the exchange. The arrangements and resources should facilitate the direct supervision of the market and the analysis of data collected.

(2) A recognized futures exchange should have arrangements, resources and authority for effective rule enforcement. The Commission believes that this should include the authority and ability to discipline and limit or suspend a member's or participant's activities as well as the authority and ability to terminate a member's or participant's activities pursuant to clear and fair standards.

(b) *Acceptable Practices.* An effective trade practice surveillance program should include:

(1) Maintenance of data reflecting the details of each transaction executed on an RFE;

(2) Electronic analysis of this data routinely to detect potential trading violations;

(3) Appropriate and thorough investigative analysis of these and other potential trading violations brought to its attention; and

(4) Prompt and effective disciplinary action for any violation that is found to have been committed. The Commission believes that the latter element should include the authority and ability to discipline and limit or suspend a member's or participant's activities pursuant to clear and fair standards. *See, e.g.,* 17 CFR part 8.

Core Principle 2: Products: List contracts for trading that are not readily susceptible to manipulation.

(a) *Application Guidance.* Applicants should submit their initial product for listing for Commission approval under § 5.2 and Part 5, Appendix A, of this chapter. Subsequent products may be listed for trading by self-certification under § 5.1 of this chapter.

(b) *Acceptable Practices.*

Guideline No. 1, 17 CFR Part 5, Appendix A may be used as guidance in meeting this core principle.

Core Principle 3: Position monitoring and reporting: Monitor markets on a routine and nonroutine basis as necessary to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process.

(a) *Application Guidance.* [Reserved]

(b) *Acceptable Practices.*

(1) An acceptable program for monitoring markets will generally involve the collection of various market data, including information on traders' market activity. Those data should be evaluated on an ongoing basis in order to make an appropriate regulatory response to potential market disruptions or abusive practices.

(2) The recognized futures exchange should collect data in order to assess whether the market price is responding to the forces of supply and demand. Appropriate data usually include various fundamental data about the underlying commodity, its supply, its demand, and its movement through marketing channels. Especially important are data related to the size and ownership of deliverable supplies—the existing supply and the future or potential supply, and to the pricing of the deliverable commodity relative to the futures price and relative to similar, but nondeliverable, kinds of the commodity. For cash-settled markets, it is more appropriate to pay attention to the availability and pricing of the commodity making up the index to which the market will be settled, as well as monitoring the continued suitability of the methodology for deriving the index.

(3) To assess traders' activity and potential power in a market, at a minimum, every exchange should have routine access to the positions and trading done by the members of its clearing facility. Although clearing member data may be sufficient for some exchanges, an effective surveillance program for exchanges with substantial numbers of customers trading through intermediaries should employ a much more comprehensive large-trader reporting system (LTRS). The Commission operates an industry-wide LTRS. As an alternative to having its own LTRS or contracting out for such a system, exchanges may find it more efficient to use information available from the Commission's LTRS data for position monitoring.

Core Principle 4: Position Limits. Adopt position limits on trading where necessary and appropriate to lessen the threat of market manipulation or congestion during delivery months.

(a) *Application Guidance.* [Reserved]

(b) *Acceptable Practices.*

(1) In order to diminish potential problems arising from excessively large speculative positions, the Commission sets limits on traders' positions for certain commodities. These position limits specifically exempt bona fide hedging, permit other exemptions, and set limits differently by markets, by futures or delivery months, or by time periods. For purposes of evaluating an exchange speculative-limit program, the Commission considers the specified limit levels, aggregation policies, types of exemptions allowed, methods for monitoring compliance with the specified levels, and procedures for enforcement to deal with violations.

(2) In general, position limits are not necessary for markets where the threat of excessive speculation or manipulation is very low. Thus, exchanges do not need to set position-limit levels for futures markets in major foreign currencies and in certain financial futures having very liquid and deep underlying cash markets. Where speculative limits are appropriate, acceptable speculative-limit levels typically are set in terms of a trader's combined position in the futures contract plus its position in the option contract (on a delta-adjusted basis).

(3) Spot-month levels for physical-delivery markets should be based upon an analysis of deliverable supplies and the history of spot-month liquidations. Spot-month limits for physical-delivery markets are appropriately set at no more than 25 percent of the estimated deliverable supply. For cash-settled markets, spot-month position limits may be necessary if the underlying cash market is small or illiquid such that traders can disrupt the cash market or otherwise influence the cash-settlement price to profit on a futures position. In these cases, the limit should be set at a level that minimizes the potential for manipulation or distortion of the futures contract's or the underlying commodity's price. Markets may elect not to provide all-months-combined and non-spot month limits.

(4) An exchange may provide for position accountability provisions in lieu of position limits for contracts on financial instruments, intangible commodities, or certain tangible commodities. Markets appropriate for position accountability rules include those with large open-interest, high daily trading volumes and liquid cash markets.

(5) Exchanges must have aggregation rules that apply to those accounts under common control, those with common ownership, *i.e.,* where there is a 10 percent or greater financial interest, and those traded according to an expressed or implied agreement. Exchanges will be permitted to set more stringent aggregation policies. For example, one major exchange adopted a policy of automatically aggregating members of the same household, unless they were granted a specific waiver. Exchanges may grant exemptions to their position limits for bona fide hedging (as defined in Commission Rule 1.3(z)) and may grant exemptions for reduced risk positions, such as spreads, straddles and arbitrage positions.

(6) Exchanges must establish a program for effective monitoring and enforcement of these limits. One acceptable enforcement mechanism is a program whereby traders apply for these exemptions by the exchange and are granted a position level higher than the applicable speculative limit. The position levels granted under hedge exemptions are based upon the trader's commercial activity in related markets. Exchanges may allow a brief grace period where a qualifying trader may exceed speculative limits or an existing exemption level pending the submission and approval of appropriate justification. An exchange should consider whether it wants to restrict exemptions during the last several days of trading in a delivery month. Acceptable procedures for obtaining and granting exemptions include a requirement that the exchange approve a specific maximum higher level.

(7) Exchanges with many markets with large numbers of traders should have an automated means of detecting traders' violations of speculative limits or exemptions. Exchanges should monitor the continuing appropriateness of approved exemptions by periodically reviewing each trader's basis for exemption or requiring a reapplication.

(8) Finally, an acceptable speculative limit program must have specific policies for taking regulatory action once a violation of a position limit or exemption is detected. The exchange policy will need to consider appropriate actions where the violation is by a non-member and should address traders carrying accounts through more than one intermediary.

(9) A violation of exchange position limits that have been approved by the Commission is also a violation of section 4a(e) of the Act.

Core Principle 5: Emergency Authority: Exercise authority to intervene to maintain fair and orderly trading, including, where applicable, authority to liquidate or transfer open positions, to require the suspension or curtailment of trading, and to require the posting of additional margin.

(a) *Application Guidance.*

A recognized futures exchange should have clear procedures and guidelines for exchange decision-making regarding emergency intervention in the market, including procedures and guidelines to carry out such decision-making without a conflict of interests. An exchange should also have the authority to intervene as necessary to maintain markets with fair and orderly trading as well as procedures for carrying out the intervention. The Commission believes that a recognized futures exchange should also have procedures and guidelines for the notification of the Commission of the exercise of regulatory emergency authority, as well as procedures and guidelines to prevent conflicts of interest, for the documentation of the exchange's decision-making process and for the reasons for use of its emergency action authority.

(b) *Acceptable Practices.*

As is necessary to address perceived market threats, the exchange, among other things, should be able to impose position limits in particular in the delivery month, impose or modify price limits, modify circuit breakers, call for additional margin either from customers or clearing members, order the liquidation or transfer of open positions, order the fixing of a settlement price, order the reduction in positions, extend or shorten the expiration date or the trading hours, suspend or curtail trading on the market, order the transfer of customer contracts and the margin for such contracts from one member of the exchange to another or alter the delivery terms or conditions.

Core Principle 6: Public Information: Make information concerning the contract terms and conditions and the trading mechanism, as well as other relevant information, readily available to market authorities, users and the public.

(a) *Application Guidance.*

A recognized futures exchange should have arrangements and resources for the

disclosure of contract terms and conditions and trading mechanisms to the Commission, users and the public. Procedures should also include the provision of information on listing new products, rule amendments or other changes to previously disclosed information to the Commission, users and the public.

(b) *Acceptable Practices.* [Reserved]

Core Principle 7: Transparency: Provide market participants on a fair, equitable and timely basis information regarding, as appropriate to the market, prices, bids and offers, and other appropriate information, and make available to the public information regarding daily opening and closing prices, price ranges, trading volume, open interest and other related market information.

(a) *Application Guidance.* [Reserved].

(b) *Acceptable Practices.* [Reserved]

Core Principle 8: Trading System: Provide a competitive, open and efficient market.

(a) *Application Guidance.*

(1) Appropriate objective testing and review of any automated systems should occur initially and periodically to ensure proper system functioning, adequate capacity and security. A recognized futures exchange's analysis of its automated system should address appropriate principles for the oversight of automated systems, ensuring proper system function, adequate capacity and security. The Commission believes that the guidelines issued by the International Organization of Securities Commissions (IOSCO) in 1990 (which have been referred to as the ''Principles for Screen-Based Trading Systems''), subsequently adopted by the Commission on November 21, 1990 (55 FR 48670), are appropriate guidelines for a recognized futures exchange to apply to electronic trading systems. Any program of objective testing and review of the system should be performed by a qualified independent professional. The Commission believes that information gathered by analysis, oversight or any program of objective testing and review of any automated systems regarding system functioning, capacity and security should be made available to the Commission and the public.

(2) A recognized futures exchange that determines to allow block trading should have rules which:

(i) Define the block based upon the customary size of large positions in the cash and derivatives market,

(ii) Restrict access to block trading to eligible participants,

(iii) Provide a mechanism for ensuring that the block's price will be fair and reasonable, and

(iv) provide for transparency of the trade by requiring that it be reported for clearing within a reasonable period of time and that it be identified separately in the price reporting system.

(b) *Acceptable Practices.*

A professional that is a certified member of the Informational Systems Audit and Control Association experienced in the industry would be an example of an acceptable party to carry out such testing and review.

Core Principle 9: Audit Trail: Have procedures to ensure the recording of full data entry and trade details sufficient to reconstruct trading, the quality of the data captured, and the safe storage of such information, and have systems to enable information to be used in assisting in detecting and deterring customer and market abuse.

(a) *Application Guidance.*

A recognized futures exchange should have arrangements and resources for recording of full data entry and trade details sufficient to reconstruct trading and the safe storage of audit trail data systems enabling information to be used in combating customer and market abuse.

(b) *Acceptable Practices.*

(1) The goal of an audit trail is to detect and deter customer and market abuse. An effective exchange audit trail should capture and retain sufficient trade-related information to permit exchange staff to detect trading abuses and to reconstruct all transactions. An audit trail should include specialized electronic surveillance programs that would identify potentially abusive trades and trade patterns, including for instance, withholding or disclosing customer orders, trading ahead, and preferential allocation. An acceptable audit trail must be able to track a customer order from time of receipt through fill allocation. The exchange must create and maintain an electronic transaction history database that contains information with respect to transactions affected on the recognized futures exchange.

(2) An acceptable audit trail, therefore, should include the following: original source documents, transaction history, electronic analysis capability, and safe storage capability. A registered futures exchange whose audit trail satisfies the following acceptable practices would satisfy Core Principle 9.

(i) *Original Source Documents.* Original source documents include unalterable, sequentially identified records on which trade execution information is originally recorded, whether recorded manually or electronically. For each customer order, such records reflect the terms of the order, an account identifier that relates back to the account(s) owner(s), and the time of order entry. For floor-based exchanges, the time of report of execution of the order should also be captured.

(ii) *Transaction History.* A transaction history which consists of an electronic history of each transaction, including:

(A) All data that are input into the trade entry or matching system for the transaction to match and clear;

(B) Whether the trade was for a customer or proprietary account;

(C) Timing and sequencing data adequate to reconstruct trading; and

(D) The identification of each account to which fills are allocated.

(iii) *Eectronic Analysis Capability.* An electronic analysis capability that permits sorting and presenting data included in the transaction history so as to reconstruct trading and to identify possible trading violations with respect to both customer and market abuse.

(iv) Safe Storage Capability. Safe storage capability provides for a method of storing the data included in the transaction history in a manner that protects the data from unauthorized alteration, as well as from accidental erasure or other loss. Data should be retained in accordance with the recordkeeping standards of Core Principle 14.

Core Principle 10: Financial Standards: Have, monitor, and enforce rules regarding the financial integrity of the transactions that have been executed on the exchange and, where intermediaries are permitted, rules addressing the financial integrity of the intermediary and the protection of customer funds, as appropriate, and a program to enforce those requirements.

(a) *Application Guidance.*

Clearing of transactions executed on a recognized futures exchange should be provided through a Commission-recognized clearing facility. In addition, a recognized futures exchange should maintain the financial integrity of its transactions by maintaining minimum financial standards for its members and having default rules and procedures. The minimum financial standards should be monitored for compliance purposes. The Commission believes that in order to monitor for minimum financial requirements, a recognized futures exchange should routinely receive and promptly review financial and related information. Rules concerning the protection of customer funds should address the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, and related recordkeeping.

(b) *Acceptable Practices.* [Reserved]

Core Principle 11: Customer Protection: Have, monitor and enforce rules for customer protection.

(a) *Application Guidance.*

A recognized futures exchange should have rules prohibiting conduct by intermediaries that is fraudulent, noncompetitive, unfair, or an abusive practice in connection with the execution of trades and a program to detect and discipline such behavior. Intermediated markets are not required to have, monitor or enforce rules requiring intermediaries to provide risk disclosure or to comply with other sales practices.

(b) *Acceptable Practices.* [Reserved]

Core Principle 12: Dispute Resolution: Provide for alternative dispute resolution mechanisms appropriate to the nature of the market.

(a) *Application Guidance.*

A recognized futures exchange should provide customer dispute resolution procedures that are fair and equitable and that are made available to the customer on a voluntary basis, either directly or through another self-regulatory organization.

(b) *Acceptable Practices.*

(1) Core Principle 12 requires a recognized futures exchange to provide for dispute resolution mechanisms that are appropriate to the nature of the market.

(2) In order to satisfy acceptable standards, a recognized futures exchange should provide a customer dispute resolution mechanism that is fundamentally fair and is equitable. The procedure should provide:

(i) The customer with an opportunity to have his or her claim decided by a decision-maker that is objective and impartial,

(ii) Each party with the right to be represented by counsel, at the party's own expense,

(iii) Each party with adequate notice of claims presented against him or her, an opportunity to be heard on all claims, defenses and permitted counterclaims, and an opportunity for a prompt hearing,

(iv) For prompt written final settlement awards that are not subject to appeal within the exchange, and

(v) Notice to the parties of the fees and costs which may be assessed.

(3) The procedure employed also must be voluntary and may permit counter claims, as provided in § 166.5 of this chapter.

(4) If the recognized futures exchange also provides a procedure for the resolution of disputes which do not involve customers (*i.e.*, member-to-member disputes), the procedure for the resolution of such disputes must be independent of and shall not interfere with or delay the resolution of customers' claims or grievances.

(5) A recognized futures exchange may delegate to another self-regulatory organization or to a registered futures association its responsibility to provide for customer dispute resolution mechanisms, *Provided, however,* that, if the recognized futures exchange does so delegate that responsibility, the exchange shall in all respects treat any decision issued by such other organization or association as if the decision were its own including providing for the appropriate enforcement of any award issued against a delinquent member.

Core Principle 13: Governance: Have fitness standards for members, owners or operators with greater than 10 percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations. The recognized futures exchange must have a means to address conflicts of interest in making decisions and access to, and use of, material non-public information by the foregoing persons and by exchange employees. For mutually owned futures exchanges, the composition of the governing board must reflect market participants.

(a) *Application Guidance.*

(1) A recognized futures exchange should have appropriate eligibility criteria for the categories of persons set forth in the Core Principle which should include standards for fitness and for the collection and verification of information supporting compliance with such standards. Minimum standards of fitness are those bases for refusal to register a person under section 8a(2) of the Act or a history of serious disciplinary offenses, such as those which would be disqualifying under § 1.63 of this chapter. The Commission believes that such standards should include the provision to the Commission of registration information for such persons, whether registration information, certification to the fitness of such persons, an affidavit of such persons' fitness by the facility's counsel or other information substantiating the fitness of such persons. If an exchange provided certification of the fitness of such a person, the Commission believes that such certification should be based on verified information that the person is fit to be in their position. The means to address conflicts of interest in decision-making should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict. In addressing the access to, and use of, material non-public information, the Commission believes that the recognized futures exchange should provide for limitations on exchange employee trading.

(2) A recognized futures exchange may not limit its liability or the liability of any of its officers, directors, employees, licensors, contractors and/or affiliates where such liability arises from such person's violation of the Act or Commission rules, fraud, or wanton or willful misconduct.

(b) *Acceptable Practices.* [Reserved]

Core Principle 14: Recordkeeping: Keep full books and records of all activities related to its business as a recognized futures exchange in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

(a) *Application Guidance.* [Reserved]

(b) *Acceptable Practices.*

Commission rule 1.31 constitutes the acceptable practice regarding the form and manner for keeping records.

Core Principle 15: Competition: Operate in a manner consistent with the public interest to be protected by the antitrust laws.

(a) *Application Guidance.*

An entity seeking recognition as a recognized futures exchange may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules, including trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time of recognition or thereafter. The Commission intends to apply section 15 of the Act to its consideration of issues under the Competition Core Principle in a manner consistent with that previously applied to contract markets.

(b) *Acceptable Practices.* [Reserved]

PART 170—REGISTERED FUTURES ASSOCIATIONS

11. The authority citation for Part 170 continues to read as follows:

Authority: 7 U.S.C. 6p, 12a, and 21.

12. Section 170.8 is revised to read as follows:

§ 170.8 Settlement of customer disputes (section 17(b)(10) of the Act).

A futures association must be able to demonstrate its capacity to promulgate rules and to conduct proceedings which provide a fair, equitable and expeditious procedure, through arbitration or otherwise, for the voluntary settlement of a customer's claim or grievance brought against any member of the association or any employee of a member of the association. Such rules shall conform to and be consistent with section 17(b)(10) of the Act and be consistent with the guidelines and acceptable practices for dispute resolution found within Appendix A and Appendix B to part 38 of this chapter.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

13. Part 180 is removed.

Issued in Washington, DC, this 21st day of November, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[This statement will not appear in the Code of Federal Regulations]

Dissent of Commissioner Thomas J. Erickson Regarding Final Rules for a New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations

I dissent from the Commission's final rules regarding multilateral transaction execution facilities, or ''MTEFs.'' While I believe this is the most dynamic element of the proposed framework, I also fear that it will only expand the legal uncertainty that the industry has decried for so long in reference to the existing swaps exemption in Part 35. I am thus simultaneously interested in the potential this proposal represents and disappointed in the lost opportunity for clarification.

At its core, my concern is this: The framework will, for the first time, inject legal uncertainty into regulated exchange markets by conferring ''recognition'' upon derivatives transaction facilities, or DTFs, without any determination that the transactions are within the CFTC's jurisdiction. I believe that if an agency of the United States Government tells market participants, other branches of the government, and counterpart foreign regulators that a market is regulated, then it should be, in fact, regulated.

At the DTF level, it seems clear that some markets will not be subject to Commission oversight because the Commission's jurisdiction—over transactions for future delivery and commodity options—will not attach to markets for certain products traded on DTFs. The nature of the Commission's mixed jurisdiction was not lost on commenters to the proposed framework; while some saw this as a flaw in the

proposal,[1] others took comfort in it.[2] Despite this ''don't ask, don't tell'' approach, DTFs all will be ''recognized'' by the Commission as regulated markets.[3] In turn, these DTF markets will hold themselves out to the public as markets regulated by the CFTC.

The Commission and certain commenters within the industry find the possible mix of futures and non-futures products on DTFs acceptable. They rely on Congressional report language from the 1992 legislation that, in effect, allows the Commission to exempt transactions without first determining that they are in the agency's jurisdiction.[4]

In the context of bilateral, privately negotiated transactions—such as those swaps the Commission was directed by Congress to ''promptly exempt—such an exemption makes a certain amount of sense. The consequence of any performance failure or fraud is borne solely by the parties to the transaction.

However, today the Commission extends this rationale to entities that are, in fact, exchange markets. Global participants and international regulators rely on our representations that these markets are regulated. I will not be comfortable making such representations with regard to DTFs where the Commission's jurisdiction is so questionable.

As a secondary matter, I am concerned with the level of oversight that will be applied to all DTF markets. Under the new framework, DTFs generally will not be required to maintain or provide the Commission with reports of futures positions held by their customers that exceed certain thresholds. In what appears to be a nod to the need for these reports, known as ''large trader reports,'' the Commission contemplates collecting this information only in a select, few markets. But the vast majority of markets trading at the DTF level—generally those without retail participants—will have no obligation or duty to the Commission or the public with regard to this important information.

Large trader reports are an essential tool in the Commission's effort to detect and deter market manipulations. Deterrence is important because the effects of market manipulations reach far beyond the market's participants. Consumers ultimately pay for manipulations in commodity markets: Home buyers pay higher interest rates; commuters pay higher prices for gasoline; and we all pay higher prices for heating oil and food. For these reasons, I would require large trader reports in all DTF markets, regardless of the type of commodity product or participant involved.

The Department of the Treasury identified this issue in its comment letter, stating that ''large trader reporting requirements have worked well in the market for treasury futures, both for the information they reveal to regulators and their deterrent effect.''[5] I could not agree more strongly with the Treasury Department on this point. While it appears that large trader reporting will attach to government securities markets, I do not understand why the Treasury's views have not provided just as compelling a rationale for other markets which are not nearly as deep or liquid.

I believe that DTF markets may prove to be very successful, commercially. They may well grow to be the commercial markets where pricing and price-basing of commodities occurs. The Commission would be wise to retain its ability to detect and deter manipulations at their incipience.

Dated: November 20, 2000.

Thomas J. Erickson,

Commissioner.

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[1] *See* Mercatus letter, Aug. 21, 2000, p. 4 (''While it may be appropriate for the CFTC to avoid such a determination in granting an exemption from regulation, it is not clear that the CFTC can exercise its antifraud authority in relation to a particular transaction without determining that the CFTC is authorized to exercise jurisdiction in the first instance.'') The drafters of the Mercatus letter further note that the ''broad definition of MTEF'' in the proposed rules could even be read ''to cover auction markets such as eBay and all other forms of B2B trading facilities, whether electronic or not.'' *Id.* at 5. The Commission attempts to deflect this criticism in the final rules, stating that ''so long as a facility auctions instruments outside of the Commission's regulatory jurisdiction under the Act, [the] exemptions therefrom and this framework would have no application to its business.'' *See* Final Rules for a New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations, pp. 13–14. The Commission's response misses the rudimentary point that it will be anyone's guess whether some instruments possibly traded on DTFs are within or outside the Commission's jurisdiction.

[2] *See* Lehman Brothers letter, Sept. 5, 2000, p. 2 (''[T]he Commission's jurisdiction extends solely to futures and commodity options, such that reserving anti-fraud and anti-manipulation authority over futures and commodity options merely restates the current state of law. Such a reservation of authority cannot, legally, extend to transactions other than futures and commodity options and repeating the nature of the agency's statutory jurisdiction carries no legal baggage.'')

[3] The only apparent penalty for refusing to comply with Commission rules is the market's loss of recognition as a DTF. I am not comfortable with this after-the-fallout remedy, and I cannot imagine potential market participants or domestic or international regulators being any more pleased.

[4] *See* A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations, p. 11, citing H.R. Rep. No. 978, 102d Cong., 2d Sess. 82–83 (1992).

[5] *See* Department of Treasury letter, Aug. 16, 2000, p. 4.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 140, 155 and 166

RIN 3038–AB56

Rules Relating to Intermediaries of Commodity Interest Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: As part of a comprehensive regulatory reform process, the Commodity Futures Trading Commission (CFTC or Commission) has revised its rules relating to intermediation of commodity futures and commodity options (commodity interest) transactions. These new rules and rule amendments will provide greater flexibility in several areas. For example, to ease barriers to entry for persons seeking registration as futures commission merchants (FCMs) or introducing brokers (IBs), the Commission has established a simplified registration procedure for those persons who are regulated by other federal financial regulatory agencies and who limit their customer base to institutional customers only, regardless of the type of market involved.

With respect to trading on recognized derivatives transaction facilities (DTFs), the Commission has determined to permit non-institutional customers to enter into transactions thereon, provided that such non-institutional customer business is transacted either through a registered FCM that is a clearing member of at least one designated contract market or recognized futures exchange (RFE), and that has adjusted net capital of at least $20 million or by a registered commodity trading advisor (CTA) who has discretionary authority over the non-institutional customer's account, and who has assets under management of not less than $25 million. The latter circumstance is an expansion of the proposal.

As proposed, the Commission is expanding the range of instruments in which FCMs may invest customer funds. In response to various comments concerning the expansion of permissible investments, the Commission is making certain adjustments to the proposals relating to, among other things, concentration limits as applied to securities held in connection with repurchase transactions, permissible investments in FCMs and their affiliates by money market mutual funds meeting the requirements of Rule 2a–7 under the Investment Company Act of 1940 (Investment Company Act), and investment in foreign sovereign debt. Separately, the Commission also is considering proposing risk-based capital rules for FCMs. Further, the Commission recently adopted a revised interpretation concerning the treatment of customer funds on deposit with

FCMs for the purpose of trading on foreign markets under Rule 30.7.[1]

In addition, the Commission is announcing herein the adoption of other new rules and rule amendments, concerning the definition of the term ''principal,'' certified financial reports, ethics training, disclosure, account opening procedures, trading standards, reporting requirements, and offsetting positions, as proposed. The Commission has made additional changes to allow a registrant to notify the Commission when a new natural person is added as a principal ''promptly'' after the change occurs. With respect to pre-dispute arbitration agreements between an institutional customer and a Commission registrant, the Commission has determined to allow such parties to negotiate any or all terms of the agreement, provided that the signing of such agreement by the institutional customer cannot be made a condition of doing business with the registrant. The Commission has also determined to allow any counterclaim to be heard as part of an arbitration proceeding between a non-institutional customer and a registrant where the parties have agreed in advance that all such claims must be included in the proceeding, provided that the aggregate value of the counterclaim is capable of calculation and that the counterclaim arises out of a transaction subject to Commission jurisdiction.

EFFECTIVE DATE: February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Paul H. Bjarnason, Jr., Special Advisor for Accounting Policy (with respect to Rule 1.25 concerning investment of customer funds), or Ky Tran-Trong, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5450.

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I. Introduction

A. Background

In accordance with the recommendations made in a staff task force report submitted to the Commission's Congressional oversight committees on February 22, 2000, the Commission on June 22, 2000 published a proposed new regulatory structure intended to adapt to the changing needs of the modern marketplace (New Regulatory Framework).[2] In reviewing its regulatory structure for intermediaries, the Commission in its proposal (Proposing Release) identified eight Core Principles that it believes are fundamental to assuring proper conduct by intermediaries of commodity interest transactions.[3] Although the Commission did not propose these Core Principles as rules, they guided the Commission in its regulatory reform efforts, as the Commission reviewed all of its rules related to intermediaries in light of the Core Principles. The Commission proposed reforms contemplating greater flexibility for intermediaries and their customers via a regulatory structure that acknowledges the different levels of safeguards appropriate to the types of instruments, customers, and markets involved.

To the extent that an existing rule was not addressed in the Proposing Release, and no amendment thereto has been adopted, the rule will apply to intermediaries transacting business on behalf of customers on contract markets, RFEs and DTFs. When an intermediary transacts business on an exempt multilateral transaction execution facility (exempt MTEF), these transactions are subject only to the Commission's antifraud and antimanipulation authority to the extent applicable.[4] Similarly, where a DTF permits trading only on a principal-to-principal basis, CFTC rules related only to intermediaries will not be applicable to such a market structure.[5]

The Core Principles that guided the Commission in its review of rules applicable to intermediaries, which relate to registration, fitness of registrants, financial requirements, risk disclosure, trading standards, supervision of personnel, large position reporting requirements, and recordkeeping, are as follows:

1. Registration Required

Any person or entity intermediating a transaction on an RFE, or on a DTF that permits intermediation of trading, must be registered in the appropriate capacity with the Commission as an FCM, IB, CTA, commodity pool operator (CPO), associated person (AP) of any of the foregoing, or floor broker (FB). In addition, a person trading solely for his or her own account on an RFE or DTF with a trading floor must register as a floor trader (FT).

2. Fitness of Registrants

Intermediaries and FTs in all markets recognized by the CFTC must be and remain fit.

3. Financial

FCMs must keep and safeguard customer money and FCMs and IBs must have sufficient capital to ensure their capacity to meet their obligations to customers.

4. Risk Disclosure

Intermediaries must provide to customers risk disclosure appropriate to the particular instrument or transaction and the customer.

5. Trading Standards

Intermediaries and their affiliated persons are prohibited from misusing knowledge of their customers' orders.

6. Supervision

All intermediaries, including APs having supervisory responsibilities, must diligently supervise all commodity interest accounts that they carry,

[1] 65 FR 60558 (Oct. 11, 2000). Unless otherwise noted, Commission rules referred to herein are found at 17 CFR Ch. I (2000).

[2] *See* A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations, 65 FR 38986; Rules Relating to Intermediaries of Commodity Interest Transactions, 65 FR 39008; A New Regulatory Framework for Clearing Organizations, 65 FR 39027; Exemption for Bilateral Transactions, 65 FR 39033.

[3] 65 FR 39008.

[4] *See id.* at 39009 nn.1–3.

[5] *See id.* A more complete description of the various new market structures can be found in ''A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations,'' published elsewhere in today's edition of the **Federal Register.**

operate, advise, introduce, handle, or trade, as well as all of the other activities that arise in their business as intermediaries. All intermediaries must establish, maintain, and enforce supervisory procedures.

7. Reporting of Positions

All intermediaries must report to the Commission, RFE or DTF information that permits the Commission, RFE, or DTF to identify concentrations of positions and market composition. Reports of transactions on RFEs are required on a routine and non-routine basis, as is the case for transactions on contract markets. Reports of transactions on an institutional-participant DTF are required only on a non-routine basis.[6]

8. Recordkeeping

All intermediaries (and FTs) must keep full books and records of all activities related to their business as an FCM, IB, CPO, CTA, FB, or FT, in a form and manner acceptable to the Commission for a period of five years. Such information must be readily available during the first two years and be produced to the Commission at the expense of the person required to keep the books or records. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

Certain of the Commission's rule amendments, such as those concerning ethics training and the definition of the term ''principal,'' will affect all registered firms. The other new rules and rule amendments will affect mainly FCMs and IBs, and are not applicable to CPOs and CTAs. The Commission intends to consider further rulemaking proposals at a subsequent date that will focus more directly upon Part 4 of the Commission's rules, which governs the operations and activities of CPOs and CTAs.[7]

B. The Comments Received

The Commission received 81 comment letters on the New Regulatory Framework, 51 of which were posted to the comment file on intermediaries on the Commission's web site. Of those 51 comment letters, 31 letters addressed specific provisions of the Proposing Release: five from U.S. commodity exchanges; two from the National Futures Association (NFA); one from the Futures Industry Association (FIA); six from other futures industry professional associations; one from the Federal Reserve Bank of Chicago (FRBC); one from the Department of the Treasury (Treasury); one from a provider of ethics training programs for the futures industry; five from firms registered as FCMs; one from a margin settlement bank for various U.S. exchanges and clearing corporations; three from trade associations representing the grain industry; one from a group of trade associations representing various producer groups; two from public policy centers; one from a single firm registered as an FCM, CPO and CTA; and one from a certified public accounting firm. These commenters, as well as those that addressed the concept of regulatory reform in a more general fashion, expressed strong support for the Proposing Release, but some suggested that the relief did not go far enough towards replacing the Commission's regulatory framework concerning intermediaries with core principles.[8]

The Commission has carefully reviewed all of the comments received. Based upon this review, the Commission generally has determined to adopt the new rules and amendments as proposed in the Proposing Release. In response to the comments, the Commission has also decided, however, to modify the proposal in several respects. First, the Commission has determined to expand the ''passport'' provisions with respect to those FCMs and IBs that are already registered with the Securities and Exchange Commission (SEC) in a similar registration capacity, or that are authorized to perform these functions by a federal banking authority. As adopted, these rules will allow those FCMs and IBs to follow a simplified registration procedure in order to conduct business solely for institutional customers on designated contract markets and RFEs, in addition to DTFs. Second, the Commission has determined to permit certain CTAs to place trades on a DTF on behalf of non-institutional customers, provided that the non-institutional customer's investment decisions are directed by the CTA and that total assets over which the CTA has discretionary authority are not less than $25 million. The proposal would have required non-institutional customers wishing to trade on DTFs to transact their business only through an FCM with at least $20 million in adjusted net capital that is also a clearing member of at least one designated contract market or RFE.[9] Third, the Commission has made adjustments to its rules governing permissible investments for customer funds in response to the comments received. Fourth, the Commission has adopted additional changes to allow a registrant to notify the Commission ''promptly'' after a new principal is added, rather than prior to the change as was the case previously. Fifth, with respect to pre-dispute arbitration agreements between an institutional customer and a Commission registrant, the Commission has determined to allow such parties to negotiate any or all terms of such agreements, provided that the signing of the agreement may not be made a condition of doing business with the registrant. Sixth, the Commission has decided to permit any counterclaim arising out of a transaction subject to the Commodity Exchange Act (Act) or regulations thereunder to be heard as part of an arbitration proceeding between a non-institutional customer and a registrant where the parties have agreed in advance that all such claims must be included in the proceeding.

In the Proposing Release, the Commission gave a detailed explanation for each revision that it proposed to

[6] As discussed in a companion release in today's edition of the **Federal Register**, large trader reports will not be required from participants trading on a DTF restricted to commercial participants, except where the Commission specifically orders otherwise.

[7] The Commission wishes to make clear that its regulatory reform efforts are an ongoing process. Thus, for example, as a part of the regulatory reform process, the Division of Trading and Markets recently permitted designated self-regulatory organizations (DSROs) to conduct ''risk-based'' auditing and thereby take into account a firm's business practices in establishing the scope and timing of audits. *See* Financial and Segregation Interpretation No. 4–2, CFTC Staff Letter 99–32, [1998–1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,745 (Aug. 20, 1999). Similarly, the Commission is considering amendments to the minimum capital requirements for FCMs. Those proposed amendments would contain an approach, generally referred to as ''risk-based'' capital requirements, that is based more upon position risk than is the case under the current rules.

[8] Commenters are generally identified by name below when their comments are discussed. Citations to comment letters are denoted as ''CL 22–x.'' The number 22 represents the comment file for the Proposing Release and ''x'' is the number assigned to a particular comment letter as set forth on the Commission's website, www.cftc.gov.

[9] As explained in the separate release on ''A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations'' in today's edition of the **Federal Register**, however, the Commission is amending its proposal to permit a non-institutional customer to enter an order directly to a DTF's electronic trading platform where the customer's account is carried by a registered FCM with at least $20 million in adjusted net capital that is also a clearing member of at least one designated contract market or RFE, provided that such FCM's credit filter is maintained as part of the DTF's electronic trading platform. *See* § 37.2(a)(2)(ii)(A).

In addition, FTs and FBs will be permitted to trade for their own account on a DTF, even if they would not otherwise come within the definition of an institutional customer, provided that their obligations in connection with their trading on the DTF are guaranteed by an FCM. *See* § 37.1(b)(1), (2). Generally, an FT or an FB must have total assets exceeding $10,000,000 to be considered an institutional customer. *See* §§ 1.3(g), 35.2(b)(10), (11).

make to the rules relating to intermediation of commodity interest transactions. The scope of this **Federal Register** release generally is restricted to the comments received on the Proposing Release and changes to the proposed new rules and rule amendments that the Commission has made in response thereto. Accordingly, the Commission encourages interested persons to read the Proposing Release for a discussion of the background and purpose of each of the rule amendments that is not described in detail in this **Federal Register** release.

The Proposing Release also presented several sets of questions intended to elicit public comments on various issues. For instance, the Commission requested comment concerning the need to update and to make more flexible its minimum net capital requirements for FCMs by permitting the application of risk-based net capital requirements.[10] In response to the comments received, the Commission plans to separately propose various rules and amendments addressing risk-based capital requirements. The Commission also posed certain questions related to the treatment of customer funds.[11] Reactions were mixed regarding these additional issues. Consequently, the Commission will continue to study these issues.

II. Responses to the Comments Received

A. General

As noted above, several commenters urged the Commission to revoke many of the rules that govern the relationship between futures and options customers and intermediaries, and to adopt in their place a set of core principles and statements of acceptable practices that reflect the ''largely institutional nature of derivatives market participants.'' (CL 22–31 at 2–3; see also CL 22–22 at 9; CL 22–24 at 1; CL 22–39 at 8; CL 22–35 at 11) In particular, FIA commented that:

> [We have] identified the following core principles that we believe should govern intermediaries in the conduct of their business, without regard to the market on which a transaction is executed: (1) Registration of intermediaries and their associated persons; (2) minimum financial requirements; (3) protection of customer funds appropriate to the type of customer; (4) prohibition against fraud and manipulation; (5) large trader reporting requirements; and (6) recordkeeping. These core principles, combined with an effective self-regulatory organization audit program to assure that intermediaries have developed and are enforcing adequate internal controls[,] should achieve the Commission's regulatory purpose. (CL 22–31 at 3 (footnotes omitted))

In general, the Commission believes that it is more expeditious at this time to adopt the specific regulatory reforms contemplated in the original release. Replacing the current rules with core principles might have delayed these changes, and in some instances, resulted in no practical benefit to the regulated community. To use Rule 1.55 as an example, the development of a core principle approach in this area would have required the Commission to propose the repeal of Rule 1.55 and the adoption of a core principle for disclosure together with a Statement of Acceptable Practices. The Statement of Acceptable Practices would likely provide, as the rule does now, no standard disclosure requirement for institutional customers and the basic single-page statement now applicable to non-institutional customers. At the end of this process, there would be no discernible change in FCM or IB operations. Firms might theoretically be freer to develop their own statements, but to clear them through counsel and self-regulatory organization (SRO) staff would likely be costly and time-consuming. Accordingly, the Commission did not believe that it would be an effective use of the Commission's or the industry's resources at this time to replace Rule 1.55 solely for the purpose of establishing a core principle concerning disclosure. The Commission reaches similar conclusions with respect to the repeal of other rules.

Second, the Commission believes that certain issues, such as the computation of capital for a financial intermediary, do not lend themselves easily to a core principle approach. As one commenter observed: ''Capital and segregation requirements * * *'' must be spelled out in detail to ensure the integrity of customer funds.'' (CL 22–24 at 1)

Third, as the New York Mercantile Exchange (NYMEX) noted, a re-examination of the Commission's rules applicable to intermediaries with a goal towards replacing them with a set of Core Principles and statements of acceptable practices ''would require an intensive review of the applicable rules in this area,'' and accordingly, ''undertaking such an examination as part of the current Reform Proposal could so greatly lengthen the process as to undermine the entire reform effort.'' (CL 22–32 at 16–17)

Nevertheless, the Commission's decision at this time not to use a core principles approach with respect to intermediaries will not affect its commitment to the continued review of the rules affecting intermediaries to determine where core principles are appropriate.[12] In this regard, the Commission notes the request it made in the Proposing Release for specific comments concerning existing rules and suggested modifications thereto.[13] The Commission further notes that under Rule 140.99, there remains a procedure in place whereby the Commission's staff may consider specific individual circumstances and, where warranted, the Commission's staff may grant interpretative, exemptive, or no-action relief from requirements under the Act or Commission rules to individuals or entities requesting such relief.

Certain commenters specifically addressed the need for further regulatory relief with respect to CPOs and CTAs. (CL 22–22 at 9; CL 22–43 at 5–6; CL 22–47 at 2) The Commission recognizes that CPOs and CTAs represent ''important sectors of the futures industry.'' (CL 22–22 at 2) As stated above, the regulatory reform process is an ongoing one. The Commission continues to explore additional areas in which relief for CPOs and CTAs may be warranted, *e.g.,* Part 4 of the Commission's rules, and will be making further rulemaking proposals.

With specific regard to recordkeeping, the Commission in 1999 adopted amendments to the recordkeeping requirements of Rule 1.31 in order to allow recordkeepers to store most records on either micrographic or electronic storage media for the full five-year period, thereby harmonizing procedures for those firms regulated by both the Commission and the SEC.[14] In order to avoid undue hardship, the Commission later extended the effective date of the requirement that recordkeepers using only electronic storage media enter into arrangements with third-party technical consultants.[15] The Commission's staff is continuing to work with industry representatives to implement this procedure.

[10] 65 FR at 39012.

[11] *Id.* at 39014–15.

[12] Should the Commission in the future adopt core principles in the place of some of its existing regulations as they pertain to intermediaries, NFA urged the Commission to look to NFA and the industry to develop the acceptable practices for satisfying many of these core principles, subject to Commission approval. (CL 22–24 at 2) The Commission notes that it has already taken such an approach in certain areas, *e.g.,* disclosure to non-institutional customers trading on DTFs, and looks forward to continuing to work with NFA and the industry in developing acceptable practices in additional areas.

[13] 65 FR at 39009.

[14] 64 FR 28735 (May 27, 1999).

[15] 64 FR 36568 (July 7, 1999).

B. Core Principle One: Registration

1. Definition of the Term ''Principal''

Under Commission staff's prior interpretation of the definition of the term ''principal'' in Rules 3.1(a)(1) and 4.10(e)(1),[16] all officers of a registrant were treated as principals and required to register as such. In response to changes in management structures over the last 20 years and requests from registrants that certain employees, such as some vice presidents, not be considered principals because they do not exercise a controlling influence over the registrant or any of its activities subject to Commission regulation, the Commission proposed to amend Rules 3.1(a)(1) and 4.10(e)(1) by defining as principals persons within a given organizational structure who hold specific offices.[17] A registrant would, therefore, no longer be required to treat every officer as a principal, but only those who met the criteria of the rule as revised.

Commenters were strongly in support of the proposal to amend the definition of ''principal'' to reduce the number of persons required to be registered, and the Commission is adopting the amendments as proposed.[18] (CL 22–22 at 11; CL 22–24 at 3; CL 22–25 at 2; CL 22–31 at 13; CL 22–32 at 16) The Managed Funds Association (MFA) asked the Commission to confirm that the reference in the proposed amendment to the ''principal'' definition to ''any person in charge of a business unit subject to regulation by the Commission'' applied solely to ''the aggregate business unit acting in a registered capacity and not subsidiary divisions or units such as marketing, human resources, audit, and other departments within an operating entity.'' (CL 22–22 at 11) The Commission agrees with this interpretation, and reiterates that the intent of the amended ''principal'' definition is to reduce the number of officers that will be considered principals, while ensuring that appropriate personnel, *e.g.,* those that exercise, or are in a position to exercise, ''a controlling influence over the registrant or any of its activities subject to Commission regulation,'' [19] remain listed as such.

The Commission also has determined to adopt, as proposed, conforming changes to Rules 4.24(f)(1)(v), 4.25(a)(8)(ii)(A) and 4.25(c)(2)(i)(B), applicable to CPOs, and 4.34(f)(1)(ii) and 4.35(a)(7)(ii)(A), applicable to CTAs, as incorporated by reference in amended Rule 4.10(e)(1). Accordingly, CPOs and CTAs will only be required to provide business backgrounds and proprietary trading results for those principals who participate in making trading or operational decisions, or supervise persons so engaged, and not all officers.[20]

In response to suggestions by FIA, the Commission has determined to delete Rule 3.32, which specifies certain events or changes within a firm's management structure that require the firm to file a new registration form. (CL 22–31 at 13–14) The Commission is adding a new paragraph (a)(2) to Rule 3.31 to require the registrant to file a Form 8–R on behalf of each new natural person principal who was not listed on the registrant's Form 7–R ''promptly'' after the change occurs. Rule 3.31(a)(2) was drafted to closely parallel Rule 3.10(a)(2)(i), and provides that, if the change that renders the application for registration deficient or inaccurate results from the addition of a new principal without a current Form 8–R on file with NFA, a Form 8–R for that principal must accompany the Form 3–R amending the registrant's application for registration.[21]

2. Special Procedures Available to Firms Subject to Securities or Banking Regulation

The Commission proposed to amend Rule 3.10 to simplify the registration process for FCMs or IBs who conduct business solely for institutional customers on a DTF, and who are already registered with the SEC in a similar registration category or who are authorized to perform these functions by a federal banking authority.[22] The Commission stated in the Proposing Release that such applicants would be registered as an FCM or IB upon filing notice with NFA of their intent to undertake such limited activities, together with a certification that they are registered or authorized to engage in a similar function by, and are in good standing with, the SEC or a federal banking authority. In addition, individuals acting in the capacity of APs for such FCMs or IBs need not be registered or listed, and would not be subject to proficiency testing or ethics training requirements. These firms and their salespersons would remain subject to antifraud provisions, however.[23]

The Chicago Mercantile Exchange (CME), along with other commenters, stated that the ''passporting'' provisions did not go far enough and urged the Commission to extend the provisions to allow those persons who are regulated by the SEC or a federal banking agency, and who opt to register as an FCM or IB under the simplified registration procedure, to conduct business for institutional customers on all trading platforms, rather than limit their access to DTFs.[24] (CL 22–35 at 12; *see also* CL 22–24 at 3–4; CL 22–25 at 2–3) In support of this recommendation, the Chicago Board of Trade (CBT) stated, ''[i]f the nature of the entity or individual intermediating the transaction and the nature of the customer determines the need for any particular requirement, whether the transaction facility is a DTF or an RFE is irrelevant.'' (CL 22–25 at 3; *see also* CL 22–35 at 15)

In contrast, however, the National Introducing Brokers Association (NIBA) urged that any person or organization conducting any commodity interest business should be subject to full registration requirements (CL 22–17 at 4), while MFA stated that firms making use of the ''passport'' procedure should be subject to a limitation upon their commodity interest business, such as a requirement that their commodity interest activities be incidental to their primary business as a broker-dealer or bank. (CL 22–22 at 11–12)

Upon consideration of the comments received, the Commission agrees that given the nature of the customers (*i.e.,* solely institutional customers) for whom a securities broker-dealer or bank would

[16] Rule 3.1(a) defines ''principal'' for purposes of the Commission's Part 3 rules, which govern registration. Rule 4.10(e) defines ''principal'' for purposes of the Commission's Part 4 rules, which apply to the activities of CPOs and CTAs.

[17] 65 FR at 39010.

[18] As amended, the ''principal'' definition will continue to include all directors of a corporate registrant. In addition, the definition will include the general provision that defines as a principal any person occupying a similar status as or performing similar functions to those persons specifically listed, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over a firm's activities that are subject to regulation by the Commission. As noted in the Proposing Release, what constitutes ''a controlling influence'' will be left for determination on ''a case-by-case basis.'' *Id.* at 39011 n.11.

[19] *Id.* at 39010.

[20] *Id.* at 39011.

[21] An additional conforming change was made to § 3.21(c) to reflect the deletion of § 3.32, and the addition of new paragraph (a)(2) to § 3.31.

[22] 65 FR at 39011–12.

[23] *Id.* at 39012.

[24] In this regard, the CME stated that given the restrictions of the DTF market structure:

The proposed rulemaking provides no relief whatsoever to a securities broker-dealer (not also registered as a FCM) that wishes to execute transactions in both stock index futures and the underlying stocks in order to implement an asset allocation strategy for its institutional customers. So long as the customers are sophisticated institutions, we can see no regulatory reason not to allow them to use the federally-regulated intermediary of their choice in effecting transactions in a futures market, regardless of whether the market is regulated as a designated contract market, an RFE, a DTF or an exempt MTEF. (CL 22–35 at 12)

be acting as an FCM or IB, the securities broker-dealer or bank should be eligible for the simplified FCM or IB registration procedures, irrespective of the type of exchange on which the customer seeks to conduct its transactions. Accordingly, the Commission has adopted Rule 3.10(a)(1)(i)(B) to permit an individual or entity who is registered with the SEC as a broker-dealer, or has been authorized by the appropriate banking authority, to register as an FCM or IB simply by filing notice with NFA, together with a certification of registration with the appropriate financial regulator.[25] Such FCMs and IBs who are otherwise regulated by another federal financial regulator will be permitted to conduct business solely for institutional customers on any designated contract market, RFE or DTF.[26] The Commission notes, however, in accordance with FIA's comments, that the simplified registration procedure is limited to banks themselves, and not to their affiliates, and further, that once registered, securities broker-dealers and banks would be subject to the same rules that govern all FCMs and IBs. (CL 22–34 at 13)

Although ''passported'' firms will be eligible for the simplified FCM or IB registration procedures without regard to the type of exchange on which their institutional customers seek to conduct business, the Commission has determined to adopt Rules 1.17(a)(2)(iii) and 1.52(m), as proposed, without making further changes. Under Rule 1.17(a)(2)(iii), the Commission would not require an FCM or IB registered under the ''passporting'' procedures in Rule 3.10(a)(1)(i)(B) to meet the Commission's minimum financial requirements if (i) it meets the appropriate net capital requirements of its primary regulator, (ii) its activities are limited to serving institutional customers trading on DTFs that do not require compliance with CFTC minimum financial requirements for such ''passported'' firms, and (iii) it conforms to minimum financial standards and related reporting requirements set by such DTF in its bylaws, rules, regulations or resolutions.[27]

If, however, the ''passported'' FCM or IB chooses to conduct transactions on behalf of its institutional customers on a contract market or RFE in addition to its DTF activities, the firm would then be required to satisfy the Commission's minimum financial requirements. The Commission believes that this requirement is important to protect the financial integrity of these markets because a customer default may have ancillary impacts not just on other customers of the affected firm, but also on other firms and their customers transacting business on such markets. Moreover, because the Commission anticipates that ''passported'' firms will conduct most of their business in the securities or banking fields, with only a minor portion of their activities involving commodity interests, the requirement that such firms meet the Commission's minimum financial requirements if they conduct business for their institutional customers on a contract market or RFE should not impose a significant burden. Rules 1.17(a)(1)(i) and (ii) already require the dually registered FCM or IB to meet the greater of either the Commission's or SEC's minimum financial requirements, and in most cases, those entities that conduct most of their business in the securities or banking fields will have satisfied the Commission's minimum financial requirements by meeting the SEC capital requirements. Similarly, the Commission allows a dually registered FCM or IB to satisfy the basic financial reporting requirements of Rule 1.10 by filing a copy of its FOCUS report in lieu of a Form 1–FR. In addition, Rule 1.52(m) is adopted as proposed to relieve a DTF from the requirement that it adopt for ''passported'' firms, the Commission's minimum adjusted net capital standards.[28]

The Commission continues to encourage the SEC to consider reciprocal amendments to its rules to accommodate FCMs and IBs that are not now dually registered as securities brokers or dealers, but that may wish to act as intermediaries in the securities markets.

The Commission also noted in the Proposing Release that it was considering updating and making more flexible its minimum net capital requirements with respect to FCMs, specifically with respect to adopting risk-based net capital requirements.[29] Commenters were overwhelmingly in favor of this proposal, and the CBT further noted that it had, along with the Board of Trade Clearing Corporation (BOTCC) and the CME, already adopted risk-based capital requirements at the clearing organization level. (CL 22–25 at 3) The Commission is separately considering proposing rules related to risk-based net capital requirements.[30]

3. Standard Application Procedures for FCMs and IBs

The Commission proposed that applicants for registration as FCMs or IBs who raise their own capital to satisfy minimum financial requirements would be permitted to file an unaudited financial report indicating satisfaction of the minimum requirements, rather than be required to provide certified financial statements with their registration application.[31] A firm taking

[25] As noted in the Proposing Release, a firm acting in the capacity of an FCM would be required to become a member of a registered futures association. *See* § 170.15. NFA is currently the only registered futures association. NFA Bylaw 1101 essentially provides that no NFA member may deal with another person with respect to an account, order or transaction where the other person is acting in a capacity that requires registration, unless that other person is also a member of a registered futures association. The combination of Commission Rule 170.15 and NFA Bylaw 1101 therefore requires most registrants to become members of NFA.

The Commission may consider not requiring NFA membership in the future if reciprocal arrangements were made by the primary regulators of other financial industry segments to recognize CFTC registration without requiring corresponding SRO membership.

[26] Because an intermediary that conducts business on an exempt MTEF will not be subject to Commission regulation for activity on the exempt MTEF, except for the antifraud and antimanipulation provisions of the Act to the extent applicable, it is unnecessary to extend the ''passporting'' procedure to firms trading on these markets.

[27] 65 FR at 39012.

[28] *Id.*

[29] *Id.*

[30] Although the Proposing Release did not generally address registration procedures for firms that are dually registered with the National Association of Securities Dealers (NASD) and NFA, the Association of Registration Management (ARM) made several suggestions in that area. Among its comments, ARM recommended that: (1) Firms that are dually registered with NASD and NFA should be permitted to maintain internal records about branch office location and supervision of those locations; (2) NFA should be permitted to rely on the fingerprint information available through the NASD's Internet-based Central Registration Depository (Web CRD) database for dual registrants; and (3) NFA also should be permitted to rely on disciplinary and disclosure information filed through amendments to Web CRD. (CL 22–23 at 2–3) ARM also recommended that the Commission eliminate its Form 7–R annual update requirement by allowing NFA to rely upon, and to record changes in a registrant's application through use of, the amendments filed via Form 3–R throughout the year. (CL 22–23 at 1–2)

The Commission's Registration Working Group (RWG) will consider ARM's suggestions in the near future. In this regard, Commission staff indicated in a letter dated July 13, 2000 to NFA that: (1) NFA could rely upon reporting by the futures industry SROs and the Commission with respect to SRO disciplinary actions and Commission enforcement actions; (2) certain requirements related to the collection of employment, residential and educational data could be reduced; and (3) as part of the annual update process, firms would only be required to report any new criminal or civil matters that had arisen since the previous update.

[31] *Id.* However, as stated in the Proposing Release, those IB applicants who do not raise their own capital continue to be required to file a guarantee agreement entered into with an FCM with their registration application. IBs and FCMs should refer to Commission Rules 1.10(j) and 1.57(a)(1) concerning the procedures applicable to guarantee

advantage of the new procedure would be subject to an on-site review within six months of registration by the firm's DSRO or, at the DSRO's discretion, a conference between appropriate staff of the firm and the DSRO at the DSRO's offices. An applicant that did not wish to be subject to the six-month review could continue to follow the existing rules and file a certified financial statement with its application.[32]

In general, commenters supported the proposed elimination of the certified financial statement requirement for IB applicants. (CL 22–17 at 3; CL 22–24 at 4; CL 22–25 at 4) Both NFA and the CBT, however, expressed reservations about eliminating the requirement for FCM applicants. (CL 22–24 at 4; CL 22–25 at 4) In addition, NFA recommended that the Commission consider allowing the DSRO to conduct the six-month review of independent IBs telephonically where the DSRO has no reason to be concerned about the IB's capital. (CL 22–24 at 4) The CBT expressed the view that the six-month time period for the on-site review of the FCM by the DSRO should be calculated from the date the FCM begins customer business, rather than six months from the date of registration. (CL 22–25 at 4).

The Commission has determined to eliminate the requirement to file certified financial statements with FCM or IB registration applications by adopting Rules 1.10 (a)(2)(i)(C) and (a)(2)(ii)(C), generally as proposed.[33] This alternative procedure is modeled on similar procedures in the securities industry. Although the Commission is not requiring FCMs to file a certified financial statement with their application for registration, this does not preclude any SRO from imposing this requirement before accepting an FCM for membership. With respect to the six-month review that must be conducted should an FCM or IB choose not to file a certified financial statement with its registration application, the Commission does not object, in the case of an IB, to allowing the DSRO to conduct the review telephonically where the DSRO does not have reason to question the IB's capital. However, the Commission believes that the six-month time period for the review of both FCMs and IBs should begin from the date the applicant is registered. The Commission has held consistently that once a registrant becomes registered in a certain capacity, the registrant is immediately assumed to be engaging in the activities permitted by such registration.[34]

C. Core Principles Two and Six: Fitness and Supervision

The Commission proposed to delete Rule 3.34 and instead to implement Congressional intent regarding ethics training through a Statement of Acceptable Practices.[35] Rule 3.34 specified frequency and duration of ethics training, the suggested curriculum, qualifications of instructors, and the necessary proof of attendance at such classes. In proposing to replace the rule with a Statement of Acceptable Practices that would leave the format, frequency, and providers of ethics training up to the registrants themselves, the Commission expressed its belief that greater flexibility regarding ethics training and proficiency testing could be afforded to registrants than was permitted under Rule 3.34. For registrants seeking guidance as to the maintenance of proper ethics training procedures consistent with the purposes of the Core Principle that intermediaries must be and remain fit, the Commission stated that the Statement of Acceptable Practices could function as a ''safe harbor.''[36]

In general, commenters expressed strong support for the Commission's proposal, stating, for example, that Rule 3.34 had become ''far too detailed and administratively cumbersome,'' (CL 22–24 at 5) and that ''each registrant should be responsible for implementing an ethics training program that addresses the registrant's business activities.'' (CL 22–31 at 14) Other commenters, however, expressed their beliefs that Rule 3.34 already provided sufficient flexibility to registrants, and that by eliminating the rule, the Commission risks sending the wrong message to the industry regarding the importance the Commission assigns to the ethics requirement. (CL 22–7 at 3; CL 22–43 at 6).

Upon consideration of the comments received, the Commission is deleting Rule 3.34 and issuing the Statement of Acceptable Practices as a new Appendix B to Part 3 of its Rules as proposed. Although the Commission notes the concern that eliminating Rule 3.34 may lead firms to place an inadequate priority on ethics training, the Commission does not believe that the replacement of the rule with a Statement of Acceptable Practices will diminish a registrant's obligations to remain fit and to adequately supervise the handling of customer accounts. Instead, the Commission hopes that the Statement of Acceptable Practices, which allows registrants to adopt ethics training programs that are better tailored to their needs, will help to imbue firms with a ''culture of ethics'' that is ongoing rather than episodic. The Commission believes that the essence of the ethics training or continuing education requirement is to remain current as to the legal requirements applicable to a person's role in the futures industry, which a registrant ignores at his or her peril.

The Commission also proposed to publish its recent ''guidance letters'' issued to NFA concerning the treatment of SRO disciplinary actions in assessing the fitness of FBs and FTs. The guidance letters were issued to provide greater clarity in interpreting the ''other good cause'' ground for statutory disqualification from registration under Section 8a(3)(M) of the Act. Support was expressed for this proposal and, accordingly, the Commission is hereby publishing both letters as an addition to Appendix A to Part 3 of its Rules.[37] (CL 22–25 at 4–5)

The Commission also requested comment regarding additional changes that should be considered in this area. In response, NFA urged the Commission to consider prohibiting exchange ''subscribers'' from accessing electronic exchanges where they have been barred by another exchange. (CL 22–22 at 5) As explained by NFA, the term ''subscriber'' describes the type of person that is equivalent to an FT. The Commission previously stated, when it adopted rules to govern FT registration, that it would defer consideration of the application of such requirements to persons using electronic trading systems to a later date.[38] To date, the Commission has not revisited the issue, and accordingly does not believe that it is appropriate to adopt NFA's request at this time. Nevertheless, the exchanges remain free to ban such ''subscribers''

agreements. *See also First American Discount Corp.* v. *CFTC,* 222 F.3d 1008 (D.C. Cir. Aug. 18, 2000).

[32] 65 FR at 39013.

[33] Rules 1.10(a)(2)(i)(C) and (a)(2)(ii)(C) have been further revised to make clear that the Form 1–FR–FCM or Form 1–FR–IB that must be submitted by new applicants for registration as FCMs and IBs with their application must be dated not more than 17 business days prior to the date on which such report is filed. This is consistent with Rules 1.10(a)(2)(i)(B) and (a)(2)(ii)(B).

[34] *See, e.g., In re Premex,* [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,992 (Feb. 1, 1984), *aff'd in relevant part, rev'd in part,* 785 F.2d 1403 (9th Cir. 1986).

[35] 65 FR at 39013.

[36] *Id.*

[37] In the Proposing Release, the Commission indicated that these letters would be published as an accompanying statement to this **Federal Register** release. The Commission has determined to add these letters to Appendix A to Part 3 because they relate to the issue of ''other good cause,'' which is discussed at the end of Appendix A, and to provide an easier way to access the texts of these letters.

[38] 58 FR 19575, 19576 (Apr. 15, 1993).

from access pursuant to their own rules and policies. As with the case of certified financial statements for FCM applicants discussed above, SROs may determine to impose requirements that are stricter than the minimum standards set forth in Commission rules.

D. Core Principal Three: Financial Requirements

1. Trading by Non-Institutional Customers on DTFs

Under the New Regulatory Framework, trading on DTFs would be limited to futures and options on specified commodities or those commodities deemed eligible under a case-by-case Commission determination.[39] In addition, DTFs could permit trading in any commodities if trading is limited to qualifying commercial participants.[40] The Commission proposed, however, that under certain conditions a DTF might permit non-institutional customers to enter into transactions thereon.[41] To address the higher degree of risk associated with the lower regulatory protections offered to DTF participants, such non-institutional customer business could be transacted only through a registered FCM that (1) Is a clearing member of at least one designated contract market or RFE, and (2) has a minimum adjusted net capital of at least $20 million.[42] Such an FCM is considered to be more capable of properly handling these transactions and the associated risk. The Commission further noted that, in order to provide guidance to such customers and their FCMs, NFA would issue a Statement of Acceptable Practices regarding additional disclosures to be made to non-institutional customers trading on DTFs and related issues involving price dissemination.[43]

Several commenters objected to the $20 million adjusted net capital requirement for FCMs set forth in Rule 1.17(a)(1)(ii) as proposed, stating that the amount was arbitrary, and urging that it be eliminated or reduced. (CL 22–35 at 8; CL 22–46 at 3–4; CL 22–48 at 3) The CBT observed that the $20 million minimum adjusted net capital requirement would prevent more than half of all registered FCMs from intermediating on DTFs for retail customers. (CL 22–25 at 5) Instead, the CBT suggested that the Commission focus on the FCM's record of customer protection, and permit any registered FCM to transact retail customer business on a DTF if the firm: (1) Has been registered as an FCM for at least three years; and (2) has not been found by a governmental or SRO authority to have committed any sales practice violations against retail customers during the past three years. (CL 22–25 at 5) Goldenberg, Hehmeyer & Co. (GHC) recommended that the Commission apply risk-based capital requirements in lieu of the $20 million minimum net capital requirement to assess the FCM's financial soundness. (CL 22–19 at 1–2) In a somewhat related vein, Treasury commented that a more appropriate measure of an intermediary's soundness is the amount of adjusted net capital in excess of the minimum required by regulation. (CL 22–34 at 3–4) Treasury further observed, however, that because the Commission's adjusted net capital requirements are based on the amount of segregated funds, whether excess adjusted net capital is an appropriate measure of an FCM's soundness in addition to total adjusted net capital depended on what the Commission ultimately decided on the segregation of funds issue. Accordingly, Treasury recommended that the Commission consider the segregation of funds issue in conjunction with its review of net capital rules. (CL 22–34 at 3–4)

Although MFA supported the Commission's proposal to allow non-institutional customers access to DTFs through qualifying FCMs (*i.e.,* those that are clearing members of at least one designated contract market or RFE and that have at least $20 million in adjusted net capital), it urged that customers who opted to trade through certain registered CTAs should also have such access. (CL 22–22 at 5) Specifically, MFA recommended that CTAs with at least $25 million in assets under management be permitted to access both exempt MTEFs and DTFs and engage in transactions on behalf of their customers in those markets. In support, MFA pointed out that in adopting Rule 30.12, which included in the definition of ''authorized customer'' any person whose investment decisions with respect to foreign futures and foreign option transactions are made by a CTA with total assets under management exceeding $50 million,[44] the Commission recognized that where a professional asset manager such as a CTA acts for a customer, it is appropriate to rely on the financial sophistication of the person managing the assets rather than on the sophistication of the individual CTA client. (CL 22–22 at 5) MFA further stated that because customers select their CTAs precisely on the basis of their determination that those CTAs are best qualified to make trading decisions on their behalf, precluding a CTA from being able to access DTF markets ''would * * * deprive customers of their ability to elect and receive the full benefits of the professional management for which the customer has retained the CTA.'' (CL 22–22 at 6) MFA estimated that less than 10 percent of all registered CTAs would qualify under a $25 million assets under management threshold, and expressed the view that this ''small but sophisticated'' class of CTAs would be an appropriate group for the Commission to permit access to all types of futures markets. (CL 22–22 at 8)

The Commission has reviewed these comments carefully. The Commission has determined to adopt, as proposed, the $20 million minimum adjusted net capital requirement for FCMs wishing to transact business on behalf of non-institutional customers on a DTF. The Core Principle addressing financial standards encourages intermediaries to maintain adequate capital to ensure they are able to meet their obligations to customers, and the Commission believes that the $20 million adjusted net capital requirement is a sufficient proxy for ensuring that FCMs will be financially capable of properly maintaining and servicing customer accounts. The Commission will monitor the effects of this requirement and make adjustments if appropriate.

The Commission has determined to add a new Rule 4.32 to permit registered CTAs to enter trades on or subject to the rules of a DTF on behalf of a non-institutional client, provided that the CTA: (1) Directs the client's commodity interest account;[45] (2) directs accounts containing total assets of not less than $25 million at the time the trade is entered; and (3) discloses to the client that it may enter trades on a DTF on the client's behalf. Paragraph (b) of Rule 4.32 further requires that the client's commodity interest account be carried by a registered FCM. An FCM who receives orders on behalf of a non-institutional customer from a CTA acting in accordance with Rule 4.32 need not maintain $20 million in minimum adjusted net capital, however. *See* Rule 1.17(a)(1)(ii)(B). In addition, a CTA placing trades on a DTF on behalf of a non-institutional client will be required to make any necessary

[39] 65 FR at 38990.

[40] *Id.*

[41] 65 FR at 39013.

[42] *Id.*

[43] *Id.*

[44] 65 FR at 47277.

[45] The term ''direct,'' as defined in Rule 4.10(f), refers to, in the context of trading commodity interest accounts, ''agreements whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization.''

disclosures pursuant to Rule 4.34(h), which requires a CTA to disclose to the client if, pursuant to Rule 1.46, the CTA has instructed the FCM carrying the client account either not to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis. This issue is discussed in greater detail below.

2. Segregation of Funds

The Proposing Release raised two sets of questions seeking comments about whether, and under what circumstances, the Commission should permit (1) customers to opt out of segregation and (2) FCMs to maintain, in the same customer segregated account, various instruments, such as over-the-counter (OTC) derivatives, equity securities, and other cash market positions, as well as the funds used for the purpose of securing or margining such products and positions.[46] Differing views were presented on both issues, and the Commission has determined to defer action in these areas. With respect to customer opt-out of segregation, most parties commenting on the issue urged the Commission to consider thoroughly the potential implications with respect to the bankruptcy rules, *e.g.,* priority of distribution, before proceeding on the issue. (CL 22–18 at 1; CL 22–22 at 6; CL 22–25 at 7; CL 22–31 at 7–8; CL 22–32 at 14–15; CL 22–34 at 3) NFA further expressed the view that there was no current need for, or interest in, allowing institutional customers to opt out of segregation, as the FCM community is more interested in being able to provide customers with a unified account statement reflecting their holdings across all products, not just futures contracts. (CL 22–24 at 5)

In response to the Commission's query on whether the types of permissible instruments held in the same customer account should be expanded, FIA expressed the view that Section 4d(2) of the Act permits the Commission to authorize any FCM that wishes to carry a customer's cash, OTC derivatives, securities and futures positions in a single account to maintain that account as a customer segregated account. The CBT cautioned the Commission to give further consideration to bankruptcy implications before proceeding in this area. The Commission agrees that action on this issue should be deferred to allow for additional study and consultation with other regulators, including members of the President's Working Group (PWG), and in addition, that any ultimate determination must be made in conjunction with deciding the customer opt-out of segregation issue.[47]

3. Investment of Customer Funds

The Commission proposed to amend Rule 1.25, which sets forth the types of instruments in which FCMs and clearing organizations are permitted to invest customer funds pursuant to Section 4d(2) of the Act (permitted investments), by expanding the list of permitted investments.[48] Previously, an FCM or clearing organization was permitted to invest segregated funds only in obligations of the U.S., in general obligations of any State or of any political subdivision thereof, or in obligations fully guaranteed as to principal and interest by the U.S.

The Commission proposed, subject to specific risk-limiting features, to permit FCMs to invest customer segregated funds in the following additional instruments: (1) Obligations issued by any agency sponsored by the U.S.; (2) certificates of deposit issued by a bank, as defined in Section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation; (3) commercial paper; (4) corporate notes; and (5) interests in money market mutual funds (MMMFs). In addition, an FCM or a clearing organization would also be permitted to both buy and sell the permitted investments pursuant to agreements for resale or repurchase of the instruments (repurchase transactions).[49]

The Proposing Release contained several provisions intended to minimize credit risk, market risk, and liquidity risk, including: (i) A requirement that the investments be highly-rated by a nationally-recognized statistical rating agency (NRSRO), except for U.S. government securities and those MMMFs that are not required to be rated; (ii) a requirement that the dollar-weighted average of the time remaining to maturity of the debt securities held in the segregated portfolio not exceed 24 months, excluding investment in MMMFs because MMMFs have no maturity date; (iii) concentration limits on the percentage of the portfolio that may be comprised of the securities of individual issuers; (iv) specific prohibitions against leverage, embedded derivatives, and options; and (v) a requirement that the daily value and gains and losses on each investment be included in the records of the FCM or clearing organization.[50]

In connection with the proposed revisions to Rule 1.25, the Commission also proposed to amend Rules 1.20(a) and 1.26(a) to eliminate the requirement that an FCM obtain a written acknowledgment, from each clearing organization where the FCM has deposited customer funds or instruments purchased with customer funds, that the clearing organization was informed that the customer funds or instruments purchased with customer funds and deposited therein belong to customers and are being held in accordance with the provisions of the Act and the rules and orders promulgated thereunder.[51] The elimination of the written acknowledgment requirement would be conditioned upon the clearing organization's adoption and submission to the Commission of rules that provide for the segregation as customer funds, in accordance with the Act and the Commission's rules and orders, of all funds held on behalf of customers and all instruments purchased with customer funds.[52]

In general, commenters responded favorably to the Commission's proposals to expand the permissible investments, and the Commission has determined to adopt the amendments generally as proposed.[53] Notwithstanding their overall support, however, commenters addressed several areas in which they sought additional adjustments or clarifications concerning the rule amendments. Commenters also responded to specific questions raised by the Commission in the Proposing Release.

The CBT suggested that the Commission set guidelines with regard to the marketability of the permitted investments. The CBT recommended that the guidelines limit permitted investments to those instruments for which there are available quotes or valuations and, further, that the guidelines provide that there be a likelihood that any permitted investments can be liquidated within a

[46] 65 FR at 39014.

[47] The Commission notes, however, that cross-margining arrangements are already in place with respect to trading of stock index options and stock index futures.

[48] 65 FR at 39014.

[49] *Id.*

[50] *Id.* at 39014–15.

[51] *Id.* at 39015.

[52] *Id.* This codifies a staff no-action letter issued three years ago. *See* CFTC Staff Letter No. 97–45, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,085 (May 5, 1997).

[53] Because the Commission has determined to include MMMFs in the list of permissible investments for customer funds, subject to the limitations adopted in Rule 1.25, it is hereby rescinding Division of Trading and Markets Financial and Segregation Interpretation No. 9, which previously prohibited such investment. *See* Financial and Segregation Interpretation No. 9, 1 Comm. Fut. L. Rep. (CCH) ¶7,119 (Nov. 23, 1983).

reasonable time period. (CL 22–25 at 7) The final rule has been modified so that paragraph (b)(1) of Rule 1.25 requires that the permitted securities held in segregation be ''readily marketable'' consistent with SEC Rule 15c3–1 under the Securities Exchange Act of 1934.[54]

The CBT also recommended that the Commission use a simpler approach for the valuation of downgraded investments than the proposed 20 percent per day reduction. The CBT suggested instead that a set number of days be permitted for disposal of the investment and that, during that permitted time period, the firm be allowed to use the full market value of the instrument towards meeting its segregated liability. The CBT also indicated that it thought the 20 percent per day reduction in value for a downgraded instrument could lead to errors in calculation. (CL 22–25 at 7–8) The Commission has determined not to change this provision because it believes that the 20 percent per day write-down will provide an appropriate valuation under the circumstances and that it will serve as an incentive for the firm to take action to dispose of a downgraded investment sooner. *See* Rule 1.25(b)(2)(ii).

Rosenthal Collins Group, LLC (RCG) stated that the proposed credit rating requirements were too restrictive. (CL 22–18 at 2) The Commission notes that these requirements are intended to result in the holding of ''investment grade'' securities only. After the new rule takes effect, the Commission plans to monitor the effectiveness of the rule on an ongoing basis. If experience shows that the required ratings are too stringent, adjustments to the rule will be considered.

RCG also stated that the Commission should not impose rating requirements on investments in municipal securities because some of these securities are not rated due to the costs associated with obtaining a rating. RCG stated further that if the rule were adopted as proposed, investments that comply with the present rules but that do not comply with the new requirements should be ''grandfathered'' as part of an existing portfolio. (CL 22–18 at 2) In response to this comment, the Commission will not require the disposal of investments held as of December 13, 2000, *i.e.,* such investments may be held until they mature or are liquidated in the ordinary course of business, although no new acquisitions of non-compliant investments will be permitted.

Brown Brothers Harriman (BBH) stated that the prohibition against an FCM investing in an MMMF that has investments in securities issued by a parent or affiliate of the FCM should be dropped. (CL 22–20 at 5) This recommendation was made because MMMFs are often operated independently of the sponsoring affiliated entity and, in any event, are subject to a five percent concentration limit in the securities of any single issuer. BBH also noted that many FCMs are affiliated with world-class financial enterprises and that a prohibition against MMMFs investing in securities of the FCMs' affiliates would eliminate a large and important group of instruments. The Commission finds merit in this suggestion and has modified Rule 1.25(b)(6)(ii) accordingly. The Commission also notes that Section 17 of the Investment Company Act[55] restricts investments made by MMMFs in securities issued by any entity affiliated with the MMMF or its sponsors, and that the concentration limit set forth in SEC Rule 2a–7 under the Investment Company Act[56] is similar to the concentration provision of CFTC Rule 1.25.

BBH also requested that the requirement that a fund be ''SEC registered'' be defined to mean registration under the Investment Company Act only and not require registration under the Securities Act of 1933. (CL 22–20 at 6) This clarification has been made to paragraph (c)(1) of Rule 1.25.

Sentinel Management Group, Inc. (Sentinel) requested clarification as to whether the concentration limits provided for in the proposed rule would apply to securities held in connection with repurchase agreements. (CL 22–41 at 1) Sentinel stated that the concentration limits should not apply because of: (1) The burden that would be imposed upon the FCMs; (2) the fact that complete information on such securities is sometimes not known until the day following entry into the repurchase transaction; (3) the fact that the duration of repurchase transactions is only one day; and (4) the fact that the obligation created pursuant to a repurchase transaction is that of the counterparty and not the issuer of the securities. Therefore, it argued, the creditworthiness of the counterparty augments the value of the securities held pursuant to the repurchase agreement. (CL 22–41 at 1–2) This same point was raised by BBH in follow-up conversations.

Taking into consideration these comments, as well as the requirement contained in the Proposing Release that counterparties for repurchase transactions must be regulated financial institutions (generally large banks or brokerage firms), the Commission has concluded that the focus of concentration should be primarily upon the counterparties and secondarily upon the securities held in connection with the repurchase agreement. Therefore, the final rule contains several clarifying or enhancing changes.

First, paragraph (b)(4)(ii) provides that securities that are held by a counterparty, *i.e.,* securities that have been ''repoed out,'' are subject to the concentration limitations along with currently-owned direct investment securities. This clarification was made because a security that has been sold subject to repurchase at a later date presents the FCM or clearing organization with the same price risk as a security that is currently held in the portfolio. Second, paragraph (b)(4)(iii) provides concentration limit percentages for securities that are held by the FCM or clearing organization pursuant to a reverse repurchase agreement that are double those required for direct investments, provided that the counterparty has a credit rating of single A or higher from two or more NRSROs. In addition, the rule was changed to provide that the concentration percentages for such securities shall be computed using only the securities contained in the portfolio of securities supplied by each counterparty of the FCM or clearing organization. This change was made because the counterparty has the direct control over what specific securities will be supplied in a repurchase transaction. Thus, the Commission expects that an FCM or clearing organization will inform its counterparties as to the per-issuer concentration limits that must be observed, as set forth in the rule. Finally, paragraph (b)(4)(v) makes explicit that the concentration limits do not apply to securities owned by customers that have been posted by customers as collateral with the FCM. This clarification was made primarily because changes in the value of customer-owned securities accrue to the customers who posted the securities and, therefore, in a properly margined account such securities pose no direct price risk to the FCM. The Commission believes that these changes and clarifications will provide additional flexibility to FCMs and clearing

[54] 17 CFR 240.15c3–1. As a result of the addition of new Rule 1.25(b)(1), proposed paragraph (b)(6) of Rule 1.25 concerning recordkeeping is being adopted unchanged as paragraph (b)(7).

[55] 15 U.S.C. 80a–17.

[56] 17 CFR 270.2a–7.

organizations without unduly increasing associated risk.

The Investment Company Institute (ICI) suggested that MMMFs sponsored by investment advisers registered under the Investment Advisers Act of 1940 be included in the list of permitted investments. (CL 22–27 at 6) The Commission has made this suggested change. *See* Rule 1.25(c)(2).

ICI noted that the proposed rule appeared to require valuation of the investment portfolio by 9 a.m. each day and suggested, instead, that valuation not be required until after the close of the markets each day, *i.e.,* not until after 4 p.m. (CL 22–27 at 7) The Commission's intention was to require valuation by 9 a.m. the business day following the investment, so that the valuation would be available in time for the segregation calculation, which is required to be completed on a daily basis by noon the following business day. The final rule (paragraph (c)(4) of Rule 1.25) has been changed to correctly state the Commission's intention more precisely.

ICI also suggested that the proposed rule should be changed to permit MMMFs that are not rated by an NRSRO to invest in unrated securities. The proposed rule provided that only MMMFs that are rated may invest in unrated securities. ICI cited the comprehensive approach to risk control and preservation of capital contained in SEC Rule 2a–7 and noted that that rule permits an MMMF to invest in unrated securities if the MMMF determines that the securities are of comparable quality to otherwise eligible securities. (CL 22–27 at 4) The Commission has changed the final rule (Rule 1.25(b)(2)(i)(D)) to permit unrated MMMFs to invest in unrated securities because of the risk-limiting features of SEC Rule 2a–7.

ICI also recommended two revisions to paragraph (c)(3) of Rule 1.25 concerning MMMFs. First, because fund shares are usually uncertificated, ICI recommended that the first sentence be revised to provide that the ownership of fund shares must be noted (by book-entry or otherwise) in a custody account of the FCM or clearing organization. Second, to ensure that confirmations for transactions in fund shares are retained, ICI recommended that the confirmation relating to the purchase be retained in the FCM's or clearing organization's records. (CL 22–27 at 6) The Commission has made these suggested changes.

ICI further recommended that the one-day liquidity requirement applicable to MMMFs be extended to seven days, to be consistent with SEC requirements and the longer settlement time-frames associated with direct investments. (CL 22–27 at 7)

The Commission believes the one-day liquidity requirement for investments in MMMFs is necessary to ensure that the funding requirements of FCMs will not be impeded by a long liquidity time frame. Since a material portion of an FCM's customer funds could well be invested in a single MMMF, this is an important provision of the rule. The Commission notes that, although sales of directly-owned securities settle in longer than one-day time-frames, an FCM or clearing organization could obtain liquidity by entering into a repurchase transaction. Therefore, the Commission has retained the one-day liquidity requirement imposed on investments in MMMFs and, in view of the importance of this provision, has clarified that demonstration that this requirement has been met may include either an appropriate provision in the offering memorandum of the fund or a separate side agreement between the fund and an FCM or clearing organization. *See* Rule 1.25(c)(5).

The FRBC commented that permitted investments should have either a CUSIP or ISIN number, and that permitted investments should be required to have a reasonably transparent secondary market enabling accurate and efficient valuation of the investments. (CL 22–30 at 6) The Commission has changed the final rule to include securities with ISIN numbers as permitted investments.

The FRBC also recommended that permitted investments have a reasonably transparent secondary market. As noted above, the Commission strengthened the rule in this respect by adding a requirement that all permitted securities, except for MMMFs, meet the SEC's ''readily marketable'' standard. The Commission intends to monitor closely for any problems concerning valuation of permitted investments, and will consider proposing further rule amendments if appropriate.

The FRBC also recommended that permitted investments should settle on a same-day or next-day basis, to ensure adequate liquidity. It pointed out that, currently in the U.S., virtually all corporate and municipal debt securities settle on a T+3 basis, which is not sufficient for futures clearing organization demands, and that this delay could deprive the FCM or clearing organization of the liquidity that is so important in times of market stress or emergency. (CL 22–30 at 5) The Commission has elected to permit investment of customer funds in investment grade corporate notes and municipal securities because FCMs have methods of obtaining liquidity other than by selling the securities, such as by entering into repurchase transactions and by establishing backup bank lines of credit using the securities as collateral.

The FRBC further recommended that CFTC rules should permit the investment of customer funds held in a foreign currency in identically-denominated sovereign debt securities. (CL 22–30 at 4–5; *see also* CL 22–31 at 9; CL 22–42 at 2) The Commission notes that, under the rule as proposed, an FCM that decided to invest deposits of foreign currencies was required to convert the foreign currencies received to a U.S. dollar-denominated asset. This would increase its exposure to foreign currency fluctuation risk, unless it incurred the additional expense of hedging. Therefore, the Commission has determined that the FRBC's suggestion should be adopted. The Commission has changed the proposed rule to permit investment in the general obligations of any country whose sovereign debt is rated in the highest category by at least one NRSRO, but limited as follows: an FCM may invest in the sovereign debt of a country to the extent it has balances owed to its customers denominated in that currency; a clearing organization may invest in the sovereign debt of a country to the extent it has balances owed to its clearing member FCMs denominated in that currency.[57] The Commission notes that foreign sovereign debt that is denominated in the Euro will qualify as a permitted investment under this rule, provided the country that issued the debt qualifies as a permitted country under the rule, the obligation is a general obligation of the country, and the balances owed to the customers or the FCMs are Euro-denominated. As with other aspects of Rule 1.25, the Commission will monitor the effect of this provision and stands ready to make additional adjustments as experience dictates.

In addition, the FRBC suggested that the CFTC expressly approve the use of certain ''sweep'' accounts in connection with the investment of customer funds in MMMFs or other permissible forms of investment. (CL 22–30 at 6) The Commission notes that Rule 1.25 will not preclude the use of sweep accounts and encourages this practice to enhance the efficiency of liquidity management.

The FRBC also suggested that, with respect to the concentration provision, the rule should be clarified that it applies only to the portfolio of securities

[57] As is the case for U.S. government securities and those MMMFs that are not required to be rated, permitted foreign sovereign debt will not be subject to a credit rating requirement. *See* § 1.25(b)(2)(i)(A).

purchased with customer funds, *i.e.,* the provision does not apply to customer-owned securities posted as margin. (CL 22–30 at 6) As noted previously, the Commission has made this clarification in paragraph (b)(4)(v) of Rule 1.25.

FIA suggested that the Commission clarify what is meant by the required ratings in the rule, where the ''two highest ratings of an NRSRO'' are specified, *i.e.,* AAA and AA. In particular, it recommended that the Commission clarify whether ''AA'' includes all variations included within the AA rating. (CL 22–31 at 8) The Commission confirms that this interpretation is correct.

FIA also suggested that the Commission clarify whether a security would be a permitted investment if one NRSRO gave it an acceptable rating, even though another NRSRO gave it an unacceptable rating. (CL 22–31 at 9) The Commission hereby confirms that if one NRSRO gave an acceptable rating and another did not, investment in the security would be permitted. The Commission believes that it would be rare for such differences to occur at the investment grade ratings level and, further, that any differences would probably be temporary.

FIA also suggested providing a grace period for FCMs or clearing organizations that find themselves in violation of the concentration limits. (CL 22–31 at 9) The Commission has decided against adopting this suggestion because the Commission would not expect FCMs to violate the concentration limits, except perhaps under unusual circumstances. Further, the Commission is concerned that were a formal grace period provided in the rule, it might be subject to abuse.

In addition, FIA suggested that the Commission plan to review the list of permitted investments every six months to determine whether revisions should be made. (CL 22–31 at 9) The Commission plans to review all aspects of the new rule on an ongoing basis and further changes will be proposed, if appropriate.

Two exchanges, the NYMEX and the CME, pointed out that each clearing organization would need to make its own determination as to the types of assets that would be accepted by that clearing organization. (CL 22–32 at 16; CL 22–35 at 13) The Commission recognizes that an SRO may adopt more restrictive requirements than those set forth in Rule 1.25 for its member FCMs.

E. Core Principle Four: Risk Disclosure and Account Statements

Although the Commission stated in the Proposing Release that non-institutional customers should continue to receive the risk disclosures regarding futures and options trading that are currently required,[58] it proposed to streamline the account opening process by amending Rules 1.55(d)(1) and (2) to expand the list of disclosures and consents that could be provided in a single document and acknowledged with a single signature.[59] This list includes: (1) The disclosures required by new Rule 1.33(g) (relating to electronic transmission of statements);[60] (2) the consent referenced in Rule 155.3(b)(2) (relating to customer permission for FCMs to take the opposite side of an order); and (3) a provision for preauthorization of transfers of funds from a customer's segregated account to another account of that customer. The single signature could be made electronically as provided for in recently-adopted Commission Rules 1.3(tt) and 1.4.[61] Disclosure concerning arbitration of disputes, however, would continue to require a separate signed acknowledgement by non-institutional customers, pursuant to proposed Rule 166.5 (which was modeled on, and would replace, prior Rule 180.3).[62]

All of the commenters who addressed the proposed amendments to Rule 1.55(d) responded favorably to the expansion of disclosures and consents that could be acknowledged and made by a single signature, and the Commission is adopting the amendments as proposed. (CL 22–17 at 3; CL 22–24 at 6; CL 22–25 at 8; CL 22–31 at 14; CL 22–32 at 16; CL 22–35 at 11; CL 22–44 at 2) FIA requested that the Commission confirm that an FCM may obtain an acknowledgement of receipt and understanding of the risk disclosure statement contemporaneously with opening an account. The Commission agrees that the FCM may open the customer account simultaneously with receiving the acknowledgment of receipt and understanding of the risk disclosure statement, along with margin funds and any other required account opening documents, from the customer. The FCM will remain responsible for ensuring that the risk disclosure document is furnished to the customer in such a way that the customer can review and understand the document before committing funds to the FCM.

NFA commented generally that the Commission should not dictate the specifics of how disclosures and consents are delivered and acknowledged, and that it would be willing to develop best practice guidance in this area. (CL 22–24 at 6) The Commission believes that its rules requiring risk disclosure and customer acknowledgments do not impose a significant burden in light of their important customer protections. The Commission is providing additional flexibility to the industry in this area. As the Commission noted in the Proposing Release, there would continue to be no specific disclosure requirements for institutional customers and, in addition, as provided in Rule 35.1(b), governmental entities would be included in the definition of ''institutional customer,'' and consequently would not be required to receive and to acknowledge a disclosure statement.[63] Further, the single signature acknowledgment could be made electronically as provided for in Rules 1.3(tt) and 1.4. The Commission looks forward to working with NFA and the industry both in developing a Statement of Acceptable Practices for disclosure to non-institutional customers trading on DTFs, and in developing more streamlined disclosure requirements for domestic exchange-traded options under Rule 33.7.

As noted above, the Commission proposed to continue to require a separate signed acknowledgement by non-institutional customers with respect to disclosure concerning arbitration of disputes. Nevertheless, the Commission also solicited comment on whether to maintain this requirement.[64] FIA opposed continuing to require a separate signature from non-institutional customers if their account agreement contains a pre-dispute arbitration provision. (CL 22–31 at 14) In general, FIA expressed the opinion that the Commission should eliminate all of its rules pertaining to the use of pre-dispute arbitration agreements, as well as the Commission's reparations program. For example, FIA commented that the Commission's rule that an FCM may not require a customer to sign a pre-dispute arbitration agreement as a condition to opening an account with the FCM inhibits the ability of FCMs that are also securities broker-dealers to enter into a single agreement with their customers, because the SEC does not prohibit the use of such mandatory agreements. (CL 22–31 at 10) At the very least, FIA stated that the Commission

[58] 65 FR at 39015. There would continue to be no specific disclosure requirements for institutional customers. Id. at 39016.

[59] *Id.* at 39015–16.

[60] *See infra.*

[61] 65 FR 12466 (Mar. 9, 2000).

[62] 65 FR at 39016. This is discussed further below.

[63] *Id.*

[64] *Id.*

should permit institutional customers contractually to waive their right to file a complaint under the Commission's reparations program. (CL 22–31 at 10) In this regard, NFA maintained that intermediaries and institutional customers should be allowed to negotiate *all* terms in pre-dispute arbitration agreements. (CL 22–24 at 8).

The Commission is adopting Rule 166.5 as it pertains to non-institutional customers as proposed. Further, the Commission believes that no customer, regardless of their level of sophistication, should be required to sign a pre-dispute arbitration agreement as a condition for doing business in the futures industry. The Commission has determined, however, to allow institutional customers and intermediaries to negotiate any terms of a pre-dispute arbitration agreement as they deem appropriate, including a waiver of the customer's right to file a complaint under the Commission's reparations program. Accordingly, the definition of the term ''customer'' in Rule 166.5(a)(2) has been changed to exclude institutional customers from general application of the rule. In addition, new paragraph (g) has been added to make clear that an institutional customer and a registrant may negotiate any terms of a pre-dispute arbitration agreement, except that the institutional customer may not be required to sign a pre-dispute arbitration agreement as a condition of opening an account with the registrant.[65]

NFA specifically requested that the Commission clarify the reach of pre-dispute arbitration agreements and confirm that such agreements are binding on both the intermediary as well as the customer, unless the agreement states specifically that the registrant is not required to arbitrate its claims.[66] (CL 22–24 at 9) Former Part 180, which is to be replaced by Rule 166.5, was mainly intended to provide for fair and equitable SRO arbitration forums and to prevent firms from requiring customers to agree to arbitration in order to do business. Part 180 did not require registrants to submit their claims against customers to arbitration, and the Commission did not propose to require that registrants do so in the Proposing Release. Thus, provided that a registrant pursues a dispute in accordance with the terms of the customer agreement, and the procedures followed do not violate Rule 166.5, Commission rules would not prohibit the registrant's actions.

NFA also objected to proposed Rule 166.5(f), which would permit counterclaims that do not arise out of the same transaction or occurrence that is the subject of the original claim only if (1) The customer agreed to the counterclaim being heard after it has arisen, and (2) the aggregate monetary value of the counterclaim is capable of calculation. NFA believes that, for both retail and institutional customers, the parties should be allowed to agree in advance that any counterclaim would be required to be included in the arbitration proceeding. (CL 22–24 at 9) The Commission has determined to adopt NFA's suggestion, and has revised Rule 166.5(f) to permit any counterclaim arising out of a transaction subject to the Act and Commission regulations promulgated thereunder for which a non-institutional customer has utilized the services of a registrant, to be made part of an arbitration proceeding between the non-institutional customer and the registrant where the parties have agreed in advance to require that any such claim be included in the arbitration proceeding, provided that the aggregate monetary value of the counterclaim is capable of calculation. As noted above, under Rule 166.5(g), institutional customers remain free to negotiate any terms of their pre-dispute arbitration agreement, including the type of counterclaims that may be included in an arbitration proceeding.

F. Core Principle Five: Trading Standards

The Commission proposed that Rules 155.1, 155.3 and 155.4, which collectively require FCMs and IBs to establish and to maintain supervisory procedures to assure that neither they nor any affiliated persons use their knowledge of customer orders to the customer's disadvantage, would continue to apply to intermediation of trades on contract markets. These requirements would be extended to trading on RFEs, and to trading by non-institutional customers on DTFs under new Rule 155.6(a).[67] These rules over the years have helped the Commission deter such practices as ''front-running,'' ''trading ahead,'' ''bucketing,'' taking the opposite side of customer orders, and improper disclosure of customer orders. However, for intermediation of trades by institutional customers at DTFs, the Commission proposed a new Rule 155.6(b), which set forth a general standard of practice in this area that parallels the language of the core principle concerning trading standards. The Commission stated that ''it is nevertheless intended to proscribe the same trade practice abuses as Rules 155.1–155.5.'' [68]

The commenters who addressed this section were critical of the Commission's approach. The CBT expressed its belief that all prescriptive rules regarding trading practices should be replaced with core principles, not just the rules governing trades for institutional customers on DTFs. (CL 22–25 at 8) MFA stated that it was inconsistent to add a general prohibition against ''misuse'' of knowledge as contained in Proposed Rule 155.6(b) if the rule was intended to proscribe the same trade practice abuses referred to in Rules 155.1–155.5. (CL 22–22 at 13–14) NFA commented that RFEs and DTFs should not be treated differently with respect to trading standards rules, because otherwise operators of DTFs would have a competitive advantage over operators of RFEs. (CL 22–24 at 6)

The Commission has determined to leave unchanged Rules 155.1–155.5 at this time, and to adopt Rule 155.6 as proposed. The Commission believes that the existing rules should continue to apply in connection with non-institutional customer trades no matter where they occur because of such customers' greater susceptibility to trading abuses by intermediaries, as compared to institutional customers. The Commission recognizes that, with respect to institutional customers trading on a DTF, a general standard of practice is more appropriate. However, the Commission remains open to specific suggestions regarding how individual provisions in Rules 155.3 and 155.4 might be streamlined.

The Commission notes that because the core principle concerning trading standards states that intermediaries must not misuse their knowledge of their customers' orders without making any distinctions regarding the nature of the customer, the same trade practice abuses that are proscribed by Rules 155.1–155.5 should also be considered

[65] As a result of these changes, proposed paragraphs (c)(2) (ii) and (iii) of Rule 166.5 are adopted as paragraphs (c)(2) (i) and (ii), respectively. In addition, to reflect the recent amendments to Rule 4.7, paragraph (c)(2)(ii) of Rule 166.5 (formerly paragraph (c)(2)(iii)) has been modified to apply to a person who is a ''qualified eligible person'' as defined by Rule 4.7. *See* 65 FR 47848 (Aug. 4, 2000).

[66] NFA referred to several recent lower court cases where registrants who brought debit balance claims against their customers in state court successfully argued, in response to the customers' attempts to force the claims to arbitration, that a pre-dispute arbitration agreement did not apply to their claims against customers. NFA questioned the logic of these decisions, stating that there is no consideration for a customer to sign a pre-dispute arbitration agreement if it does not apply to the intermediary's claims as well. (CL 22–24 at 9)

[67] 65 FR at 39016.

[68] *Id.*

as being in violation of Rule 155.6(b). The Commission believes that its overall approach with respect to trading standards strikes a reasonable balance in preserving rules that have worked successfully over the years in curbing abusive trading practices, while relaxing certain of the specific provisions of the existing rules in connection with the trading on DTFs by more sophisticated customers.

G. Core Principle Seven: Reporting Requirements

The Commission proposed to apply its existing large trader reporting requirements to intermediaries on RFEs, but would reduce reporting requirements with respect to intermediaries transacting business on DTFs, because of the nature of the instruments traded or the limited access granted to non-institutional traders. Intermediaries trading on DTFs would be subject to large trader reporting requirements only by special call.

The Commission received varying comments in response to its large trader reporting proposal. NFA agreed with both aspects of the Commission's proposal, asserting that large trader reporting requirements should remain in place for intermediaries on RFEs, while a more flexible approach would be appropriate for gathering information from intermediaries trading on DTFs. (CL 22–24 at 7) FC Stone suggested that reduced large trader reporting should be available to all FCMs with institutional customers only, not just to those trading on DTFs. (CL 22–44 at 4) The CBT stated that the Commission should permit individual markets to require large trader reporting, as they deem necessary, and that any large trader reporting to the Commission should be done pursuant to special call, without drawing a distinction between DTFs and RFEs. (CL 22–25 at 8–9) NIBA also commented that the Commission should not make a distinction between DTFs and RFEs; NIBA stated, however, that regular large trader reports should be required on both types of exchanges, and that otherwise customers who trade on RFEs would lose the benefit of price transparency. (CL 22–17 at 4) Treasury expressed concern about the mechanics of large trader reporting on a DTF, stating that because eligible participants would not be required to use FCMs to execute trades on a DTF, it was unclear how large trader positions could be reported. In addition, Treasury noted that large trader reporting requirements have worked well in the market for Treasury bond futures, both for the information they reveal to regulators and their deterrent effect, and consequently, urged the Commission to establish a mechanism for large trader reporting for government securities futures trading on DTFs. (CL 22–34 at 4) The Economic Strategy Institute agreed with Treasury that the elimination of large trader reports would reduce the Commission's ability to effectively detect and deter manipulation. (CL 22–45 at 2) Finally, the American Farm Bureau Federation, the American Soybean Association, the National Association of Wheat Growers, the National Cattlemen's Beef Association, the National Corn Growers Association, the National Farmers Union, the National Grain Sorghum Producers and the National Pork Producers Council collectively commented that if the Commission determined to permit agricultural products to be traded on a DTF, large trader reports relating thereto should be filed with the Commission. (CL 22–51 at 1)

The Commission has determined to adopt the large trader reporting requirements for RFEs and DTFs as proposed, except that large trader reports will not be required from participants trading on a commercial-participant DTF. The reporting system is critical to the Commission's ability to oversee markets and provides a valuable bulwark against illegitimate trade practices. RFEs in particular permit unconditioned access to any type of trader, including both institutional and non-institutional customers or participants, and may list contracts on any type of commodity, including those based on commodities that have finite deliverable supplies or cash markets with limited liquidity. Such markets potentially have a greater susceptibility to price manipulation and raise greater customer protection concerns than do DTFs. Consequently, regular large trader reports are necessary to enable the Commission to carry out its oversight responsibilities for RFE markets.

With respect to intermediaries transacting business on DTFs, however, because of the nature of the instruments traded and the limited access granted to non-institutional traders, large trader reporting on a less routine basis, *i.e.*, upon special call by the Commission, is more appropriate. Where trading access on a DTF is restricted to eligible commercial participants only, however, large trader reports generally will not be required from such participants.[69] The Commission will rely instead on its investigative authority, which also applies to a person's cash market activities.[70]

H. Core Principle Eight: Recordkeeping

1. General

The Core Principles state that all registrants must keep full books and records of their activities related to their business. Thus, the Commission did not propose to amend any of its recordkeeping requirements in the Proposing Release.[71] NFA asked the Commission to consider replacing Rule 1.31 with a core principle and acceptable practice guidance that follows NFA's December 1997 proposal. NFA's proposal recommended that Rule 1.31 be rewritten to require only that registrant recordkeeping systems meet general reliability and accessibility standards. (CL 22–24 at 7) The Commission revised Rule 1.31 in 1999 to provide additional flexibility to recordkeepers, allowing them to store most required records on either micrographic or electronic storage media for the full five-year required retention period.[72] The Commission intends to revisit NFA's proposal in the future and, where appropriate, will undertake to work with the SEC to make additional changes in this area.

2. Customer Account Statements; Close-Out of Offsetting Positions

The Commission proposed to codify its June 1997 advisory relating to the electronic transmission of account statements in a new Rule 1.33(g).[73] Thus, an FCM would be permitted, with customer consent, to deliver required confirmation, purchase-and-sale, and monthly account statements electronically in lieu of mailing a paper copy. FCMs would need only to retain the daily confirmation statement as of the end of the trading session, provided that it reflects all trades made during that session. Before transmitting any statement electronically to a customer, however, the FCM would be required to make certain disclosures regarding the practice, and in the case of non-institutional customers, the FCM would be required to obtain the customer's signed consent acknowledging the disclosures. The acknowledgement could be made through a single signature in accordance with Rule 1.55 as discussed above. NIBA and FC Stone responded favorably to the

[69] As explained in a companion release in today's edition of the **Federal Register**, large trader reports may be required upon special call depending upon the nature of the commodity interest traded on a commercial-participant DTF.

[70] Large trader reports may be required upon special call on the DTF itself, however. *See* § 37.6(a).

[71] 65 FR at 39017.

[72] 64 FR 28735.

[73] 65 FR at 39017; *see also* 62 FR 31507 (June 10, 1997).

Commission's proposal (CL 22–17 at 3; CL 22–44 at 2), while NFA commented that the 1997 Advisory should be treated as acceptable practices guidance rather than codified in a new rule. (CL 22–24 at 7) The Commission has determined to adopt the rule as proposed, believing that, as noted previously, a certain level of uniformity and standardization is essential in an area such as reporting to customers to facilitate the processing of massive quantities of data, which is often accomplished by third-party, ''back office'' firms.

The Commission also proposed to revise Rule 1.46 to allow customers or account controllers to instruct the FCM if they wished to deviate from the default rule that the FCM close out offsetting positions on a first-in, first-out basis, looking across all accounts it carries for the same customer.[74] CPOs and CTAs would be required to disclose, under proposed amendments to Rules 4.24(h)(2) and 4.34(h), respectively, if they instruct an FCM to deviate from the default rule for closing out offsetting positions.[75]

After considering the comments received, the Commission is adopting the revisions as proposed. Nevertheless, the Commission agrees with NFA that FCMs should closely monitor the activity in those customer accounts that depart from the default close-out method set forth in Rule 1.46 to ensure that their customers are not offsetting their positions other than by a first-in, first-out method solely to avoid taxes, to launder money, or to improve their delivery position. (CL 22–24 at 7)

In addition, the Commission believes that customers may transmit their offset instructions to their FCMs orally, as requested by FIA. (CL 22–31 at 8) In the case of CPOs and CTAs, the Commission agrees with MFA that responsibility for transmitting instructions regarding offset should normally lie with the registrant directing trading. Generally, where a pool's trading is directed by a CTA, this should be the CTA, not the CPO. (CL 22–22 at 14) The Commission does not agree, however, that it is unnecessary to require CPOs and CTAs to disclose whether they instructed their FCM to offset positions in a manner other than by a first-in, first-out method. The Commission does not believe that this requirement would impose a significant burden on CPOs and CTAs, particularly in light of the fact that these entities would no longer be prevented from offsetting their positions in a manner other than on a first-in, first-out basis, as was previously the case. The Commission believes that it is appropriate in this area to provide greater choice balanced with disclosure as to the method of operation.

[74] 65 FR at 39017.

[75] *Id.*

III. Section 4(c) Findings

Certain of these final rules and rule amendments are being promulgated under Section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may, by rule, regulation or order, exempt any class of agreements, contracts or transactions, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirement of Section 4(a) of the Act, or any other provision of the Act other than Section 2(a)(1)(B), if the Commission determines that the exemption would be consistent with the public interest. Furthermore, Section 4(c)(2) of the Act provides that the Commission may not grant an exemption from the contract market designation requirement of Section 4(a) of the Act unless the Commission also finds that: (i) The contract market designation requirement should not be applied to the agreement, contract, or transaction for which the exemption is requested and the exemption would be consistent with the public interest and the purposes of the Act; (ii) the exempted transaction will be entered into solely between ''appropriate persons''; and (iii) the agreement, contract or transaction in question will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act. For the reasons stated below, the Commission believes that issuing the exemptive relief as set forth in these final rules and rule amendments is consistent with those determinations.

As explained above, certain of the final rules and rule amendments would provide greater flexibility for intermediaries and their customers in several areas. Specifically, the Commission is adopting final rule amendments concerning the definition of the term ''principal'' that recognize the evolution of management structures by reducing the number of officers that will be considered principals, while ensuring that appropriate personnel that perform significant roles within the firm remain listed as such. In addition, the Commission is expanding the range of instruments in which FCMs may invest customer funds beyond those listed in Section 4d(2) of the Act to enhance the yield available to FCMs, clearing organizations and their customers, without compromising the safety of customer funds. These final rule amendments acknowledge the development of new financial instruments over the last 60 years, and should both enable FCMs to remain competitive globally and domestically and maintain safeguards against systemic risk. In light of the foregoing, the Commission has determined that the adoption of the final rules and rule amendments relating to the definition of the term ''principal'' and the expansion of permitted instruments for the investment of customer funds will be consistent with the public interest.

Further, the final rules and rule amendments adopted herein, as well as the existing rules as they also relate to the transaction of business by intermediaries, will be applied, or extended, to agreements, contracts and transactions carried out on new markets, *i.e.,* RFEs and DTFs. As more fully discussed in a companion release published in this edition of the **Federal Register**, the rules pertaining to the new markets establish a new regulatory framework that is intended to promote innovation and competition in the trading of derivatives and to permit the markets the flexibility to respond to technological and structural changes in the markets. The new framework establishes three regulatory tiers with regulations tailored to the nature of the commodities traded and the nature of the market participant, and access to each of the tiers is dependent upon the appropriateness of the participant. In this respect, the Commission believes that the actions taken herein are consistent with the ''public interest'' as that term is used in Section 4(c) of the Act. When that provision was enacted, the Conference Report accompanying the Futures Trading Practices Act of 1992[76] stated that the ''public interest'' in this context would ''include the national public interests noted in the Act, the prevention of fraud and the preservation of the financial integrity of the markets, as well as the promotion of responsible economic or financial innovation and fair competition.''[77]

[76] Pub. L. No. 102–546 (1992), 106 Stat. 3590.

[77] H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992). The Conference Report also states that the reference in Section 4(c) to the ''purposes of the Act'' is intended to ''underscore [the Conferees'] expectation that the Commission will assess the

Continued

The Commission has retained or adopted safeguards to ensure that transactions will be carried out between appropriate persons. Appropriate persons can include, beyond those specified in Section 4(c)(3)(A)–(J) of the Act, ''[s]uch other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.'' [78] The Commission has determined that it is appropriate to permit any person to trade on an RFE because the rules pertaining to RFEs will be closest to those currently pertaining to contract markets and the bulk of the existing regulatory framework pertaining to intermediaries will apply in connection with their intermediation of transactions on RFEs. On the other hand, customers on DTFs, which will be subject to looser regulation than RFEs, are generally restricted to the types of persons specified in Section 4(c)(3)(A)–(J) of the Act. The Commission has determined, however, that it is appropriate to allow access to retail, or non-institutional, customers on DTFs, subject to stated limits and conditions. For example, if a non-institutional customer seeks to enter into transactions on a DTF permitting such access, such customer may only do so through either: a) a registered FCM that is a clearing member of at least one designated contract market or RFE, and that has adjusted net capital of at least $20 million; or b) a registered CTA who has discretionary authority over the non-institutional customer's account, and who has assets under management of not less than $25 million. The Commission further believes that, in light of these conditions and safeguards, the exemptive relief would have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (1994 & Supp. II 1996), requires federal agencies, in proposing rules, to consider the impact of those rules on small businesses. The rules adopted herein would affect FCMs, IBs, CPOs, CTAs, FBs, FTs, leverage transaction merchants (LTMs) and agricultural trade option merchants (ATOMs), as well as principals thereof. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[79] The Commission has previously determined that registered FCMs, CPOs, LTMs and ATOMs are not small entities for the purpose of the RFA.[80] With respect to IBs, CTAs, FBs and FTs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all of the affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule. In this regard, the rules being adopted herein would not require any registrant to change its current method of doing business. For many registrants, the revisions should decrease the number of persons within the registrant's organization who would be considered principals under the CFTC rules. Further, the revisions should reduce, rather than increase, the regulatory requirements that apply to registrants and applicants for registration, regardless of size. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the action taken herein will not have a significant economic impact on a substantial number of small entities. In this regard, the Commission notes that it did not receive any comments concerning the RFA implications of the rules and rule amendments discussed herein.

B. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 [44 U.S.C. 3507(d)], the Commission submitted a copy of the proposed amendments to its rules to the Office of Management and Budget for its review. The Commission did not receive any comments on any potential paperwork burden associated with the Proposing Release.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Principals, Registration, Reporting and recordkeeping requirements.

17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Disclosure, Principals, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organization and functions (Government agencies).

17 CFR Part 155

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 166

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 2, 4(c), 4b, 4d, 4f, 4m, 4n, 8a, and 19 thereof, 7 U.S.C. 2, 6(c), 6b, 6d, 6f, 6m, 6n, 12a and 23, the Commission hereby amends Parts 1, 3, 4, 140, 155 and 166 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.3 is amended by adding new paragraphs (g), (m) and (v) to read as follows:

§ 1.3 Definitions.

* * * * *

(g) *Institutional customer.* This term has the same meaning as ''eligible participant'' as defined in § 35.1(b) of this chapter.

* * * * *

(m) *Derivatives transaction facility.* This term has the same meaning as a ''derivatives transaction facility'' under part 37 of this chapter.

* * * * *

(v) *Recognized futures exchange.* This term has the same meaning as a ''recognized futures exchange'' under part 38 of this chapter.

* * * * *

3. Section 1.10 is amended as follows:

a. Revising paragraph (a)(2)(i)(B);

b. Adding paragraph (a)(2)(i)(C);

c. Designating the undesignated paragraph following paragraph

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impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants.'' *Id.*

[78] See Section 4(c)(3)(K) of the Act, 7 U.S.C. 6(c)(3)(K).

[79] 47 FR 18618–21 (Apr. 30, 1982).

[80] *Id.* at 18619–20 (discussing FCMs and CPOs); 54 FR 19556, 19557 (May 8, 1989) (discussing LTMs); and 63 FR 18821, 18830 (Apr. 16, 1998) (discussing ATOMs).

(a)(2)(i)(B) as paragraph (a)(2)(i)(D) and revising it;

d. Designating the undesignated paragraph following paragraph (a)(2)(ii)(C) as paragraph (a)(2)(ii)(E) and revising it;

e. Redesignating paragraph (a)(2)(ii)(C) as (a)(2)(ii)(D) and revising it; and

f. Adding a new paragraph (a)(2)(ii)(C).

The revisions and additions read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) * * *

(2) * * *

(i) * * *

(B) A Form 1–FR–FCM as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1–FR–FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which such report is filed; or

(C) A Form 1–FR–FCM as of a date not more than 17 business days prior to the date on which such report is filed, *Provided, however,* that such applicant shall be subject to a review by the applicant's designated self-regulatory organization within six months of being granted registration.

(D) Each such person must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii) * * *

(C) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which such report is filed, *Provided, however,* that such applicant shall be subject to a review by the applicant's designated self-regulatory organization within six months of registration; or

(D) A guarantee agreement.

(E) Each person filing in accordance with paragraphs (a)(2)(ii) (A), (B) or (C) of this section must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

* * * * *

4. Section 1.17 is amended by redesignating paragraph (a)(1)(ii) as (a)(1)(iii) and by adding new paragraphs (a)(1)(ii) and (a)(2)(iii) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a) * * *

(1) * * *

(ii) Each person registered as a futures commission merchant engaged in soliciting or accepting orders and customer funds related thereto for the purchase or sale of any commodity for future delivery on or subject to the rules of a derivatives transaction facility from any customer who does not qualify as an ''institutional customer'' as defined in § 1.3(g):

(A) Must be a clearing member of a designated contract market or recognized futures exchange, and must maintain adjusted net capital in the amount of the greater of $20,000,000 or the amounts otherwise specified in paragraph (a)(1)(i) of this section; or

(B) Receive orders on behalf of the customer from a commodity trading advisor acting in accordance with § 4.32 of this chapter.

* * * * *

(2) * * *

(iii) The requirements of paragraph (a)(1) of this section shall not be applicable if the registrant is a futures commission merchant or introducing broker registered in accordance with § 3.10(a)(1)(i)(B) of this chapter, whose business is limited to transacting business on behalf of institutional customers on a derivatives transaction facility, and who conforms to minimum financial standards and related reporting requirements set by such derivatives transaction facility in its rules.

* * * * *

5. Section 1.20 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.20 Customer funds to be segregated and separately accounted for.

(a) All customer funds shall be separately accounted for and segregated as belonging to commodity or option customers. Such customer funds when deposited with any bank, trust company, clearing organization or another futures commission merchant shall be deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the Act and this part. Each registrant shall obtain and retain in its files for the period provided in § 1.31 a written acknowledgment from such bank, trust company, clearing organization, or futures commission merchant, that it was informed that the customer funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Act and this part: *Provided, however,* that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers. Under no circumstances shall any portion of customer funds be obligated to a clearing organization, any member of a contract market, a futures commission merchant, or any depository except to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or commodity option transactions of commodity or option customers. No person, including any clearing organization or any depository, that has received customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the option or commodity customers of the futures commission merchant which deposited such funds.

* * * * *

(c) Each futures commission merchant shall treat and deal with the customer funds of a commodity customer or of an option customer as belonging to such commodity or option customer. All customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of a futures commission merchant or of any other person, or be used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held: *Provided, however,* That customer funds treated as belonging to the commodity or option customers of a futures commission merchant may for convenience be commingled and deposited in the same account or accounts with any bank or trust company, with another person registered as a futures commission merchant, or with a clearing organization, and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust, or settle the trades, contracts or commodity options of such commodity or option customers or resulting market positions, with the clearing organization or with any other person registered as a futures commission merchant, may be withdrawn and applied to such purposes, including the payment of premiums to option grantors, commissions, brokerage, interest, taxes,

storage and other fees and charges, lawfully accruing in connection with such trades, contracts or commodity options: *Provided, further,* That customer funds may be invested in instruments described in § 1.25.

6. Section 1.25 is revised to read as follows:

§ 1.25 Investment of customer funds.

(a) *Permitted investments.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant or a clearing organization may invest customer funds in the following instruments (permitted investments):

(i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(ii) General obligations of any State or of any political subdivision thereof (municipal securities);

(iii) General obligations issued by any agency sponsored by the United States (government sponsored agency securities);

(iv) Certificates of deposit issued by a bank (certificates of deposit) as defined in section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank that carries deposits insured by the Federal Deposit Insurance Corporation;

(v) Commercial paper;

(vi) Corporate notes;

(vii) General obligations of any country whose sovereign debt is rated in the highest category by at least one nationally recognized statistical rating organization (NRSRO), as that term is defined in § 270.2a–7 of this title (permitted foreign sovereign debt), subject to the following limits: a futures commission merchant may invest in the sovereign debt of a country to the extent it has balances in segregated accounts owed to its customers denominated in that country's currency; a clearing organization may invest in the sovereign debt of a country to the extent it has balances in segregated accounts owed to its clearing member futures commission merchants denominated in that country's currency; and

(viii) Interests in money market mutual funds.

(2) In addition, a futures commission merchant or a clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (viii) of this section pursuant to agreements for resale or repurchase of the instruments, in accordance with the provisions of paragraph (d) of this section.

(b) *General terms and conditions.* A futures commission merchant or a clearing organization is required to manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity and according to the following specific requirements.

(1) *Marketability.* Except for interests in money market mutual funds, investments must be ''readily marketable'' as defined in § 240.15c3–1 of this title.

(2) *Ratings.* (i) *Initial requirement.* Instruments that are required to be rated by this section must be rated by an NRSRO. For an investment to qualify as a permitted investment, ratings are required as follows:

(A) U.S. government securities and the permitted sovereign debt of the countries listed in paragraph (a)(1)(vii) of this section, need not be rated;

(B) Municipal securities, government sponsored agency securities, certificates of deposit, commercial paper, and corporate notes, except notes that are asset-backed, must have the highest short-term rating of an NRSRO or one of the two highest long-term ratings of an NRSRO;

(C) Corporate notes that are asset-backed must have the highest rating of an NRSRO; and

(D) Money market mutual funds that are rated by an NRSRO must be rated at the highest rating of the NRSRO.

(ii) *Effect of downgrade.* If an NRSRO lowers the rating of an instrument that was previously a permitted investment on the basis of that rating to below the minimum rating required under this section, the value of the instrument recognized for segregation purposes will be the lesser of:

(A) The current market value of the instrument; or

(B) The market value of the instrument on the business day preceding the downgrade, reduced by 20 percent of that value for each business day that has elapsed since the downgrade.

(3) *Restrictions on instrument features.* (i) With the exception of money market mutual funds, no permitted investment may contain an embedded derivative of any kind, including but not limited to a call option, put option, or collar, cap, or floor on interest paid.

(ii) No instrument may contain interest-only payment features.

(iii) No instrument may provide payments linked to a commodity, currency, reference instrument, index, or benchmark except as provided in paragraph (b)(3)(iv) of this section.

(iv) Variable-rate securities are permitted, provided the interest rates paid correlate closely and on an unleveraged basis to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, or the one-month or three-month LIBOR rate.

(v) Certificates of deposit, if negotiable, must be able to be liquidated within one business day or, if not negotiable, must be redeemable at the issuing bank within one business day, with any penalty for early withdrawal limited to any accrued interest earned according to its written terms.

(4) *Concentration.* (i) *Direct investments.* (A) U.S. government securities, money market mutual funds, and permitted foreign sovereign debt securities shall not be subject to a concentration limit.

(B) Securities of any single issuer of government sponsored agency securities held by a futures commission merchant or clearing organization may not exceed 25 percent of total assets held in segregation by the futures commission merchant or clearing organization.

(C) Securities of any single issuer of municipal securities, certificates of deposit, commercial paper, or corporate notes held by a futures commission merchant or clearing organization may not exceed 5 percent of total assets held in segregation by the futures commission merchant or clearing organization.

(ii) *Repurchase agreements.* For purposes of determining compliance with the concentration limits set forth in this section, securities sold by a futures commission merchant or clearing organization subject to agreements to repurchase shall be combined with securities held by the futures commission merchant or clearing organization as direct investments.

(iii) *Reverse repurchase agreements.* The concentration limit applicable to securities of each issuer that are held by a futures commission merchant or clearing organization subject to agreements to resell to a particular counterparty shall be as follows:

(A) For a portfolio of securities held that are subject to resale to a counterparty that has been rated single A or higher by two or more NRSROs, or whose obligation under an agreement is guaranteed by a parent or affiliate company that has been rated single A or higher by two or more NRSROs:

(*1*) Government sponsored agency debt, issued by the same issuer and supplied by the counterparty, may not exceed 50 percent of the total amount of securities supplied by such counterparty; and

(*2*) Municipal securities, certificates of deposit, commercial paper, and corporate notes, issued by the same issuer and supplied by the counterparty,

may not exceed 10 percent of the total amount of securities supplied by such counterparty; and

(B) For a portfolio of securities held that are subject to resale to a counterparty that does not have a rating or guarantee as specified in paragraph (b)(4)(iii)(A) of this section:

(*1*) Government sponsored agency debt, issued by the same issuer and supplied by the counterparty, may not exceed 25 percent of the total amount of securities supplied by such counterparty; and

(*2*) Municipal securities, certificates of deposit, commercial paper, and corporate notes, issued by the same issuer and supplied by the counterparty, may not exceed 5 percent of the total amount of securities supplied by such counterparty.

(iv) *Treatment of securities issued by affiliates.* For purposes of determining compliance with the concentration limits set forth in this section, securities issued by entities that are affiliated, as defined in paragraph (b)(6) of this section, shall be aggregated and deemed the securities of a single issuer. An interest in a permitted money market mutual fund is not deemed to be a security issued by its sponsoring entity.

(v) *Treatment of customer-owned securities.* For purposes of determining compliance with the concentration limits set forth in this section, securities owned by the customers of a futures commission merchant and posted as margin collateral are not included in total assets held in segregation by the futures commission merchant, and securities posted by a futures commission merchant with a clearing organization are not included in total assets held in segregation by the clearing organization.

(5) *Time-to-maturity.* Except for investments in money market mutual funds, the dollar-weighted average of the time-to-maturity of the portfolio, as that average is computed pursuant to § 270.2a–7 of this title, may not exceed 24 months.

(6) *Investments in instruments issued by affiliates.* (i) A futures commission merchant shall not invest customer funds in obligations of an entity affiliated with the futures commission merchant, and a clearing organization shall not invest customer funds in obligations of an entity affiliated with the clearing organization. An affiliate includes parent companies, including all entities through the ultimate holding company, subsidiaries to the lowest level, and companies under common ownership of such parent company or affiliates.

(ii) A futures commission merchant or clearing organization may invest customer funds in a fund affiliated with that futures commission merchant or clearing organization.

(7) *Recordkeeping.* A futures commission merchant and a clearing organization shall prepare and maintain a record that will show for each business day with respect to each type of investment made pursuant to this section, the following information:

(i) The type of instruments in which customer funds have been invested;

(ii) The original cost of the instruments; and

(iii) The current market value of the instruments.

(c) *Money market mutual funds.* The following provisions will apply to the investment of customer funds in money market mutual funds (the fund).

(1) Generally, the fund must be an investment company that is registered under the Investment Company Act of 1940 with the Securities and Exchange Commission and that holds itself out to investors as a money market fund, in accordance with § 270.2a–7 of this title. A fund sponsor, however, may petition the Commission for an exemption from this requirement. The Commission may grant such an exemption provided that the fund can demonstrate that it will operate in a manner designed to preserve principal and to maintain liquidity. The application for exemption must describe how the fund's structure, operations and financial reporting are expected to differ from the requirements contained in § 270.2a–7 of this title and the risk-limiting provisions for direct investments contained in this section. The fund must also specify the information that the fund would make available to the Commission on an ongoing basis.

(2) The fund must be sponsored by a federally-regulated financial institution, a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, an investment adviser registered under the Investment Advisers Act of 1940, or a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, except for a fund exempted in accordance with paragraph (c)(1) of this section.

(3) A futures commission merchant or clearing organization shall maintain the confirmation relating to the purchase in its records in accordance with § 1.31 and note the ownership of fund shares (by book-entry or otherwise) in a custody account of the FCM or clearing organization in accordance with § 1.26(a). If the futures commission merchant or the clearing organization holds its shares of the fund with the fund's shareholder servicing agent, the sponsor of the fund and the fund itself are required to provide the acknowledgment letter required by § 1.26.

(4) The net asset value of the fund must be computed by 9 a.m. of the business day following each business day and made available to the futures commission merchant or clearing organization by that time.

(5) A fund must be able to redeem an interest by the business day following a redemption request by the futures commission merchant or clearing organization. Demonstration that this requirement has been met may include either an appropriate provision in the offering memorandum of the fund or a separate side agreement between the fund and a futures commission merchant or clearing organization.

(6) The agreement pursuant to which the futures commission merchant or clearing organization has acquired and is holding its interest in a fund must contain no provision that would prevent the pledging or transferring of shares.

(d) *Repurchase and reverse repurchase agreements.* A futures commission merchant or clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (viii) of this section pursuant to agreements for resale or repurchase of the securities (agreements to repurchase or resell), provided the agreements to repurchase or resell conform to the following requirements:

(1) The securities are specifically identified by coupon rate, par amount, market value, maturity date, and CUSIP or ISIN number.

(2) Counterparties are limited to a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, a securities broker or dealer, or a government securities broker or government securities dealer registered with the Securities and Exchange Commission or which has filed notice pursuant to section 15C(a) of the Government Securities Act of 1986.

(3) The transaction is executed in compliance with the concentration limit requirements applicable to the securities held in connection with the agreements to repurchase referred to in paragraphs (b)(4)(ii) and (iii) of this section.

(4) The transaction is made pursuant to a written agreement signed by the parties to the agreement, which is consistent with the conditions set forth in paragraphs (d)(1) through (d)(12) of this section and which states that the

parties thereto intend the transaction to be treated as a purchase and sale of securities.

(5) The term of the agreement is no more than one business day, or reversal of the transaction is possible on demand.

(6) The securities transferred under the agreement are held in a safekeeping account with a bank as referred to in paragraph (d)(2) of this section, a clearing organization, or the Depository Trust Company in an account that complies with the requirements of § 1.26.

(7) The futures commission merchant or the clearing organization may not use securities received under the agreement in another similar transaction and may not otherwise hypothecate or pledge such securities, except securities may be pledged on behalf of customers at another futures commission merchant or clearing organization. Substitution of securities is allowed, *provided, however,* that:

(i) The qualifying securities being substituted and original securities are specifically identified by date of substitution, market values substituted, coupon rates, par amounts, maturity dates and CUSIP or ISIN numbers;

(ii) Substitution is made on a ''delivery versus delivery'' basis; and

(iii) The market value of the substituted securities is at least equal to that of the original securities.

(8) The transfer of securities is made on a delivery versus payment basis in immediately available funds. The transfer is not recognized as accomplished until the funds and/or securities are actually received by the custodian of the futures commission merchant's or clearing organization's customer funds or securities purchased on behalf of customers. The transfer or credit of securities covered by the agreement to the futures commission merchant's or clearing organization's customer segregated custodial account is made simultaneously with the disbursement of funds from the futures commission merchant's or clearing organization's customer segregated cash account at the custodian bank. On the sale or resale of securities, the futures commission merchant's or clearing organization's customer segregated cash account at the custodian bank must receive same-day funds credited to such segregated account simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

(9) A written confirmation to the futures commission merchant or clearing organization specifying the terms of the agreement and a safekeeping receipt are issued immediately upon entering into the transaction and a confirmation to the futures commission merchant or clearing organization is issued once the transaction is reversed.

(10) The transactions effecting the agreement are recorded in the record required to be maintained under § 1.27 of investments of customer funds, and the securities subject to such transactions are specifically identified in such record as described in paragraph (d)(1) of this section and further identified in such record as being subject to repurchase and reverse repurchase agreements.

(11) An actual transfer of securities by book entry is made consistent with Federal or State commercial law, as applicable. At all times, securities received subject to an agreement are reflected as ''customer property.''

(12) The agreement makes clear that, in the event of the bankruptcy of the futures commission merchant or clearing organization, any securities purchased with customer funds that are subject to an agreement may be immediately transferred. The agreement also makes clear that, in the event of a futures commission merchant or clearing organization bankruptcy, the counterparty has no right to compel liquidation of securities subject to an agreement or to make a priority claim for the difference between current market value of the securities and the price agreed upon for resale of the securities to the counterparty, if the former exceeds the latter.

(e) *Deposit of firm-owned securities into segregation.* A futures commission merchant shall not be prohibited from directly depositing unencumbered securities of the type specified in this section, which it owns for its own account, into a segregated safekeeping account or from transferring any such securities from a segregated account to its own account, up to the extent of its residual financial interest in customers' segregated funds; provided, however, that such investments, transfers of securities, and disposition of proceeds from the sale or maturity of such securities are recorded in the record of investments required to be maintained by § 1.27. All such securities may be segregated in safekeeping only with a bank, trust company, clearing organization, or other registered futures commission merchant. Furthermore, for purposes of §§ 1.25, 1.26, 1.27, 1.28 and 1.29, investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into such a segregated account shall be considered customer funds until such investments are withdrawn from segregation.

7. Section 1.26 is revised to read as follows:

§ 1.26 Deposit of instruments purchased with customer funds.

(a) Each futures commission merchant who invests customer funds in instruments described in § 1.25 shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank, trust company, clearing organization or another futures commission merchant, shall be deposited under an account name which clearly shows that they belong to commodity or option customers and are segregated as required by the Act and this part. Each futures commission merchant upon opening such an account shall obtain and retain in its files an acknowledgment from such bank, trust company, clearing organization or other futures commission merchant that it was informed that the instruments belong to commodity or option customers and are being held in accordance with the provisions of the Act and this part. *Provided, however,* that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers and all instruments purchased with customer funds. Such acknowledgment shall be retained in accordance with § 1.31. Such bank, trust company, clearing organization or other futures commission merchant shall allow inspection of such obligations at any reasonable time by representatives of the Commission.

(b) Each clearing organization which invests money belonging or accruing to commodity or option customers of its clearing members in instruments described in § 1.25 shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank or trust company, shall be deposited under an account name which will clearly show that they belong to commodity or option customers and are segregated as required by the Act and this part. Each clearing organization upon opening such an account shall obtain and retain in its files a written acknowledgment

from such bank or trust company that it was informed that the instruments belong to commodity or option customers of clearing members and are being held in accordance with the provisions of the Act and this part. Such acknowledgment shall be retained in accordance with § 1.31. Such bank or trust company shall allow inspection of such instruments at any reasonable time by representatives of the Commission.

§ 1.27 [Amended]

8. Section 1.27 is amended by:

a. Revising the word ''obligations'' to read ''instruments'' each time it appears; and

b. Adding the phrase ''or ISIN'' following the word ''CUSIP'' each time it appears.

§§ 1.28 and 1.29 [Amended]

9. Sections 1.28 and 1.29 are amended by revising the word ''obligations'' to read ''instruments'' each time it appears.

10. Section 1.33 is amended by adding a new paragraph (g) to read as follows:

§ 1.33 Monthly and confirmation statements.

* * * * *

(g) *Electronic transmission of statements.* (1) The statements required by this section, and by § 1.46, may be furnished to any customer by means of electronic media if the customer so requests, *Provided, however,* that a futures commission merchant must, prior to the transmission of any statement by means of electronic media, disclose the electronic medium or source through which statements will be delivered, the duration, whether indefinite or not, of the period during which consent will be effective, any charges for such service, the information that will be delivered by such means, and that consent to electronic delivery may be revoked at any time.

(2) In the case of a customer who does not qualify as an ''institutional customer'' as defined in § 1.3(g), a futures commission merchant must obtain the customer's signed consent acknowledging disclosure of the information set forth in paragraph (g)(1) of this section prior to the transmission of any statement by means of electronic media.

(3) Any statement required to be furnished to a person other than a customer in accordance with paragraph (d) of this section may be furnished by electronic media.

(4) A futures commission merchant who furnishes statements to any customer by means of electronic media must retain a daily confirmation statement for such customer as of the end of the trading session, reflecting all transactions made during that session for the customer, in accordance with § 1.31.

* * * * *

11. Section 1.46 is amended as follows:

a. By revising paragraph (a), introductory text,

b. By removing and reserving paragraphs (d)(4) through (d)(7),

c. By removing paragraph (d)(9) and

d. By revising paragraph (e) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(a) *Application of purchases and sales.* Except with respect to purchases or sales which are for omnibus accounts, or where the customer has instructed otherwise, any futures commission merchant who, on or subject to the rules of a contract market, recognized futures exchange or derivatives transaction facility:

* * * * *

(e) The statements required by paragraph (a) of this section may be furnished to the customer or the person described in § 1.33(d) by means of electronic transmission, in accordance with § 1.33(g).

* * * * *

12. Section 1.52 is amended by adding a new paragraph (m) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

* * * * *

(m) Nothing in this section shall apply to the activities of a derivatives transaction facility or the minimum adjusted net capital requirements it may require of persons operating thereon pursuant to § 1.17(a)(2)(iii).

* * * * *

13. Section 1.55 is amended by revising paragraphs (d) and (f) to read as follows:

§ 1.55 Distribution of ''Risk Disclosure Statement'' by futures commission merchants and introducing brokers.

* * * * *

(d) Any futures commission merchant, or in the case of an introduced account any introducing broker, may open a commodity futures account for a customer without obtaining the separate acknowledgments of disclosure and elections required by this section and by § 1.33(g), and by §§ 33.7, 155.3(b)(2), and 190.06 of this chapter, provided that:

(1) Prior to the opening of such account, the futures commission merchant or introducing broker obtains an acknowledgment from the customer, which may consist of a single signature at the end of the futures commission merchant's or introducing broker's customer account agreement, or on a separate page, of the disclosure statements and elections specified in this section and § 1.33(g), and in §§ 33.7, 155.3(b)(2), and 190.06 of this chapter, and which may include authorization for the transfer of funds from a segregated customer account to another account of such customer, as listed directly above the signature line, provided the customer has acknowledged by check or other indication next to a description of each specified disclosure statement or election that the customer has received and understood such disclosure statement or made such election;

(2) The acknowledgment referred to in paragraph (d)(1) of this section must be accompanied by and executed contemporaneously with delivery of the disclosures and elective provisions required by this section and § 1.33(g), and by §§ 33.7, 155.3(b)(2), and 190.06 of this chapter.

* * * * *

(f) A futures commission merchant or, in the case of an introduced account an introducing broker, may open a commodity futures account for an institutional customer without furnishing such institutional customer the disclosure statements or obtaining the acknowledgements required under paragraph (a) of this section, §§ 1.33(g) and 1.65(a)(3), and §§ 30.6(a), 33.7(a), 155.3(b)(2), and 190.10(c) of this chapter.

* * * * *

PART 3—REGISTRATION

14. The authority citation for Part 3 is revised to read as follows:

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

15. Section 3.1 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 3.1 Definitions.

(a) * * *

(1) If the entity is organized as a sole proprietorship, the proprietor; if a partnership, any general partner; if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, and any person in charge of a principal business

unit, division or function subject to regulation by the Commission; if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, the manager, managing member or those members vested with the management authority for the entity, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; and, in addition, any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission;

(2)(i) Any individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise, is the owner of ten percent or more of the outstanding shares of any class of stock, is entitled to vote or has the power to sell or direct the sale of ten percent or more of any class of voting securities, or is entitled to receive ten percent or more of the profits; or

(ii) Any person other than an individual that is the direct owner of ten percent or more of any class of securities; or

* * * * *

16. Section 3.10 is amended by revising paragraph (a)(1)(i), by redesignating paragraph (a)(2)(i) as paragraph (a)(2), by removing paragraph (a)(2)(ii), and by revising paragraph (d) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Application for registration.* (1)(i)(A) Except as provided in paragraph (a)(1)(i)(B) of this section, application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(B) An applicant for registration as a futures commission merchant or introducing broker that will conduct transactions on or subject to the rules of a contract market, recognized futures exchange or derivatives transaction facility for institutional customers, and which is registered with the Securities and Exchange Commission as a securities broker or dealer, or is a bank or any other financial depository institution subject to regulation by the United States, may apply for registration by filing with the National Futures Association notice of its intention to undertake transactions on or subject to the rules of a contract market, recognized futures exchange, or derivatives transaction facility for institutional customers, together with a certification of registration and good standing with the appropriate authority or of authorization to engage in such transactions by said authority.

* * * * *

(d) *Annual filing.* Any person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a)(1)(i)(A) of this section must file with the National Futures Association a Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

* * * * *

17. Section 3.21 is amended by revising paragraph (c) introductory text to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(c) *Outside directors.* Any futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of §§ 3.10(a)(2)(i) and 3.31(a)(2), file a ''Notice Pursuant to Rule 3.21(c)'' with the National Futures Association. Such notice shall state, if true, that such outside director:

* * * * *

18. Section 3.31 is amended by redesignating paragraph (a) as paragraph (a)(1), and by adding new paragraph (a)(2) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) * * *

(1) * * *

(2) Where the deficiency or inaccuracy is created by the addition of a new principal not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration), each Form 3–R filed in accordance with the requirements of paragraph (a)(1) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8–R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the National Futures Association for that purpose, unless such principal is a director who qualifies for the exemption from the fingerprint requirement pursuant to § 3.21(c). The provisions of this paragraph do not apply to any principal who has a current Form 8–R on file with the Commission or the National Futures Association.

* * * * *

§ 3.32 [Removed]

19. Section 3.32 is removed.

§ 3.34 [Removed]

20. Section 3.34 is removed.

21. Appendix A to Part 3 is amended by adding to the end thereto the following:

Appendix A to Part 3—Interpretive Statement with Respect to Section 8A(2)(C) and (E) and Section 8A(3)(J) and (M) of the Commodity Exchange Act

* * * * *

The Commission has further addressed ''other good cause'' under Section 8a(3)(M) of the Act in issuing guidance letters on assessing the fitness of floor brokers, floor traders or applicants in either category:

[First guidance letter]

December 4, 1997.

Robert K. Wilmouth,

President, National Futures Association, 200 West Madison Street, Chicago, IL.

Re: Adverse Registration Actions with Respect to Floor Brokers, Floor Traders and Applicants for Registration in Either Category

Dear Mr. Wilmouth:

As you know, the Commission on June 26, 1997, approved for publication in the **Federal Register** a Notice and Order concerning adverse registration actions by the National Futures Association (''NFA'') with respect to registered floor brokers (''FBs''), registered floor traders (''FTs'') and applicants for registration in either category. 62 Fed. Reg. 36050 (July 3, 1997). The Notice and Order authorized NFA to grant or to maintain,

either with or without conditions or restrictions, FB or FT registration where NFA previously would have forwarded the case to the Commission for review of disciplinary history. The Commission has worked with its staff to determine which of the pending matters could efficiently be returned to NFA for handling, and such matters have been forwarded to NFA. The Commission will continue to accept or to act upon requests for exemption, and the Commission staff will consider requests for ''no-action'' opinions with respect to applicable registration requirements.

By this correspondence, the Commission is issuing guidance that provides NFA further direction on how it expects NFA to exercise its delegated power, based upon the experience of the Commission and the staff with the registration review process during the past three years. This guidance will help ensure that NFA exercises its delegated power in a manner consistent with Commission precedent.

In exercising its delegated authority, NFA, of course, needs to apply all of the provisions of Sections 8a(2) and (3) of the Commodity Exchange Act (''Act'').[1] In that regard, NFA should consider the matters in which the Commission has taken action in the past and endeavor to seek similar registration restrictions, conditions, suspensions, denials, or revocations under similar circumstances.

One of the areas in which NFA appears to have had the most uncertainty is with regard to previous self-regulatory organization (''SRO'') disciplinary actions. Commission Rule 1.63[2] provides clear guidelines for determining whether a person's history of ''disciplinary offenses'' should preclude service on SRO governing boards or committees.[3] In determining whether to grant or to maintain, either with or without conditions or restrictions, FB or FT registration, NFA should, as an initial matter, apply the Rule 1.63(a)(6) criteria to those registered FBs, registered FTs and applicants for registration in either category. However, NFA should be acting based upon any such offenses that occurred within the previous five years, rather than the three years provided for in Rule 1.63(c). NFA should consider disciplinary actions taken by an SRO as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934 no differently from disciplinary actions taken by an SRO in the futures industry as defined in Rule 1.3(ee).[4] Application of the Rule 1.63 criteria, as modified, to these matters will aid NFA in making registration determinations that are reasonably consonant with Commission views.[5] NFA should focus on the nature of the underlying conduct rather than the sanction imposed by an SRO. Thus, if a disciplinary action would not come within the coverage of Rule 1.63 but for the imposition of a short suspension of trading privileges (such as for a matter involving fighting, use of profane language or minor recordkeeping violations), NFA could exercise discretion, as has the Commission, not to institute a statutory disqualification case. On the other hand, conduct that falls clearly within the terms of Rule 1.63, such as violations of rules involving potential harm to customers of the exchange, should not be exempt from review simply because the exchange imposed a relatively minor sanction.

The Commission has treated the registration process and the SRO disciplinary process as separate matters involving separate considerations. The fact that the Commission has not pursued its own enforcement case in a particular situation does not necessarily mean that the Commission considers the situation to be a minor matter for which no registration sanctions are appropriate. Further, the Commission believes that it and NFA, entities with industry-wide perspective and responsibilities, are the appropriate bodies, rather than any individual exchange, to decide issues relating to registration status, which can affect a person's ability to function in the industry well beyond the jurisdiction of a particular exchange. Thus, NFA's role is in no way related to review of exchange sanctions for particular conduct, but rather it is the entirely separate task of determining whether an FB's or FT's conduct should impact his or her registration.

NFA also should look to Commission precedent in selecting conditions or restrictions to be imposed, such as a dual trading ban where a person has been involved in disciplinary offenses involving customer abuse. Where conditions or restrictions are imposed, or agreed upon, NFA also should follow Commission precedent, under which such conditions or restrictions generally have been imposed for a two-year period.

The Commission has required sponsorship for conditioned FBs and FTs when their disciplinary offenses have involved noncompetitive trading and fraud irrespective of the level of sanctions imposed by an SRO. Indeed, but for a sponsorship requirement there would be no one routinely watching and responsible for the activities of these registrants. Absent sponsorship, such FBs and FTs would only be subject to routine Commission and exchange surveillance. The Commission's rules are premised upon the judgment that requiring FTs and FBs to have sponsors to ensure their compliance with conditions is both appropriate and useful. See Rule 3.60(b)(2)(i).

A question has arisen whether, if NFA is required to prove up the underlying facts of an SRO disciplinary action, the exchanges can provide information on exchange disciplinary proceedings directly to NFA. Although Section 8c(a)(2) of the Act states that an exchange shall not disclose the evidence for a disciplinary action except to the person disciplined and to the Commission, Section 8a(10) of the Act allows the Commission to authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law. The effective discharge of the delegated registration function requires NFA to have access to the exchange evidence. Thus, the Commission believes that Section 8a(10) may reasonably be interpreted to allow the disclosure of information from exchange disciplinary proceedings directly to NFA despite the provisions of Section 8c(a)(2).

Nothing in the Notice and Order affects the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions, including review of the sufficiency of conditions or restrictions imposed by NFA, to review the determination by NFA not to take action to affect an existing registration, or to take its own action to address a statutory disqualification. Moreover, the Commission Order contemplates that to allow for appropriate Commission oversight of NFA's exercise of this delegated authority, NFA will provide for the Commission's review quarterly schedules of all applicants cleared for registration and all registrants whose registrations are maintained without adverse action by NFA's Registration, Compliance, Legal Committee despite potential statutory disqualifications.

The Commission will continue to monitor NFA activities through periodic rule enforcement reviews, and NFA remains subject to the present requirement that it

[1] 7 U.S.C. 12a(2) and (3) (1994). The letter is intended to supplement, not to supersede, other guidance provided in the past to NFA. In this regard, the NFA should continue to follow other guidance provided by the Commission or its staff.

[2] Commission rules referred to herein are found at 17 CFR Ch. I.

[3] Rule 1.63(c) provides that a person is ineligible from serving on an SRO's disciplinary committees, arbitration panels, oversight panels or governing board if, as provided in Rule 1.63(b), the person, inter alia: (1) within the past three years has been found by a final decision of an SRO, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense; or (2) within the past three years has entered into a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

Rule 1.63(a)(6) provides that a ''disciplinary offense'' includes: (i) any violation of the rules of an SRO except those rules related to (A) decorum or attire, (B) financial requirements, or (C) reporting or record-keeping unless resulting in fines aggregating more than $5,000 within any calendar year; (ii) any rule violation described in subparagraphs (A) through (C) above that involves fraud, deceit or conversion or results in a suspension or expulsion; (iii) any violation of the Act or the regulations promulgated thereunder; or (iv) any failure to exercise supervisory responsibility with respect to an act described in paragraphs (i) through (iii) above when such failure is itself a violation of either the rules of an SRO, the Act or the regulations promulgated thereunder.

[4] Thus, for example, a disciplinary action taken by the Chicago Board Options Exchange or the National Association of Securities Dealers, Inc. should be considered in a manner similar to a disciplinary action of the Chicago Board of Trade or NFA.

[5] In reviewing these matters, the NFA should bear in mind recent Commission precedent which allows for reliance on settled disciplinary proceedings in some circumstances. *See In the Matter of Michael J. Clark,* [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,032 (Apr. 22, 1997) (''other good cause'' under Section 8a(3)(M) of the Act exists based upon a pattern of exchange disciplinary actions resulting in significant sanctions for serious rule violations—whether settlements or adjudications), *aff'd sub nom., Clark v. Commodity Futures Trading Commission,* No. 97–4228 (2d Cir. June 4, 1999) (unpublished).

monitor compliance with the conditions and restrictions imposed on conditioned and restricted registrants.

Sincerely,

Jean A. Webb,

Secretary of the Commission.

[Second guidance letter]

April 13, 2000.

Robert K. Wilmouth,

President, National Futures Association, 200 West Madison Street, Chicago, IL.

Re: Use of Exchange Disciplinary Actions as *''Other Good Cause'' to Affect Floor Broker/Floor Trader Registration*

Dear Mr. Wilmouth:

I. Introduction and Background

In July 1997, the Commission issued a Notice and Order authorizing the National Futures Association (''NFA'') to grant or to maintain, either with or without conditions or restrictions, floor broker (''FB'') or floor trader (''FT'') registration where NFA previously would have forwarded the case to the Commission for review of disciplinary history.[1] By letter dated December 4, 1997 (''Guidance Letter''), the Commission provided further direction on how the Commission expected NFA to exercise its delegated power and to ensure that NFA exercised its delegated power in a manner consistent with Commission precedent.

The Commission has determined to revise the Guidance Letter. Specifically, the Commission is revising the portion of the Guidance Letter that addresses the use of exchange disciplinary actions as ''other good cause'' to affect FB and FT registrations. The Commission has made this determination following its own reconsideration of the issue and at the urging of industry members.[2]

The Guidance Letter pointed out that, in exercising its delegated authority, NFA must apply all of the provisions of Sections 8a(2) and (3) of the Commodity Exchange Act (''Act'').[3] In particular, Section 8a(3)(M) of the Act authorizes the Commission to refuse to register or to register conditionally any person if it is found, after opportunity for hearing, that there is other good cause for statutory disqualification from registration beyond the specifically listed grounds in Sections 8a(2) and 8a(3) of the Act. The Commission held in *In the Matter of Clark* that statutory disqualification under the ''other good cause'' provision of Section 8a(3)(M) may arise on the basis of, among other things, a pattern of exchange disciplinary actions alleging serious rule violations that result in significant sanctions, and that it is immaterial whether the sanctions imposed resulted from a fully-adjudicated disciplinary action or an action that was taken following a settlement.[4]

The Guidance Letter recommended the application of the provisions of Commission Rule 1.63[5] as criteria to aid in assessing the impact of an FB or FT applicant's or registrant's previous disciplinary history on the person's fitness to be registered, with the exception that NFA should be acting based on disciplinary history from the previous five years, rather than the three years provided for in Rule 1.63.[6] The Guidance Letter also noted that NFA should consider disciplinary actions taken not only by futures industry SROs but also those taken by SROs as defined in Section 3(a)(26) of the Securities Exchange Act of 1934 (''1934 Act''), including settled disciplinary actions.

II. Revised Guidance

As stated above, the Commission has determined to revise the Guidance Letter. From this point forward, NFA should cease using Rule 1.63 as the basis to evaluate the impact of an FB or FT applicant's or registrant's disciplinary history on his or her fitness to be registered. Instead, as *Clark* stated, when reviewing disciplinary history to assess the fitness to be registered of an FB, FT, or applicant in either category, a pattern of exchange disciplinary actions alleging serious rule violations that result in significant sanctions will trigger the ''other good cause'' provision of Section 8a(3)(M). The ''pattern'' should consist of at least two final exchange disciplinary actions, whether settled or adjudicated.

NFA also should consider initiating proceedings to affect the registration of the FB or FT, even if there is only a single exchange action against the FB or FT, if the exchange action was based on allegations of particularly egregious misconduct or involved numerous instances of misconduct occurring over a long period of time. If, however, a proceeding is initiated based on a single exchange action that was disposed of by settlement, NFA may have to prove up the underlying misconduct. Furthermore, traditional principles of collateral estoppel apply to adjudicated actions, whether they are being considered individually or as part of a pattern.[7]

As provided by the Guidance Letter, ''exchange disciplinary actions'' would continue to include disciplinary actions taken by both futures industry SROs and SROs as defined in Section 3(a)(26) of the 1934 Exchange Act. Furthermore, NFA should review an applicant's or registrant's disciplinary history for the past five years.[8] At least one of the actions forming the pattern, however, must have become final after *Clark* was decided by the Commission on April 22, 1997. Finally, ''serious rule violations'' consist of, or are substantially related to, charges of fraud, customer abuse, other illicit trading practices, or the obstruction of an exchange investigation.

Congress, the courts and the Commission have indicated the importance of considering an applicant's history of exchange disciplinary actions in assessing that person's fitness to register.[9] Furthermore, NFA's review of exchange disciplinary actions within the context of the registration process should not simply mirror the disciplinary actions undertaken by the exchanges. The two processes are separate matters that involve separate considerations. As part of their ongoing self-regulatory obligations, exchanges must take disciplinary action[10] and such disciplinary matters necessarily focus on the specific misconduct that forms the allegation. In a statutory disqualification action, however, NFA must determine whether the disciplinary history of an FB, FT or applicant over the preceding five years should impact his or her registration. Additionally, NFA possesses industry-wide perspective and responsibilities. As such, NFA, rather than an individual exchange, should decide registration status issues, since those issues affect an individual's status

[1] Registration Actions by National Futures Association With Respect to Floor Brokers, Floor Traders and Applicants for Registration in Either Category, 62 FR 36050 (July 3, 1997).

[2] *See* letters submitted by James Bowe, former president of the New York Board of Trade (''NYBOT''), dated October 13, 1999, Christopher Bowen, general counsel of the New York Mercantile Exchange (''NYMEX''), dated October 18, 1999, and the Joint Compliance Committee (''JCC''), dated February 2, 2000. The JCC consists of senior compliance officials from all domestic futures exchanges and the NFA (*i.e.,* the domestic self-regulatory organizations (''SROs'')). In addition, staff from the Contract Markets Section of the Commission's Division of Trading and Markets attend the JCC meetings as observers. The JCC was established to aid in the development of improved compliance systems through joint efforts and information-sharing among the SROs. Commission staff have also discussed this issue with SRO staff.

[3] 7 U.S.C. 12a(2) and (3) (1994).

[4] *In the Matter of Clark,* [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,032 (Apr. 22, 1997), *aff'd sub nom., Clark* v. *Commodity Futures Trading Commission,* No. 97–4228 (2d Cir. June 4, 1999) (unpublished).

[5] Commission rules referred to in this letter are found at 17 CFR Ch. 1.

[6] Rule 1.63 provides, among other things, that a person is ineligible from serving on SRO disciplinary committees, arbitration panels, oversight panels or governing boards if that person, *inter alia,* entered into a settlement agreement within the past three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.

Rule 1.63(a)(6) defines a ''disciplinary offense'' to include:

(i) any violation of the rules of an SRO except those rules related to (A) decorum or attire, (B) financial requirements, or (C) reporting or record-keeping unless resulting in fines aggregating more than $5,000 within any calendar year; (ii) any rule violation described in subparagraphs (A) through (C) above that involves fraud, deceit or conversion or results in a suspension or expulsion; (iii) any violation of the Act or the regulations promulgated thereunder; or (iv) any failure to exercise supervisory responsibility with respect to an act described in paragraphs (i) through (iii) above when such failure is itself a violation of either the rules of an SRO, the Act or the regulations promulgated thereunder.

[7] *Clark* at 44,929.

[8] The Commission generally looked at a five-year period of disciplinary history. On occasion, however, the Commission examined a longer period of an applicant's or registrant's disciplinary history. For example, the Commission revoked the registration of one FB on the basis of exchange disciplinary cases that extended back six years, *see Clark,* 2 Comm. Fut. L. Rep. (CCH) ¶ 27,032, and denied an application for registration as an FT on the basis of exchange disciplinary cases that extended back seven years, *see In the Matter of Castellano,* [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,360 (Nov. 23, 1988), *summarily aff'd* (May 29, 1990), *reh. denied* [1990–1992 Transfer Binder] Comm. Fut. L. Rep. ¶ 24,870 (June 26, 1990), *aff'd sub nom. Castellano* v. *CFTC,* Docket No. 90–2298 (7th Cir. Nov. 20, 1991).

[9] Letter dated July 14, 1995, from Mary L. Schapiro to R. Patrick Thompson, President, New York Mercantile Exchange (unpublished). *See also Castellano, supra* note 8.

[10] *See* Rule 1.51(a)(7).

within the industry as a whole, well beyond the jurisdiction of a particular exchange.

The Commission also wants to clarify to the fullest extent possible that its power to delegate the authority to deny or condition the registration of an FB, FT, or an applicant for registration in either category permits exchanges to disclose to NFA all evidence underlying exchange disciplinary actions, notwithstanding the language of Section 8c(a)(2) of the Act.[11] The Commission's power to delegate stems from Section 8a(10) of the Act, which permits delegation of registration functions, including statutory disqualification actions, to any person in accordance with rules adopted by such person and submitted to the Commission for approval or for review under Section 17(j) of the Act, ''notwithstanding any other provision of law.'' Certainly, Section 8c(a)(2) qualifies as ''any other provision of law.'' Furthermore, the effective discharge of the delegated function requires NFA to have access to the exchange evidence. Thus, the exercise of the delegated authority pursuant to Section 8a(10) permits the exchanges to disclose all evidence underlying disciplinary actions to NFA.[12]

This letter supersedes the Guidance Letter to the extent discussed above. In all other aspects, the Guidance Letter and other guidance provided by the Commission or its staff remain in effect. Therefore, NFA should continue to follow Commission precedent when selecting conditions or restrictions to be imposed. For example, NFA should impose a dual trading ban where customer abuse is involved and any conditions or restrictions imposed should be for a two-year period. Furthermore, NFA should require sponsorship for conditioned FBs or FTs when their disciplinary offenses involve noncompetitive trading and fraud.

Nothing in the Notice and Order or this letter affects the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions, including review of the sufficiency of conditions or restrictions imposed by NFA, to review the determination by NFA not to take action to affect an existing registration, or to take its own action to address a statutory disqualification. Moreover, the Commission Order contemplates that to allow for appropriate Commission oversight of NFA's exercise of this delegated authority, NFA will provide for the Commission's review quarterly schedules of all applicants cleared for registration and all registrants whose registrations are maintained without adverse action by NFA's Registration, Compliance, Legal Committee despite potential statutory disqualifications.

The Commission will continue to monitor NFA activities through periodic rule enforcement reviews, and NFA remains subject to the present requirement that it monitor compliance with the conditions and restrictions imposed on conditioned and restricted registrants.

Sincerely,

Jean A. Webb,
Secretary of the Commission.

22. Part 3 is amended by adding Appendix B to read as follows:

Appendix B to Part 3—Statement of Acceptable Practices with Respect to Ethics Training

(a) The provisions of section 4p(b) of the Act (7 U.S.C. 6p(b) (1994)) set forth requirements regarding training of registrants as to their responsibilities to the public. This section requires the Commission to issue regulations requiring new registrants to attend ethics training sessions within six months of registration, and all registrants to attend such training on a periodic basis. Consistent with the will of Congress, the Commission believes that a Core Principle for all persons intermediating transactions in recognized multilateral trade execution facilities is fitness. The awareness and maintenance of professional ethical standards are essential elements of a registrant's fitness. Further, the use of ethics training programs is relevant to a registrant's maintenance of adequate supervision, itself a Core Principle, and a requirement under Rule 166.3.

(b)(1) The Commission recognizes that technology has provided new, faster means of sharing and distributing information. In view of the foregoing, the Commission has chosen to allow registrants to develop their own ethics training programs. Nevertheless, futures industry professionals may want guidance as to the role of ethics training. Registrants may wish to consider what ethics training should be retained, its format, and how it might best be implemented. Therefore, the Commission finds it appropriate to issue this Statement of Acceptable Practices regarding appropriate training for registrants, as interpretative guidance for intermediaries on fitness and supervision. Commission registrants may look to this Statement of Acceptable Practices as a ''safe harbor'' concerning acceptable procedures in this area.

(2) The Commission believes that section 4p(b) of the Act reflects an intent by Congress that industry professionals be aware, and remain abreast, of their continuing obligations to the public under the Act and the regulations thereunder. The text of the Act provides guidance as to the nature of these responsibilities. As expressed in section 4p(b) of the Act, personnel in the industry have an obligation to the public to observe the Act, the rules of the Commission, the rules of any appropriate self-regulatory organizations or contract markets (which would also include recognized futures exchanges and recognized derivatives transactions facilities), or other applicable federal or state laws or regulations. Further, section 4p(b) acknowledges that registrants have an obligation to the public to observe ''just and equitable principles of trade.''

(3) Additionally, section 4p(b) reflects Congress' intent that registrants and their personnel retain an up-to-date knowledge of these requirements. The Act requires that registrants receive training on a periodic basis. Thus, it is the intent of Congress that Commission registrants remain current with regard to the ethical ramifications of new technology, commercial practices, regulations, or other changes.

(c) The Commission believes that training should be focused to some extent on a person's registration category, although there will obviously be certain principles and issues common to all registrants and certain general subjects that should be taught. Topics to be addressed include:

(1) An explanation of the applicable laws and regulations, and the rules of self-regulatory organizations or contract markets, recognized futures exchanges and derivatives transaction facilities;

(2) The registrant's obligation to the public to observe just and equitable principles of trade;

(3) How to act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market;

(4) How to establish effective supervisory systems and internal controls;

(5) Obtaining and assessing the financial situation and investment experience of customers;

(6) Disclosure of material information to customers; and

(7) Avoidance, proper disclosure and handling of conflicts of interest.

(d) An acceptable ethics training program would apply to all of a firm's associated persons and its principals to the extent they are required to register as associated persons. Additionally, personnel of firms that rely on their registration with other regulators, such as the Securities and Exchange Commission, should be provided with ethics training to the extent the Act and the Commission's regulations apply to their business.

(e) As to the providers of such training, the Commission believes that classes sponsored by independent persons, firms, or industry associations would be acceptable. It would also be permissible to conduct in-house training programs. Further, registrants should ascertain the credentials of any ethics training providers they retain. Thus, persons who provide ethics training should be required to provide proof of satisfactory completion of the proficiency testing requirements applicable to the registrant and evidence of three years of relevant industry or pedagogical experience in the field. This industry experience might include the practice of law in the fields of futures or securities, or employment as a trader or risk manager at a brokerage or end-user firm. Likewise, the Commission believes that registrants should employ as ethics training providers only those persons they reasonably believe in good faith are not subject to any investigations or to bars to registration or to

[11] Section 8c(a)(2) states, in relevant part, that ''[A]n exchange * * * shall not disclose the evidence therefor, except to the person who is suspended, expelled, disciplined, or denied access, and to the Commission.''

[12] Of course, the Commission could request records from the exchange and forward them to NFA. The Commission believes that this is an unnecessary administrative process and that NFA should obtain the records it needs to carry out the delegated function of conducting disciplinary history reviews directly from the exchanges. In this context and pursuant to Commission orders authorizing NFA to institute adverse registration actions, NFA should be viewed as standing in the shoes of the Commission.

service on a self-regulatory organization governing board or disciplinary panel.

(f)(1) With regard to the frequency and duration of ethics training, it is permissible for a firm to require training on whatever periodic basis and duration the registrant (and relevant self-regulatory organizations) deems appropriate. It may even be appropriate not to require any such specific requirements as, for example, where ethics training could be termed ongoing. For instance, a small entity, sole proprietorship, or even a small section in an otherwise large firm, might satisfy its obligation to remain current with regard to ethics obligations by distribution of periodicals, legal cases, or advisories. Use of the latest information technology, such as Internet websites, can be useful in this regard. In such a context, there would be no structured classes, but the goal should be a continuous awareness of changing industry standards. A corporate culture to maintain high ethical standards should be established on a continuing basis.

(2) On the other hand, larger firms which transact business with a larger segment of the public may wish to implement a training program that requires periodic classwork. In such a situation, the Commission believes it appropriate for registrants to maintain such records as evidence of attendance and of the materials used for training. In the case of a floor broker or floor trader, the applicable contract market, recognized futures exchange or derivatives transaction facility should maintain such evidence on behalf of its member. This evidence of ethics training could be offered to demonstrate fitness and overall compliance during audits by self-regulatory organizations, and during reviews of contract market, recognized futures exchange or derivatives transaction facility operations.

(g) The methodology of such training may also be flexible. Recent innovations in information technology have made possible new, fast, and cost-efficient ways for registrants to maintain their awareness of events and changes in the commodity interest markets. In this regard, the Commission recognizes that the needs of a firm will vary according to its size, personnel, and activities. No format of classes will be required. Rather, such training could be in the form of formal class lectures, video presentation, Internet transmission, or by simple distribution of written materials. These options should provide sufficiently flexible means for adherence to Congressional intent in this area.

(h) Finally, it should be noted that self-regulatory organizations and industry associations will have a significant role in this area. Such organizations may have separate ethics and proficiency standards, including ethics training and testing programs, for their own members.

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

23. The authority citation for Part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

24. Section 4.10 is amended by revising paragraph (e)(1) to read as follows:

§ 4.10 Definitions.

* * * * *

(e)(1) *Principal,* when referring to a person that is a principal of a particular entity, shall have the same meaning as the term ''principal'' under § 3.1(a) of this chapter.

* * * * *

25. Section 4.24 is amended by revising paragraphs (f)(1)(v) and (h)(2) to read as follows:

§ 4.24 General disclosures required.

* * * * *

(f) * * *

(1) * * *

(v) Each principal of the persons referred to in this paragraph (b)(1) who participates in making trading or operational decisions for the pool or who supervises persons so engaged.

* * * * *

(h) * * *

(2) A description of the trading and investment programs and policies that will be followed by the offered pool, including the method chosen by the pool operator concerning how futures commission merchants carrying the pool's accounts shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and any material restrictions or limitations on trading required by the pool's organizational documents or otherwise. This description must include, if applicable, an explanation of the systems used to select commodity trading advisors, investee pools and types of investment activity to which pool assets will be committed;

* * * * *

26. Section 4.32 is added to read as follows:

§ 4.32 Trading on a derivatives transaction facility for non-institutional customers.

(a) A registered commodity trading advisor may enter trades on or subject to the rules of a derivatives transaction facility on behalf of a client who does not qualify as an ''institutional customer'' as defined in § 1.3(g) of this chapter, provided that the trading advisor:

(1) Directs the client's commodity interest account;

(2) Directs accounts containing total assets of not less than $25,000,000 at the time the trade is entered; and

(3) Discloses to the client that the trading advisor may enter trades on or subject to the rules of a derivatives transaction facility on the client's behalf.

(b) The commodity interest account of a client described in paragraph (a) of this section must be carried by a registered futures commission merchant.

27. Section 4.34 is amended by revising paragraphs (f)(1)(ii) and (h) to read as follows:

§ 4.34 General disclosures required.

* * * * *

(f) * * *

(1) * * *

(ii) Each principal of the trading advisor who participates in making trading or operational decisions for the trading advisor or supervises persons so engaged.

* * * * *

(h) *Trading program.* A description of the trading program, which must include the method chosen by the commodity trading advisor concerning how futures commission merchants carrying accounts it manages shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and the types of commodity interests and other interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such trading established by the trading advisor or otherwise.

PART 140—ORGANIZATION, FUNCTIONS AND PROCEDURES OF THE COMMISSION

28. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 4a, 12a.

29. Section 140.91 is amended by adding a new paragraph (a)(7) to read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Trading and Markets.

(a) * * *

(7) All functions reserved to the Commission in § 1.25 of this chapter.

* * * * *

PART 155—TRADING STANDARDS

30. The authority citation for Part 155 continues to read as follows:

Authority: 7 U.S.C. 6b, 6c, 6g, 6j and 12a unless otherwise noted.

§§ 155.2, 155.3, 155.4 and 155.5 [Amended]

31. Sections 155.2, 155.3, 155.4 and 155.5 are amended by adding the words ''or recognized futures exchange'' after the words ''contract market'' each time they appear.

32. Section 155.6 is added to read as follows:

§ 155.6 Trading standards for the transaction of business on derivatives transaction facilities.

(a) A futures commission merchant, or affiliated person thereof, transacting business on behalf of a customer who does not qualify as an ''institutional customer'' as defined in § 1.3(g) of this chapter on a derivatives transaction facility shall comply with the provisions of § 155.3.

(b) No futures commission merchant, introducing broker or affiliated person thereof shall misuse knowledge of any institutional customer's order for execution on a derivatives transaction facility.

PART 166—CUSTOMER PROTECTION RULES

33. The authority citation for Part 166 is amended to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6d, 6g, 6h, 6k, 6l, 6o, 7a, 12a, 21 and 23, unless otherwise noted.

34. Section 166.5 is added to read as follows:

§ 166.5 Dispute settlement procedures.

(a) *Definitions.* (1) The term *claim or grievance* as used in this section shall mean any dispute that:

(i) Arises out of any transaction executed on or subject to the rules of a contract market, a recognized futures exchange or a derivatives transaction facility,

(ii) Is executed or effected through a member of such facility, a participant transacting on or through such facility or an employee of such facility, and

(iii) Does not require for adjudication the presence of essential witnesses or third parties over whom the facility does not have jurisdiction and who are not otherwise available.

(iv) The term claim or grievance does not include disputes arising from cash market transactions that are not a part of or directly connected with any transaction for the purchase or sale of any commodity for future delivery or commodity option.

(2) The term *customer* as used in this section includes an option customer (as defined in § 1.3(jj) of this chapter) and any person for or on behalf of whom a member of a contract market, a recognized futures exchange or a derivatives transaction facility or a participant transacting on or through such market, exchange or facility effects a transaction on or through such market, exchange or facility, except another member of or participant in such market, exchange or facility. *Provided, however,* a person who is an ''institutional customer'' as defined in § 1.3(g) of this chapter shall not be deemed to be a customer within the meaning of this section.

(3) The term *Commission registrant* as used in this section means a person registered under the Act as a futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor, or associated person.

(b) *Voluntariness.* The use by customers of dispute settlement procedures shall be voluntary as provided in paragraph (c) of this section.

(c) *Pre-dispute arbitration agreements.* No Commission registrant shall enter into any agreement or understanding with a customer in which the customer agrees, prior to the time a claim or grievance arises, to submit such claim or grievance to any settlement procedure except as follows:

(1) Signing the agreement must not be made a condition for the customer to utilize the services offered by the Commission registrant.

(2) If the agreement is contained as a clause or clauses of a broader agreement, the customer must separately endorse the clause or clauses containing the cautionary language and provisions specified in this section. A futures commission merchant or introducing broker may obtain such endorsement as provided in § 1.55(d) of this chapter for the following classes of customers only:

(i) A plan defined as a government plan or church plan in section 3(32) or section 3(33) of title I of the Employee Retirement Income Security Act of 1974, or a foreign person performing a similar role or function subject as such to comparable foreign regulation; and

(ii) A person who is a ''qualified eligible person'' as defined in § 4.7 of this chapter.

(3) The agreement may not require the customer to waive the right to seek reparations under section 14 of the Act and part 12 of this chapter. Accordingly, the customer must be advised in writing that he or she may seek reparations under section 14 of the Act by an election made within 45 days after the Commission registrant notifies the customer that arbitration will be demanded under the agreement. This notice must be given at the time when the Commission registrant notifies the customer of an intention to arbitrate. The customer must also be advised that if he or she seeks reparations under section 14 of the Act and the Commission declines to institute reparation proceedings, the claim or grievance will be subject to the pre-existing arbitration agreement and must also be advised that aspects of the claim or grievance that are not subject to the reparations procedure (*i.e.,* do not constitute a violation of the Act or rules thereunder) may be required to be submitted to the arbitration or other dispute settlement procedure set forth in the pre-existing arbitration agreement.

(4) The agreement must advise the customer that, at such time as he or she may notify the Commission registrant that he or she intends to submit a claim to arbitration, or at such time as such person notifies the customer of its intent to submit a claim to arbitration, the customer will have the opportunity to elect a qualified forum for conducting the proceeding.

(5) *Election of forum.* (i) Within ten business days after receipt of notice from the customer that he or she intends to submit a claim to arbitration, or at the time a Commission registrant notifies the customer of its intent to submit a claim to arbitration, the Commission registrant must provide the customer with a list of organizations whose procedures meet Acceptable Practices established by the Commission for customer dispute resolution, together with a copy of the rules of each forum listed. The list must include:

(A) The contract market, recognized futures exchange or derivatives transaction facility, if available, upon which the transaction giving rise to the dispute was executed or could have been executed;

(B) A registered futures association; and

(C) At least one other organization that will provide the customer with the opportunity to select the location of the arbitration proceeding from among several major cities in diverse geographic regions and that will provide the customer with the choice of a panel or other decision-maker composed of at least one or more persons, of which at least a majority are not members or associated with a member of the contract market, recognized futures exchange or derivatives transaction facility or employee thereof, and that are not otherwise associated with the contract market, recognized futures exchange or derivatives transaction facility (mixed panel): *Provided,*

however, that the list of qualified organizations provided by a Commission registrant that is a floor broker need not include a registered futures association unless a registered futures association has been authorized to act as a decision-maker in such matters.

(ii) The customer shall, within forty-five days after receipt of such list, notify the opposing party of the organization selected. A customer's failure to provide such notice shall give the opposing party the right to select an organization from the list.

(6) *Fees.* The agreement must acknowledge that the Commission registrant will pay any incremental fees that may be assessed by a qualified forum for provision of a mixed panel, unless the arbitrators in a particular proceeding determine that the customer has acted in bad faith in initiating or conducting that proceeding.

(7) *Cautionary Language.* The agreement must include the following language printed in large boldface type:

Three Forums Exist for the Resolution of Commodity Disputes: Civil Court litigation, reparations at the Commodity Futures Trading Commission (CFTC) and arbitration conducted by a self-regulatory or other private organization.

The CFTC recognizes that the opportunity to settle disputes by arbitration may in some cases provide many benefits to customers, including the ability to obtain an expeditious and final resolution of disputes without incurring substantial costs. The CFTC requires, however, that each customer individually examine the relative merits of arbitration and that your consent to this arbitration agreement be voluntary.

By signing this agreement, you: (1) May be waiving your right to sue in a court of law; and (2) are agreeing to be bound by arbitration of any claims or counterclaims which you or [name] may submit to arbitration under this agreement. You are not, however, waiving your right to elect instead to petition the CFTC to institute reparations proceedings under Section 14 of the Commodity Exchange Act with respect to any dispute that may be arbitrated pursuant to this agreement. In the event a dispute arises, you will be notified if [name] intends to submit the dispute to arbitration. If you believe a violation of the Commodity Exchange Act is involved and if you prefer to request a section 14 ''Reparations'' proceeding before the CFTC, you will have 45 days from the date of such notice in which to make that election.

You need not sign this agreement to open or maintain an account with [name]. *See* 17 CFR 166.5.

(d) *Enforceability.* A dispute settlement procedure may require parties utilizing such procedure to agree, under applicable state law, submission agreement or otherwise, to be bound by an award rendered in the procedure, provided that the agreement to submit the claim or grievance to the procedure was made in accordance with paragraph (c) of this section or that the agreement to submit the claim or grievance was made after the claim or grievance arose. Any award so rendered shall be enforceable in accordance with applicable law.

(e) *Time limits for submission of claims.* The dispute settlement procedure established by a contract market, recognized futures exchange or derivatives transaction facility shall not include any unreasonably short limitation period foreclosing submission of customers' claims or grievances or counterclaims.

(f) *Counterclaims.* A procedure established by a contract market, recognized futures exchange, or derivatives transaction facility under the Act for the settlement of customers' claims or grievances against a member or employee thereof may permit the submission of a counterclaim in the procedure by a person against whom a claim or grievance is brought. The contract market, recognized futures exchange, or derivatives transaction facility may permit such a counterclaim where the counterclaim arises out of the transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of essential witnesses, parties, or third persons over whom the contract market, recognized futures exchange, or derivatives transaction facility does not have jurisdiction. Other counterclaims arising out of a transaction subject to the Act and rules promulgated thereunder for which the customer utilizes the services of the registrant may be permissible where the customer and the registrant have agreed in advance to require that all such submissions be included in the proceeding, and if the aggregate monetary value of the counterclaim is capable of calculation.

(g) *Institutional customers.* (1) A person who is an ''institutional customer'' as defined in § 1.3(g) of this chapter may negotiate any term of an agreement or understanding with a Commission registrant in which the institutional customer agrees, prior to the time a claim or grievance arises, to submit such claim or grievance to any settlement procedure, except that signing the agreement must not be made a condition for the institutional customer to use the services offered by the registrant.

(2) If the agreement is contained as a clause or clauses of a broader agreement, the institutional customer must separately endorse the clause or clauses containing the agreement; *Provided, however,* a futures commission merchant or introducing broker may obtain such endorsement as provided in § 1.55(d) of this chapter.

Issued in Washington, D.C. on November 21, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–30268 Filed 12–12–00; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AB57

A New Regulatory Framework for Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is promulgating a new regulatory framework to apply to clearing organizations. These regulations for clearing organizations are part of an initiative that would also establish a new regulatory framework for multilateral transaction execution facilities (MTEF) and market intermediaries. The final new framework in its entirety is simultaneously announced today in companion releases. The new framework, including these regulations are centered on broad, flexible, core principles and are designed to ''promote innovation, maintain U.S. competitiveness, and at the same time reduce systemic risk and protect customers.'' The Commission has fashioned these regulations so that it can fairly and efficiently carry out the important duty of overseeing clearing organizations in a changing, dynamic industry pursuant to a transparent codified framework.

EFFECTIVE DATE: February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Alan L. Seifert, Deputy Director, Division of Trading and Markets, or Lois J. Gregory, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5260 or e-mail *PArchitzel@cftc.gov, ASeifert@cftc.gov,* or *LGregory@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2000, the Commission published for comment proposed new Part 39, a regulatory framework for the oversight of clearing organizations. 65 FR 39027. Part 39 is part of an initiative that would also establish a new regulatory framework for MTEFs and market intermediaries. The final new framework in its entirety is simultaneously announced today in companion releases. The new framework, including Part 39, is centered on broad, flexible, core principles and is designed to ''promote innovation, maintain U.S. competitiveness, and at the same time reduce systemic risk and protect customers.'' 65 FR 38986.

The futures and option markets are undergoing changes in market structure and technology. Clearing organizations for these markets perform valuable functions by mitigating counterparty risk, facilitating the netting and offsetting of contractual obligations, and decreasing systemic risk. Clearing organizations should be subject to continuing regulatory oversight to ensure that they have sufficient financial resources and that they establish and implement prudential risk management programs designed to control concentration risks associated with centralized clearing.[1] The Commission has fashioned new Part 39 so that it can fairly and efficiently carry out the important duty of overseeing clearing organizations in a changing, dynamic industry pursuant to a transparent codified framework.

Part 39 requires that transactions effected on recognized futures exchanges (RFEs) under Part 38 and derivatives transaction facilities (DTFs) under Part 37 be cleared only by clearing organizations that have been recognized by the Commission under Part 39—recognized clearing organizations (RCOs). RCOs are also permitted to clear transactions that are exempt under Part 35—Exemption of Bilateral Agreements and Part 36—Exemption of Transactions on Multilateral Transaction Execution Facilities.[2] In addition, nothing in Part 39 prohibits an RCO from clearing any other type of instrument such as cash or forward delivery contracts.[3]

Current futures clearing organizations may self-certify and automatically qualify as RCOs under Part 39. New entities could apply for RCO status by demonstrating that their rules, procedures, and operations would be consistent with the 13 broad and flexible core principles set forth in Part 39. Appendix A to Part 39 would provide guidance to applicant RCOs as to how to make such a demonstration. Certain provisions of Part 39 and Appendix A have been modified from their proposed versions in light of comments received from participants in the industry. These modifications, as discussed herein, provide additional clarity and are consistent with the new regulatory framework's goal of promoting innovation and maintaining U.S. competitiveness, while also reducing systemic risk and protecting customers.

II. Overview

The Commission received comment letters on Part 39 from a number of SROs and other interested entities.[4] Commenters overwhelmingly supported the Part 39 requirement that all transactions executed on a designated contract market, an RFE, or a DTF, if cleared, be cleared by an RCO. Commenters also supported the proposition that nothing in Part 39 prohibits RCOs from clearing transactions other than those effected pursuant to Parts 35–38. Other comments concerned the definition of clearing organization, the jurisdiction of the Commission, the applicable provisions of the Commodity Exchange Act (Act) and regulations, and the guidance in Appendix A to Part 39. In response to the comments, the Commission has made changes to the definition of clearing organization and changes that clarify the jurisdiction of the Commission under Part 39. Other changes to Part 39 limit the applicability of sections of the Act and the regulations, and address the illustrative purpose of the guidance in Appendix A.

III. Discussion

A. Purpose

The Part 39 core principles reflect standards that the Commission takes into account in overseeing the clearing of futures and option contracts without imposing new regulatory requirements. Certain commenters contended that Part 39 as proposed would impose a new regulatory framework on entities already successfully regulated, and that the Commission had not fully articulated why Part 39 was being imposed at this time. *See, e.g.,* CL 21–51 at 11 and CL 23–40 at 2.

The Commission currently oversees the clearing organizations that are associated or affiliated with U.S. futures and option exchanges. As a practical matter, the Commission generally has regulated clearing organizations in connection with its oversight of contract markets which heretofore have had close affiliations with their clearing organizations. Among other things, the Commission has reviewed clearing organization rules, audited clearing organizations for compliance with the Commission's segregation, recordkeeping, and customer funds investment rules, monitored the clearing process in times of major market moves to identify potential systemic risks, and conducted oversight of the liquidation of positions and transfer of customer accounts in cases where clearing members encounter financial difficulty.

The Commission's oversight of clearing organizations also has been guided by standards not expressly set forth in the Act or the Commission's regulations for contract markets. For example, the Commission has taken into account, among other standards and procedures, the standards set forth in the Bank for International Settlements' (BIS) 1993 Lamfalussy Report on multilateral netting systems and other BIS reports, the recommendations with respect to clearing and settlement of

[1] *See* Over-the-Counter Derivatives Markets and the Commodity Exchange Act, Report of the President's Working Group, November 1999.

[2] In addition to RCOs, certain other enumerated entities also are authorized to clear transactions exempt under Parts 35 and 36. These include a clearing agency or system regulated by the Securities and Exchange Commission (SEC), the Federal Reserve, or the Comptroller of the Currency, and certain foreign clearing organizations.

[3] Further, nothing in Part 39 prohibits an entity that clears only exempt transactions from applying to the Commission for RCO status. An entity may want to apply for recognition as an RCO for its own business purposes.

[4] In this and three companion Notices of Final Rulemaking which are being published in this edition of the **Federal Register**, comment letters (CL) are referenced by file number, letter number and page. These letters are available through the Commission's internet web site. Comments filed in response to the notice of proposed rulemaking on clearing organizations are contained in file No. 23. Comments filed predominantly in response to the notice of proposed rulemaking on Parts 36–38, but which also had comments on clearing organizations, are contained in file No. 21. Those commenting upon Part 39 include: Board of Trade Clearing Corporation (BOTCC); California Power Exchange; Chicago Board of Trade; Chicago Mercantile Exchange (CME); Federal Reserve Bank of Chicago (FRB of Chicago); Financial Markets Lawyers Group; Futures Industry Association (FIA); Global TeleExchange; Government Securities Clearing Corporation (GSCC); New York Independent System Operator; JP Morgan; Kiodex, Inc.; Mercatus Center at George Mason University; New York Clearing Corporation (NYCC); New York Mercantile Exchange; Options Clearing Corporation (OCC); Oxy Energy Services, Inc.; PetroCosm Corporation; Securities Industry Association; and Cleary, Gottlieb, Steen & Hamilton, on behalf of a coalition of investment banks consisting of Chase Manhattan Bank, Citigroup Inc., Credit Suisse First Boston Inc., Goldman Sachs & Co., Merrill Lynch & Co. Inc., and Morgan Stanley Dean Witter & Co. (Coalition).

securities transactions of the Group of Thirty, and the recommendations of the President's Working Group in response to the market break of October 1987. Part 39's core principles reflect these various standards and existing futures clearing organizations currently meet these standards. Thus, Part 39 represents the Commission's intention to put into a logical and coherent regulatory form the same principles that the Commission now applies to clearing organizations. This approach is a natural accompaniment to the new regulatory framework.

Recently, there has been an increase in the number of new electronic markets that do not have their own clearing capacity. This trend has resulted in an increase in the opportunity for clearing organizations independent of transaction facilities to clear for multiple markets, which in turn magnifies the importance of clearing in the management of systemic risk. Clearing organizations unaffiliated with the transaction facilities for which they clear necessarily will have rules, procedures, and practices separate and independent from the transaction facilities. Thus, the Commission will oversee the clearing function pursuant to a framework separate from, but related to, the framework for the oversight of the transaction facilities.

B. Definition of Clearing Organization

In its final Part 39 rules, the Commission has clarified the definition of ''clearing organization'' to mean, with respect to transactions executed on a designated contract market or pursuant to Parts 35–38, a person that provides credit enhancement to its members or participants in connection with netting and/or settling the payments and payment obligations of such members or participants, by becoming a universal counterparty to such members or participants, or otherwise.[5] Providing credit enhancement in connection with, or as a byproduct of, providing settlement services is the critical attribute of a clearing organization.

Some of the comments raised concerns about the proposed definition in that they stated certain activities should not constitute the activity of clearing. *See, e.g.,* BOTCC CL 21–20 at 10. These activities include the netting of payment obligations and entitlements and the performance of trade processing services such as trade comparison, margin calculation, and reporting services.[6] In response to these comments, the revised definition captures only organizations whose services enhance the credit of the members or participants that are parties to the contracts cleared by the organization.

One method of credit enhancement is to be the counterparty to every cleared transaction. The clearing organization substitutes itself for each original counterparty and becomes legally bound to every party to a transaction. This is known as legal novation. However, a clearing organization can provide credit enhancement in ways other than strict legal novation. It can agree with its members and participants that it will be legally bound to guarantee payment flows associated with transactions in connection with or as a byproduct of the provision of netting services, that is, the netting of all payment obligations and entitlements. A clearing organization also could provide credit enhancement in any legal agreement to guarantee payment flows in connection with other settlement services.

The provision of one or more clearing services absent credit enhancement, however, will not, as a general matter, constitute the activity of clearing for purposes of Part 39. Therefore, for purposes of Part 39, the term ''clearing organization'' does not encompass the sole provision of netting services in the absence of any type of credit enhancement.

C. Scope of Part 39

The language of the scope provision, § 39.1, the enforceability provision, § 39.5, and the antifraud provision, § 39.6, in their final form, all apply to an RCO's *clearing* of transactions effected pursuant to the enumerated parts. The final language of § 39.2 clarifies:

(1) what must be cleared by an RCO (any transaction effected on a contract market or pursuant to Parts 37 and 38 that is cleared);

(2) that the *clearing of* transactions by an RCO is regulated under Part 39;

(3) that transactions effected pursuant to Parts 35 or 36 may be cleared by an RCO or by other authorized clearing organizations;[7]

(4) that the *clearing of* transactions effected pursuant to Parts 35 or 36 by an RCO is regulated under Part 39;

(5) that the clearing of transactions effected pursuant to Parts 35 or 36 by authorized clearing organizations other than an RCO is not regulated under Part 39; and

(6) that transactions not specified in 39.1(a) may also be cleared by an RCO.

The changes to the scope, enforceability and antifraud provisions address commenters' concerns that: (1) proposed Part 39 could be interpreted to apply the Act and the Commission's regulations to transactions outside the appropriate scope of Part 39, such as cash products or other products beyond the authority of the Act, *see, e.g.,* CME CL 21–51 at 9–10; (2) it may appear as if the Commission is attempting to expand its jurisdiction to include any over-the-counter transaction that is submitted to an RCO for clearing, *id.*; (3) the new part should clarify that transactions effected pursuant to Parts 35 or 36 do not become subject to the jurisdiction of the Commission simply because they are submitted to a Part 39 clearing organization and that clearing does not, by itself, make an exempt transaction subject to the Act, *see* BOTCC CLs 21–6 at 4 and 21–20 at 8; and (4) the effect of § 39.6 would not be the assertion of the Commission's enforcement authority over otherwise-exempt transactions simply because those transactions are submitted to clearing. As proposed, § 39.6 prohibited fraud in connection with any transaction cleared by an RCO. The final section prohibits fraud in connection with the *activity* of clearing. *See* BOTCC CL 21–6 at 4, FRB of Chicago CL 23–25 at 7 and GSCC CL 23–19 at 4.

As discussed, the final Part 39 rules address these comments. The Commission is not hereby asserting jurisdiction over transactions in cash and other products not subject to the Act. Commission oversight of an RCO under Part 39 addresses the clearing process only and does not include regulation or oversight of the transactions or the traders. The Commission, however, notes that it must monitor for the potential that clearing of cash and other products not subject to the Act could adversely affect the viability, risk exposure, and management of the entity as an RCO.[8]

[5] The definition continues to exclude those netting arrangements specified in § 35.2 (d)(1) and (d)(2) and an entity that is a single counterparty offering to enter into, or entering into, bilateral transactions with multiple counterparties.

[6] It also includes, where applicable, the scheduling or netting of physical delivery obligations and related bookkeeping functions such as those performed by operators of physical delivery points for certain energy-related products. *See* CL 21–56 at 2.

[7] Transactions pursuant to Part 34 are not included in 39.2 or otherwise referred to in Part 39 as these instruments have consistently been subject to other regulatory schemes, whether under the jurisdiction of the SEC as securities, or regulated pursuant to federal banking laws as depository instruments.

[8] An analogy can be drawn to the interest the Commission has in assessing risk presented to futures commission merchants (FCMs) by their non-futures activities. Thus, for example, the Commission's net capital rule has provisions relating to the capital treatment of securities and

D. Treatment as Contract Market

As proposed, § 39.1(b)(2) provided that an RCO would be deemed to be a contract market for purposes of the Act and the regulations, but would be exempt from all such provisions except as reserved in § 39.5. In its final rules, the Commission has combined the language of proposed § 39.1(b)(2) with proposed § 39.5. Section 39.5 now provides that an RCO is deemed to be a contract market *to the extent it clears transactions specified in § 39.1(a)* (the scope provision), but is exempt from all provisions of the Act and regulations except, *as applicable,* certain enumerated sections of the Act and the Commission's regulations which would continue to apply.

Combining the separate provisions and amending the resulting § 39.5 as indicated, limits the purpose for which RCOs are deemed to be contract markets and addresses commenters' concern that the provision would subject clearing organizations to provisions of the Act and the Commission's regulations that do not now apply. *See, e.g.,* BOTCC CL 21–6 at 4. Pursuant to the final rule, an RCO is deemed to be a contract market only to the extent it clears those transactions specified in § 39.1(a). Further, even though an RCO is deemed to be a contract market to this limited extent, § 39.5 exempts it from all provisions of the Act and regulations, except the sections enumerated, and only to the extent those enumerated sections are applicable to the activity of clearing § 39.1(a) transactions.

In reserving the sections of the Act and the regulations enumerated in § 39.5, the Commission is not asserting that any of those sections or regulations would be applicable to an RCO under any particular circumstances. The Commission only seeks, conservatively, to reserve those sections of the Act and regulations that may need to be applied to an RCO in order to achieve compliance with the core principles set forth in Part 39. The reservations in § 39.5 of Sections 4b and 4o of the Act and Rule 33.10 will subject RCOs to the same standard with respect to fraud and manipulation in connection with the clearing of transactions to which clearing organizations are currently subject. *See* FIA CL 23–26 at 5. Reservation of the enumerated sections of the Act or regulations, including specifically Section 4i of the Act and Rule 1.38(a), will not render RCOs responsible for the enforcement of any new or additional regulatory requirements, nor increase the liability of clearing organizations under Section 22 of the Act. *See* BOTCC CLs 21–20 at 7 and 21–6 at 4.

E. Competitive Issues

Commenters strongly agreed with the requirement in § 39.2 that all transactions effected on a contract market, RFE, or DTF, if cleared, must be cleared by an RCO. For example, the CME expressed its agreement with the result that a clearing organization that either is governed by another regulator, or has no regulator, is prohibited from clearing such products. CL 21–51 at 10. However, many commenters raised concerns regarding the effect of Part 39 on the ability of RCOs to compete with other types of clearing organizations. The commenters stated that allowing clearing organizations other than RCOs, including clearing organizations regulated by the SEC, to clear transactions effected pursuant to Parts 35 or 36, will give clearing organizations other than RCOs the ability to clear the full spectrum of financial transactions—cash, securities, options, futures (if traded on an exempt MTEF) and other derivatives. They further stated that the SEC, however, will not allow an RCO that is not also registered as a clearing agency with the SEC to clear transactions in securities. *Id.* Commenters thought the proposal grants an unfair exemption to securities clearinghouses, banks, bank affiliates, and foreign clearinghouses from the substantive requirements that otherwise would apply to RCOs. CLs 21–6 at 5, 21–20 at 5, 23–26 at 7, and 21–36 at 6.

In authorizing particular clearing organizations in addition to RCOs to clear transactions pursuant to Parts 35 and 36, the Commission is adopting the unanimous recommendations made in the report of the President's Working Group.[9] The Commission notes that it has made revisions elsewhere in its new regulatory framework (*i.e.,* the final rules under Parts 35–38) that lessen the impact of these concerns in some instances. Under final rules adopted by the Commission in response to comments made by the U.S. Department of the Treasury, transactions based on U.S. government securities are not eligible for trading on exempt MTEFs.[10] Under part 39, only RCOs can clear transactions effected on DTFs or RFEs.

F. Application of Core Principles and Appendix A

1. General

RCO applicants must demonstrate compliance with each of the core principles of Part 39 as a condition of recognition. These principles will not subject RCOs to any regulatory requirement not now applicable to futures clearing organizations under the Commission's current oversight. Each of the core principles must be addressed, but the guidance in Appendix A to Part 39 is intended only to be illustrative of the types of matters an applicant may address in order to satisfactorily demonstrate that it meets the core principles.

The final appendix clarifies the purpose of the guidance in response to commenters' concerns regarding the level of specificity in Appendix A. Commenters were concerned that the guidance would take on the force of law, applicants would have to affirmatively demonstrate compliance with each provision, and clearing organizations would be subject to far greater regulatory compliance burdens than before. *See, e.g.,* FIA CL 23–26 at 4 and BOTCC CL 21–20 at 10. Appendix A expressly makes clear that it is neither a checklist of issues that an applicant is required to address nor an exclusive list of matters from which an applicant can choose applicable components to address. Rather, the appendix provides detailed non-binding guidance that applicants can use as a tool in demonstrating satisfaction of the core principles.

In order to become recognized under Part 39, current futures clearing organizations need only submit a certification that their rules, procedures and operations fulfill the conditions for recognition under Part 39.[11] All of the current futures clearing organizations could become recognized in this

other non-futures inventory held by an FCM in the normal course of its business. *See* Commission Regulation 1.17. *See also* Commission Regulations 1.14 and 1.15 that assess risk to a registered FCM from affiliates in its holding company system.

[9] Over-the-Counter Derivatives Markets and the Commodity Exchange Act, Report of the President's Working Group, November 1999. The group, whose members were signatories to the report, includes the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission.

[10] Specifically, the Commission has removed the reference to exempt securities and indexes thereof previously included in proposed Rule 36.2(b)(4) and has amended final Rule 36.2(b)(1) to make clear that eligible debt instruments do not include such exempt securities.

[11] Although § 39.4(a) allows only nondormant entities, as defined, to self-certify, the Commission is prepared to accept the certification of the Intermarket Clearing Corporation (ICC) under this provision. ICC is a wholly-owned subsidiary of the Options Clearing Corporation. Commission staff is familiar with ICC's rules and operations. ICC has maintained its clearing systems, rules, and banking and other arrangements in place and remains fully prepared operationally to clear transactions in futures contracts in accordance with its rules.

manner. They are not required to address affirmatively any of the separate core principles (and none of the suggested guidance in Appendix A).

2. The Core Principles

The final rules contain changes that address commenters' views concerning the wording and applicability of particular core principles. Commenters requested that Core Principle 2, which deals with participant and product eligibility, be revised to eliminate product eligibility criteria for instruments that an RCO will accept for clearing. Commenters contended that this requirement was impractical, would require an extraordinary degree of prognostication and would best be dealt with on a case-by-case basis by an RCO, considering all relevant circumstances. BOTCC CL 21–20 at 13. The Commission has revised the final core principle and the accompanying appendix guidance accordingly.

Several commenters thought that Core Principle 7 on enforcement inappropriately required arrangements and resources for resolution of disputes and encouraged the Commission to eliminate it from the principle. *See, e.g.,* NYCC CL 23–40 at 4 and GSCC 23–19 at 4. The Commission has considered the commenters' concerns that this requirement would impose a new and inappropriate burden on RCOs, but has determined to retain it in the core principle with the added qualification of ''as applicable.'' The Commission does not wish to rule out the possible appropriateness of some form of dispute resolution at RCOs as the industry continues to evolve. By qualifying the item with its applicability, RCO applicants can choose to address whether and why they do or do not have a dispute resolution program in demonstrating that they will be able to effectively enforce their rules.

The final version of the other core principles contains modifications that serve to increase their intended breadth and flexibility. For example, Core Principle 1, which deals with financial resources, as proposed, required adequate capital resources to fulfill its guarantee function without interruption in various market conditions. At the suggestion of one of the commenters, the final version of Core Principle 1 requires adequate financial resources to fulfill its guarantee function without interruption in *reasonably foreseeable* market conditions. *See* Coalition CL 23–41 at 24. In addition, Core Principle 14 concerning competition has been revised. The Commission does not want to inadvertently impose duties on an applicant that differ in form or degree from the antitrust statutes and court decisions construing federal antitrust laws. *See* BOTCC CL 21–20 at 13. Thus, final Core Principle 14 simply requires RCOs to operate in a manner consistent with the public interest to be protected by the antitrust laws. This language comes directly from Section 15 of the Act which the Commission has reserved in § 39.5. The requirements of Section 15 remain the responsibility of the Commission and the Commission intends to apply Section 15 to antitrust issues in the same manner as previously applied.

Core Principle 12 regarding public disclosure of certain operating procedures of an RCO was not revised in response to concerns regarding confidentiality. An RCO, however, will not be required under this core principle to disclose trade secrets.

3. The Guidance in Appendix A

Commenters also expressed opinions about the applicability and wording of particular proposed guidance in Appendix A. Many of these concerns are addressed by language in the final appendix that states the guidance is only illustrative of the types of matters an applicant may address in order to demonstrate that it meets the core principles and is not intended to be a mandatory checklist of issues to address. If particular guidance does not apply to an RCO applicant, it may either not address it or explain why it does not apply. Applicants also are strongly encouraged to address relevant matters other than those contained in the guidance suggested in the appendix if doing so would assist the applicant in demonstrating compliance with a particular core principle.

The Commission has modified certain of the guidance in response to commenters' concerns regarding the appropriateness or applicability of particular guidance language. In response to comments that the Commission does not have the authority to review the setting of levels of margin, the Commission revised guidance regarding the determination of appropriate margin levels for a cleared contract and the clearing member clearing the contract. *See, e.g.,* FIA CL 23–26 at 4. The final version of this guidance suggests that an applicant may describe the process by which it would determine appropriate margin levels for an instrument that it clears and its clearing members. This information is highly relevant and could be used by an applicant for RCO status to assist in demonstrating that it meets the third core principle concerning the ability to manage risks associated with carrying out the guarantee function.

Several comments addressed the appropriateness of the proposed guidance under Core Principle 6 concerning default rules and procedures. The guidance suggested that applicants describe rules and procedures regarding priority of customer accounts over proprietary accounts and, where applicable, in the context of other programs such as specialized margin reduction programs like cross-margining. Commenters argued that given the successful operation of cross-margining programs, it is inappropriate for the accounts of cross-margining participants to be subordinated to the accounts of market participants not participating in cross-margining programs. OCC CL 23–23 at 2, 3. The Commission has considered this argument and although it recognizes that cross-margining programs have been successful and can operate to reduce risks, including risk of participant default, it has determined to retain this guidance in the final Appendix A. The guidance is appropriate in that it only suggests that an applicant RCO that is proposing or contemplating being a party to a margin reduction program such as cross-margining address in its application whether and why a priority rule would or would not be present in any particular margin reduction program. It does not require such a priority rule. This information will provide relevant and useful information to the Commission in assessing the applicant's overall compliance with all aspects of Core Principle 6.

The Commission modified other guidance under various core principles in response to comments received. For example, the final guidance under Core Principle 8 dealing with system safeguards suggests that an applicant may confirm that system testing and review has been performed by a qualified independent professional, and not specifically by a member of the Information Systems Audit and Control Association. A professional that is a certified member of the Information Systems Audit and Control Association experienced in the industry, however, is referred to as an example of an acceptable party to carry out such testing and review. *See* CL 21–20 at 10. In addition, the Commission has modified the guidance for Core Principle 9 relating to governance to note that an RCO, consistent with longstanding Commission policy, may not limit liability for violation of the Act or Commission rules, fraud, or wanton or willful misconduct. This requirement

currently applies to designated contract markets.

G. Other Comments

Certain commenters suggested that the Commission restrict the length of time that a proposed RCO rule could be stayed under Commission Regulation 1.41. *See e.g.,* CL 21–20 at 12. The Commission anticipates that it only will impose a stay of an RCO rule in limited and potentially egregious situations. In fact, the Commission would only be able to stay a proposed rule incident to disapproval proceedings and the stay determination would not be delegable to Commission staff. Since a rule only would be stayed incident to a disapproval proceeding, the length of any stay would not be indeterminate in any event.

Certain commenters raised questions as to whether bankruptcy provisions that are currently applicable to transactions conducted on a contract market could also be applicable to all transactions cleared by an RCO. *See, e.g.,* CL 21–65 at 23. Part 39 reserves the applicability of Part 190 to the activity of clearing § 39.1(a) transactions, *if applicable*. Part 190 in conjunction with the commodity broker liquidation provisions of Subchapter IV of Chapter 7, Title 11 of the Federal Bankruptcy Code, apply to an insolvency when the insolvent party is a ''commodity broker'' (typically an FCM or clearing organization that has any futures accounts), as defined under Title 11. If an RCO does not have open futures accounts it would not be covered by SubChapter IV.

IV. Section 4(c) Findings

These final rules are being promulgated under Section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may by rule, regulation or order, exempt any class of agreements, contracts or transactions, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirement of Section 4(a) of the Act, or any other provision of the Act other than Section 2(a)(1)(B), if the Commission determines that the exemption would be consistent with the public interest. Furthermore, Section 4(c)(2) of the Act provides that the Commission may not grant an exemption from the contract market designation requirement of Section 4(a) of the Act unless the Commission also finds that: (i) the contract market designation requirement should not be applied to the agreement, contract, or transaction for which the exemption is requested and the exemption would be consistent with the public interest and the purposes of the Act; (ii) the exempted transaction will be entered into solely between ''appropriate persons''; and (iii) the agreement, contract, or transaction in questions will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.

As explained above, Part 39 is part of a new regulatory framework. The new framework is intended to promote innovation and competition in the trading of derivatives and to permit the markets the flexibility to respond to technological and structural changes. Specifically, Part 39 replaces Commission regulation of clearing organizations through the current more formal designation and regulation of contract markets. It provides for a streamlined procedure for clearing organizations to obtain recognition by meeting broad, non-prescriptive core principles. It permits recognized clearing organizations the flexibility to clear regulated, exempt, and unregulated transactions. It also authorizes clearing organizations regulated by other regulatory bodies to clear certain transactions. The core principle approach set forth in Part 39 strikes an appropriate balance between applying necessary regulatory protections to the critical market functions of clearing and facilitating the development of varied clearing mechanisms and structures. Accordingly, the Commission believes that Part 39 is consistent with the public interest, is consistent with the purposes of the Act, will be applicable only to appropriate persons, and would have no adverse effect on the regulatory or self-regulatory responsibilities imposed by the Act.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires that agencies, in promulgating rules, consider the impact of those regulations on small entities. The rules adopted herein would affect certain clearing organizations. The Commission has stated that it is appropriate to evaluate within the context of a particular rule whether some or all of affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule. In this regard, the rules being adopted herein would not require any current futures clearing organization to change any aspect of its operation or take any action other than to submit a certification. The rules being adopted replace regulation of clearing organizations through the formal designation and regulation of contract markets with a streamlined procedure for clearing organizations, regardless of size, to obtain recognition by meeting broad, non-prescriptive core principles. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. In this regard, the Commission notes that it did not receive any comments regarding the RFA implications of Part 39.

B. Paperwork Reduction Act

Part 39 contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*., the Commission submitted a copy of this part to the Office of Management and Budget (OMB) for its review. *See* 44 U.S.C. § 3507(d). No comments were received in response to the Commission's invitation in the proposing release to comment on any potential paperwork burden associated with this regulation.

List of Subjects in 17 CFR Part 39

Clearing, Clearing Organizations, Commodity Futures, Consumer Protection.

In consideration of the foregoing, and pursuant to the authority contained in Sections 2, 6(c), 7a, and 12a(5) of the U.S.C., the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by adding part 39 to read as follows:

PART 39—RECOGNIZED CLEARING ORGANIZATIONS

Sec.

39.1 Scope and definitions.
39.2 Permitted clearing.
39.3 Conditions for recognition as a recognized clearing organization.
39.4 Procedures for recognition.
39.5 Enforceability.
39.6 Fraud in connection with the clearing of transactions by a recognized clearing organization.
Appendix A to Part 39—Application Guidance

Authority: 7 U.S.C. 2, 6(c), 6d(2), 6g, 7a, 12a(5).

§ 39.1 Scope and definitions.

(a) *Scope.* The provisions of this part 39 apply to a recognized clearing organization that clears transactions effected on or through a designated contract market, a recognized futures exchange under part 38 of this chapter, a derivatives transaction facility under part 37 of this chapter, an exempt multilateral transaction execution facility under part 36 of this chapter, and to exempt bilateral transactions under part 35 of this chapter.

(b) *Definitions.* For purposes of this part:

(1) *Clearing organization* means a person that provides a credit enhancement function with respect to transactions executed on a designated contract market or pursuant to Parts 35 through 38 of this chapter in connection with netting and/or settling the payments and payment obligations of such members or participants, by becoming a universal counterparty to such members or participants, or otherwise; but does not include those netting arrangements specified in § 35.2(d)(1) and (d)(2), nor does it include an entity that is a single counterparty offering to enter into, or entering into bilateral transactions with multiple counterparties.

(2) *Recognized clearing organization* means a clearing organization that has been recognized by the Commission under § 39.3.

§ 39.2 Permitted clearing.

(a) Any transaction effected on a designated contract market, recognized futures exchange, or derivatives transaction facility, if cleared, shall be cleared by a recognized clearing organization. The clearing of transactions by a recognized clearing organization shall be governed by the provisions of this part.

(b) A transaction effected pursuant to part 35 or part 36 of this chapter, if cleared, shall meet the requirements of § 35.2(c) or § 36.2(c) of this chapter, as applicable, if the transaction is cleared by one of the following authorized clearing organizations:

(1) A recognized clearing organization;

(2) A securities clearing agency subject to the supervisory jurisdiction of the Securities and Exchange Commission;

(3) A clearing system organized as a bank, bank subsidiary, affiliate of a bank, or Edge Act corporation established under the Federal Reserve Act authorized to engage in international banking or financial activities, and subject to the jurisdiction of the Federal Reserve or Comptroller of the Currency; or

(4) A foreign clearing organization that demonstrates to the Commission that it:

(i) Is subject to home country regulation and oversight comparable to the standards set forth by the Commission for recognition of clearing organizations under this part; and

(ii) Is a party to and abides by appropriate and adequate information-sharing arrangements.

(c) The clearing of transactions effected pursuant to part 35 or part 36 of this chapter by a recognized clearing organization shall be governed by the provisions of this part. The provisions of this part shall not apply to the clearing of transactions effected pursuant to part 35 or part 36 by an authorized clearing organization other than a recognized clearing organization.

(d) Nothing in this part prohibits clearing by a recognized clearing organization of transactions not specified in § 39.1(a).

§ 39.3 Conditions for recognition as a recognized clearing organization.

To be recognized by the Commission under this part 39 as a recognized clearing organization, an entity:

(a) Need not be affiliated with a designated contract market or recognized futures exchange under part 38 of this chapter, derivatives transaction facility under part 37 of this chapter, or exempt multilateral transaction execution facility under part 36 of this chapter;

(b) Must have rules and procedures relating to its governance and to the operation of its clearing function; and

(c) Must initially, and on a continuing basis, meet and adhere to the following core principles:

(1) *Financial resources:* Have adequate financial resources to fulfill its guarantee function without interruption in reasonably foreseeable market conditions.

(2) *Participant eligibility:* Have appropriate admission and continuing eligibility standards for members or participants of the organization.

(3) *Risk management:* Have the ability to manage the risks associated with carrying out its guarantee function through the use of tools and procedures appropriate under the circumstances.

(4) *Settlement procedures:* Have the ability to complete settlements on a timely basis under varying circumstances, to maintain an adequate record of the flow of funds associated with the transactions it clears, and, to the extent applicable, to comply with the terms and conditions of any netting or offset arrangements with other clearing organizations.

(5) *Treatment of member and participant funds:* Have adequate procedures designed to protect the safety of member and participant, and as applicable, customer funds held by the clearing organization.

(6) *Default rules and procedures:* Have rules and procedures designed to allow for the effective and fair management of events when members or participants become insolvent or otherwise default on their obligations to the clearing organization.

(7) *Rule enforcement:* Have arrangements and resources for the effective monitoring and enforcement of compliance with its rules and, as applicable, for resolution of disputes.

(8) *System safeguards:* Have a program of testing, oversight, and risk analysis to ensure that its automated systems function properly and have adequate capacity, security, emergency, and disaster recovery procedures.

(9) *Governance:* Have appropriate fitness standards for owners or operators with greater than ten percent interest or an affiliate of such an owner, and for members of the governing board, and a means to address conflicts of interest in making decisions.

(10) *Reporting:* Provide all information requested by the Commission for it to conduct its oversight function of the clearing organization's activities.

(11) *Recordkeeping:* Keep full books and records of all activities relating to its business as a recognized clearing organization in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

(12) *Public information:* Publicly disclose information concerning the rules and operating procedures governing its clearing and settlement systems, including default procedures.

(13) *Information sharing:* Participate in domestic and international information-sharing agreements as appropriate and use information obtained from such agreements in carrying out the clearing organization's risk management program.

(14) *Competition:* Operate in a manner consistent with the public interest to be protected by the antitrust laws.

§ 39.4 Procedures for recognition.

(a) *Recognition by certification.* A clearing organization that cleared for at least one nondormant contract market

within the meaning of § 5.3 of this chapter on February 12, 2001, will be recognized by the Commission as a recognized clearing organization upon receipt by the Commission at its Washington, DC, headquarters of a copy of the clearing organization's current rules and a certification by the clearing organization that it meets the conditions for recognition under this part.

(b) *Recognition by application.* A clearing organization shall be recognized by the Commission as a recognized clearing organization sixty days after receipt by the Commission of an application for recognition unless notified otherwise during that period, if:

(1) The application demonstrates that the applicant satisfies the conditions for recognition under this part;

(2) The submission is labeled as being submitted pursuant to this part;

(3) The submission includes a copy of the applicant's rules and, to the extent that compliance with the conditions of recognition is not self-evident, a brief explanation of how the rules satisfy each of the conditions for recognition under § 39.3;

(4) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period; and

(5) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to procedures under section 6 of the Act.

(6) Appendix A to this part is guidance to applicants concerning how the core principles set forth in this paragraph (b) could be satisfied.

(c) *Termination of part 39 review.* During the sixty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking recognition that the Commission is terminating review under this section and will review the proposal under the procedures of section 6 of the Act, if it appears that the application fails to meet the conditions for recognition under this part. This termination notification will state the nature of the issues raised and the specific condition of recognition that the application appears to violate, is contrary to, or fails to meet. Within ten days of receipt of this termination notification, the applicant seeking recognition may request that the Commission render a decision whether to recognize the clearing organization or to institute a proceeding to disapprove the proposed submission under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking recognition views its submission as complete and final as submitted.

(d) *Delegation of authority.* (1) The Commission hereby delegates to the Director of the Division of Trading and Markets or the Director's delegatee, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to notify an entity seeking recognition under paragraph (b) of this section that review under those procedures is being terminated.

(2) The Director of the Division of Trading and Markets may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) *Request for Commission approval of rules.* (1) An applicant for recognition as a recognized clearing organization may request that the Commission approve any or all of its rules and subsequent amendments thereto, at the time of recognition or thereafter, under section 5a(a)(12) of the Act and § 1.41 of this chapter. The recognized clearing organization may label such rules as having been approved by the Commission.

(2) Rules of a recognized clearing organization that have not been submitted pursuant to paragraph (a) or (b)(3) of this section shall be submitted to the Commission pursuant to § 1.41 of this chapter.

(3) An applicant seeking recognition as a recognized clearing organization may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies at the time of recognition or thereafter.

(f) *Request for withdrawal of recognition.* A recognized clearing organization may withdraw from Commission recognition by filing with the Commission at its Washington, DC headquarters such a request. Withdrawal from recognition shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the clearing organization was recognized by the Commission.

§ 39.5 Enforceability.

To the extent it clears transactions specified in § 39.1(a), a recognized clearing organization shall be deemed to be a contract market for purposes of the Act and the Commission rules thereunder; *provided, however,* a recognized clearing organization shall be exempt from all provisions of the Act and Commission regulations except, as applicable, sections 1a, 2(a)(1), 4, 4b, 4c, 4d, 4g, 4i, 4o, 5(6), 5(7), 5a(a)(1), 5a(a)(2), 5a(a)(8), 5a(a)(9), the rule disapproval procedures of section 5a(a)(12), 5a(a)(16), 5a(a)(17), 6(a), 6(c) to the extent it prohibits manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, 8a(7), 8a(9), 8c(a), 8c(b), 8c(c), 8c(d), 9(a), 9(f), 14, 15, 20 and 22 of the Act and §§ 1.3, 1.20, 1.24, 1.25, 1.26, 1.27, 1.29, 1.31, 1.36, 1.38, 1.41, parts 15 through 21, § 33.10, this part 39, and part 190 of this chapter, which continue to apply.

§ 39.6 Fraud in connection with the clearing of transactions by a recognized clearing organization.

It shall be unlawful for any person, directly or indirectly, in or in connection with the clearing of any transaction specified in § 39.1(a) by a recognized clearing organization:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) Willfully to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(c) Willfully to deceive or attempt to deceive any other person by any means whatsoever.

Appendix A to Part 39—Application Guidance

This appendix provides guidance to applicants for recognition as recognized clearing organizations in connection with satisfying each of the core principles of § 39.4. This appendix is only illustrative of the types of matters an applicant may address, as applicable, in order to demonstrate satisfactorily that it meets the core principles and is not intended to be a mandatory checklist of issues to address.

Core Principle 1—Financial Resources. Have adequate financial resources to fulfill its guarantee function without interruption in reasonably foreseeable market conditions.

In addressing core principle 1, applicants may describe or otherwise document:

1. The amount of resources dedicated to supporting the clearing function:

a. The amount of resources available to the clearing organization and the sufficiency of those resources to assure that no break in clearing operations would occur in a variety of market conditions; and

b. The level of member/participant default such resources could support as demonstrated through use of hypothetical default scenarios that explain assumptions and variables factored into the illustrations.

2. The nature of resources dedicated to supporting the clearing function:

a. The type of the resources, including their liquidity, and how they could be

accessed and applied by the clearing organization promptly; and

b. Any legal or operational impediments or conditions to access.

Core Principle 2—Participant Eligibility. Have appropriate admission and continuing eligibility standards for members or participants of the organization.

In addressing core principle 2, applicants may describe or otherwise document:

1. Member/participant admission criteria:

a. How admission standards for its clearing members would contribute to the soundness and integrity of operations; and

b. Matters such as whether these criteria would be in the form of organization rules that apply to all clearing members, whether different levels of membership would relate to different levels of net worth, income, and creditworthiness of members, and whether margin levels, position limits and other controls would vary in accordance with these levels.

2. Member/participant continuing eligibility criteria:

a. A program for monitoring the financial status of its members; and

b. Whether and how the clearing organization would be able to change continuing eligibility criteria in accordance with changes in a member's financial status.

3. The clearing function for each instrument the organization undertakes to clear.

Core Principle 3—Risk Management. Have the ability to manage the risks associated with carrying out its guarantee function through the use of tools and procedures appropriate under the circumstances.

In addressing core principle 3, applicants may describe or otherwise document:

1. Use of risk analysis tools and procedures:

a. How the adequacy of the overall level of financial resources would be tested on an ongoing periodic basis in a variety of market conditions; and

b. How the organization would use specific risk management tools such as stress testing and value at risk calculations.

2. Use of collateral:

a. How appropriate forms and levels of collateral would be established and collected;

b. How amounts would be adequate to secure prudentially obligations arising from clearing transactions and performing as a central counterparty;

c. The process for determining appropriate margin levels for an instrument cleared and for clearing members;

d. The appropriateness of required or allowed forms of margin given the liquidity and related requirements of the clearing organization;

e. How the clearing organization would value open positions and collateral assets; and

f. The proposed margin collection schedule and how it would relate to changes in the value of market positions and collateral values.

3. Use of credit limits: If and how systems would be implemented that would prevent members and other market participants from exceeding credit limits.

4. Use of cross-margin programs: How collateral assets subject to cross-margining programs would provide, where applicable, for clear, fair, and efficient loss-sharing arrangements in the event of a program participant default.

Core Principle 4—Settlement Procedures. Have the ability to complete settlements on a timely basis under varying circumstances, to maintain an adequate record of the flow of funds associated with the transactions it clears, and, to the extent applicable, to comply with the terms and conditions of any netting or offset arrangements with other clearing organizations.

In addressing core principle 4, applicants may describe or otherwise document:

1. Settlement timeframe:

a. Procedures for completing settlements on a timely basis during times of normal operating conditions; and

b. Procedures for completing settlements on a timely basis in varying market circumstances including during a period when a significant participant or member has defaulted.

2. Recordkeeping:

a. The nature and quality of the information collected concerning the flow of funds involved in clearing and settlement; and

b. How such information would be recorded, maintained and accessed.

3. Interfaces with other clearing organizations: How compliance with the terms and conditions of netting or offset arrangements with other clearing organizations would be met, including, among others, common banking or common clearing programs.

Core Principle 5—Treatment of Member and Participant Funds. Have adequate procedures designed to protect the safety of member and participant, and as applicable, customer funds held by the clearing organization.

In addressing core principle 5, applicants may describe or otherwise document:

1. Safe custody:

a. The safekeeping of funds, whether in accounts, in depositories, or with custodians, and how it would meet industry standards of safety;

b. Any written terms regarding the legal status of the funds and the specific conditions or prerequisites for movement of the funds; and

c. The extent to which the deposit of funds in accounts in depositories or with custodians would limit concentration of risk.

2. Segregation between customer and proprietary funds: Requirements or restrictions regarding commingling customer with proprietary funds, obligating customer funds for any purpose other than to purchase, clear, and settle the products the clearing organization is clearing, or which are subject to cross-margin or similar agreements, and any other aspects of customer fund segregation.

3. Investment standards: How customer funds would be invested consistent with high standards of safety and associated recordkeeping regarding the details of such investments.

Core Principle 6—Default Rules and Procedures. Have rules and procedures designed to allow for the effective and fair management of events when members or participants become insolvent or otherwise default on their obligations to the clearing organization.

In addressing core principle 6, applicants may describe or otherwise document:

1. Definition of default:

a. The definition of default and how it would be established and enforced; and

b. How the applicant would address failure to meet margin requirements, the insolvent financial condition of a member or participant, failure to comply with certain rules, failure to maintain eligibility standards, actions taken by other regulatory bodies, or other events.

2. Remedial action: The authority pursuant to which, and how, the clearing organization may take appropriate action in the event of the default of a member which may include, among other things, closing out positions, replacing positions, set-off, and applying margin.

3. Process to address shortfalls: Procedures for the prompt application of clearing organization and/or member financial resources to address monetary shortfalls resulting from a default.

4. Customer priority rule: Rules and procedures regarding priority of customer accounts over proprietary accounts of defaulting members or participants and, where applicable, in the context of specialized margin reduction programs such as cross-margining or trading links with other exchanges.

Core Principle 7—Rule Enforcement. Have arrangements and resources for the effective monitoring and enforcement of compliance with its rules and, as applicable, for resolution of disputes.

In addressing core principle 7, applicants may describe or otherwise document:

1. Surveillance: Arrangements and resources for the effective monitoring of compliance with rules relating to clearing practices and financial surveillance.

2. Enforcement: Arrangements and resources for effective enforcement of rules and authority and ability to discipline and limit or suspend a member's or participant's activities pursuant to clear and fair standards.

3. Dispute resolution: Where applicable, arrangements and resources for resolution of disputes between customers and members, and between members.

Core Principle 8—System Safeguards. Have a program of testing, oversight and risk analysis to ensure that its automated systems function properly and have adequate capacity, security, emergency, and disaster recovery procedures.

In addressing core principle 8, applicants may describe or otherwise document:

1. Oversight/risk analysis program:

a. Whether a program addresses appropriate principles for the oversight of automated systems to ensure that its clearing systems function properly and have adequate capacity and security;

b. Emergency procedures and a plan for disaster recovery; and

c. Periodic testing of back-up facilities and ability to provide timely processing, clearing, and settlement of transactions.

2. Appropriate periodic objective system reviews/testing:

a. Any program for the periodic objective testing and review of the system, including tests conducted and results; and

b. Confirmation that such testing and review would be performed or assessed by a qualified independent professional. A professional that is a certified member of the Information Systems Audit and Control Association experienced in the industry is an example of an acceptable party to carry out such testing and review.

Core Principle 9—Governance. Have appropriate fitness standards for owners or operators with greater than ten percent interest or an affiliate of such an owner, and for members of the governing board, and a means to address conflicts of interest in making decisions.

In addressing core principle 9, applicants may describe or otherwise document:

1. Standards for fitness for clearing organization owners, operators, affiliates of owners or operators, and members of the governing board based on disqualification standards under section 8a(2) of the Act and a history of serious disciplinary offenses, such as those which would be disqualifying under § 1.63 of this chapter.

2. Collection and verification of information supporting compliance with standards: Verification information could be registration information or certification of fitness or affidavit of fitness by outside counsel based on other verified information.

3. Methods to ascertain presence of conflicts of interest and methods of making decisions in that event.

4. A recognized clearing organization may not limit its liability or the liability of any of its officers, directors, employees, licensors, contractors and/or affiliates where such liability arises from such person's violation of the Act or Commission rules, fraud, or wanton or willful misconduct.

Core Principle 10—Reporting. Provide all information requested by the Commission for it to conduct its oversight function of the clearing organization's activities.

In addressing core principle 10, applicants may describe or otherwise document:

1. Information necessary for the Commission to perform its oversight activities of the recognized clearing organization's activities:

a. Information available to or generated by the clearing organization that will be made available to the Commission, upon request and/or as appropriate, to enable the Commission to perform properly its oversight function, including counterparties and their positions, stress test results, internal governance, legal proceedings, and other clearing activities;

b. The types of information which are not believed to be necessary to provide to the Commission and why; and

c. The information the organization intends to make routinely available to members/participants or the general public.

2. Provision of information:

a. The manner in which all relevant information will be provided to the Commission whether by electronic or other means; and

b. The manner in which any information will be made available to members/participants and/or the general public.

Core Principle 11—Recordkeeping. Keep full books and records of all activities relating to its business as a recognized clearing organization in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

In addressing core principle 11, applicants may describe or otherwise document:

1. Maintenance of records related to the function of a clearing organization in a form and manner acceptable to the Commission:

a. The different activities related to the function of the clearing organization for which the organization intends to keep books or records; and

b. Any activity related to the function of a clearing organization for which the organization does not intend to keep books or records and why this is not viewed as necessary.

2. How the entity would satisfy the requirements of § 1.31 of this chapter including:

a. What ''full'' or ''complete'' would encompass with respect to each type of book or record that would be maintained;

b. How books or records would be compiled and maintained with respect to each type of activity for which such books or records would be kept;

c. Confirmation that books and records would be open to inspection by any representative of the Commission or of the U.S. Department of Justice;

d. How long books and records would be readily available and how they would be made readily available during the first two years; and

e. How long books and records would be maintained (and confirmation that, in any event, they would be maintained for at least five years).

Core Principle 12—Public Information. Publicly disclose information concerning the rules and operating procedures governing its clearing and settlement systems, including default procedures.

In addressing core principle 12, applicants may describe or otherwise document:

Disclosure of information regarding rules and operating procedures governing clearing and settlement systems:

a. Which rules and operating procedures governing clearing and settlement systems should be disclosed to the public, to whom they would be disclosed, and how they would be disclosed;

b. What other information would be available regarding the operation, purpose and effect of rules;

c. How member/participants may become familiar with such procedures before participating in operations; and

d. How member/participants will be informed of their specific rights and obligations preceding a default and upon a default, and of the specific rights, options and obligations of the clearing organization preceding and upon the participant's default.

Core Principle 13—Information Sharing. Participate in domestic and international information-sharing agreements as appropriate, and use information obtained from such agreements in carrying out the clearing organization's risk management program.

In addressing core principle 13, applicants may describe or otherwise document:

1. Applicable appropriate domestic and international information-sharing agreements and arrangements including the different types of domestic and international information-sharing arrangements, both formal and informal, which the clearing organization views as appropriate and applicable to its operations.

2. Using information obtained from information-sharing arrangements in carrying out risk management and surveillance programs:

a. How information obtained from any information-sharing arrangements would be used to further the objectives of the clearing organization's risk management program and any of its surveillance programs including financial surveillance and continuing eligibility of its members/participants;

b. How accurate information is expected to be obtained and the mechanisms or procedures which would make timely use and application of all information; and

c. The types of information expected to be shared and how that information would be shared.

Core Principle 14—Competition. Operate in a manner consistent with the public interest to be protected by the antitrust laws.

Pursuant to Core Principle 14, an entity seeking recognition as a recognized clearing organization may request the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies at the time of application for recognition or thereafter. The Commission intends to apply section 15 of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

Issued in Washington, D.C., this 21st day of November, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[This statement will not appear in the Code of Federal Regulations.]

Concurrence of Commissioner Thomas J. Erickson Regarding Final Rules for a New Regulatory Framework for Clearing Organizations

I concur with the adoption of the final rules relating to clearing organizations. Increasingly, clearing is being de-coupled from the exchange. More electronic

exchanges are choosing to contract with new or existing clearing organizations for this aspect of traditional exchange activity. From what the Commission heard at the public hearing on the proposed framework, this trend is expected to continue and accelerate. Accordingly, this proposal represents a first step toward providing clearing organizations with the flexibility they will need to adapt to this new environment.

Nevertheless, I am sympathetic to the concerns of domestic clearing organizations regarding competition, jurisdiction and scope. Specifically, the final rule's treatment of securities clearinghouses, banks, bank affiliates, and foreign clearinghouses with regard to the requirements of Part 39 would appear to subject futures clearinghouses to a significant competitive disadvantage. The Commission's final rules justify this approach with little more than the observation that it is consistent with the ''unanimous recommendations of the President's Working Group.'' [1] Much more needs to be done so that one segment of the industry is not disproportionately affected and unfairly hamstrung by these regulations. Therefore, while I support the final rules to the extent they represent the Commission's willingness to meet the evolving marketplace with innovative approaches, I do so with the caveat that Part 39 will clearly need the Commission's full attention in order to ensure that the Commission is not picking winners and losers. At a minimum, since these reforms follow so closely the recommendations of the President's Working Group, I hope that the members of the PWG will respond swiftly to today's action by making parallel changes to their own regulatory schemes implementing the PWG's recommendations.

Date: November 20, 2000.

Thomas J. Erickson,

Commissioner.

[FR Doc. 00–30269 Filed 12–12–00; 8:45 am]

BILLING CODE 6351–01–P

[1] *See* Final Rules for a New Regulatory Framework for Clearing Organizations, p.12.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 35

RIN 3038–AB58

Exemption for Bilateral Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting final rules to clarify the operation of the current swaps exemption. In addition, in a companion notice of final rulemaking published in this edition of the **Federal Register**, the Commission is adopting rules that provide for the clearing of transactions under the revised exemption. The Commission, in other companion releases, also is adopting a new regulatory framework to apply to multilateral transaction execution facilities and to market intermediaries. This new framework establishes a number of new market categories, including a category of exempt multilateral transaction execution facility. Nothing in these releases, however, affects the continued vitality of the Commission's exemption for swaps transactions in effect before December 13, 2000, or any of its other existing exemptions, policy statements or interpretations.

EFFECTIVE DATE: February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, or Nancy E. Yanofsky, Assistant Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. E-mail: *PArchitzel@cftc.gov* or *NYanofsky@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. The Proposed Rules

On June 22, 2000, the Commission published proposed amendments to its part 35 swaps exemption to expand and to clarify its operation, including the availability of clearing for these transactions.[1] These amendments were proposed in order to provide greater legal certainty to the over-the-counter (OTC) markets and to reduce systemic risk. The President's Working Group on Financial Markets (PWG) [2] and the chairmen of the Commission's Congressional oversight committees encouraged the Commission in this undertaking.

The Commission proposed the amendments to part 35 in light of the changes that have occurred in the OTC markets since the Commission adopted its Swaps Policy Statement in 1989, and its subsequent part 35 swaps exemption in 1993. In the intervening years, the OTC derivatives markets have experienced dramatic and sustained growth. During this period, OTC financial derivatives have developed into global markets having outstanding contracts with a total notional value of over $90 trillion.[3] OTC derivatives have transformed finance, increasing the range of financial products available for managing risk.

The Commission proposed making several changes to part 35. First, the Commission proposed deleting specific reference to ''swaps'' within the exemption itself. Instead, the rule would refer to a ''contract, agreement or transaction'' that meets the requisite exemptive conditions. Moreover, as suggested by the PWG Report, the Commission proposed to delete the requirement that exempt transactions not be fungible or standardized and to make clear that insofar as such exempt transactions may be cleared, creditworthiness of the counterparty is not a condition of the exemption. PWG Report at 17. In addition, the Commission proposed, through an exemption from the private right of action provision of section 22 of the Act, that transactions entered into in reliance on the part 35 swaps exemption would not be subject to a claim for rescission solely due to a violation of the exemption's requirements. See *id.* at 18.

In proposing the rules, the Commission affirmed the continuing vitality of the exemptive relief that it had previously granted to transactions in the OTC market, including the part 35 exemption, the Policy Statement Concerning Swap Transactions (54 FR 30694 (July 21, 1989)) (Swaps Policy Statement), the Statutory Interpretation Concerning Forward Transactions (55 FR 39188 (Sept. 25, 1990)) (Energy Interpretation), and the Exemption for Certain Contracts Involving Energy Products (58 FR 21286 (April 20, 1993)) (Energy Exemption). Moreover, in recognition of its continuing vitality and to assist the public in locating it, the Commission proposed publishing the Swaps Policy Statement as Appendix A to part 35.

II. Comments Received

The Commission received 31 comment letters on the proposed rulemaking.[4] The commenters included

[1] 65 FR 39033 (June 22, 2000).

[2] Recognizing the importance of the OTC derivatives markets, the chairmen of the Senate and House Agriculture Committees requested that the PWG conduct a study of OTC derivatives markets. After studying the existing regulatory framework of OTC derivatives, recent innovations, and the potential for future developments, the PWG on November 9, 1999, reported to Congress its recommendations. See Over-the-Counter Derivatives Markets and the Commodity Exchange Act, Report of the President's Working Group on Financial Markets (PWG Report). The PWG Report focused on promoting innovation, competition, efficiency, and transparency in OTC derivatives markets and in reducing systemic risk.

[3] See Our Estimates of Global Size Market (visited Oct. 10, 2000), *http://www.swapsmonitor.com.*

[4] In addition to these 31, a significant number of letters commenting on aspects of the regulatory framework in companion notices were also submitted to the Commission. In this and three companion Notices of Final Rulemaking which are being published in this edition of the **Federal Register**, comment letters (CLs) are referenced by file number, letter number and page. Comments filed in response to the notice of proposed

nine trade associations,[5] three future exchanges,[6] two brokerage firms,[7] a coalition of commercial and investment banks,[8] four law firms,[9] four representatives of the energy services community,[10] an agricultural firm [11] and others.[12]

The majority of commenters strongly supported the Commission's proposed amendments and expressed the view that the amendments, among other things, would increase legal certainty for the OTC market. Two commenters took the opposite view, expressing jurisdictional concerns. The commenters also raised a number of technical issues concerning the operation of the exemption, the definition of ''eligible participant'' and other matters. The comments are addressed in the final rules section below.

III. The Final Rules

A. The Exemption

Except for certain technical changes, the Commission is adopting the proposed rules expanding and clarifying the operation of the swaps exemption as final rules. As noted above, the majority of commenters strongly supported the amendments, expressing the view that they will increase legal certainty for the OTC market and reduce systemic risk. See, *e.g.*, CL 24–6; CL 24–8; CL 24–25; CL 24–29; CL 24–30; CL 24–31; CL 24–34; CL 24–36. The International Swaps and Derivatives Association (ISDA) views the proposed amendments as necessary to ensuring that new and evolving risk management tools will enjoy legal certainty comparable to that which has been available to transactions covered by the Commission's swaps exemption since 1993. CL 24–8 at 2. See also CL 24–6 at 3; CL 24–29 at 3–4. ISDA specifically commented that: The proposed expansion of the exemption to cover all bilateral agreements would ''enable market participants to focus on legal and economic substance rather than labels'' (CL 24–8 at 3); that the elimination of the requirement that exempt transactions not be standardized or fungible would ''eliminate a potential source of uncertainty with respect to the scope of the exemption'' (*id.*); that the authorization of clearing would ''eliminate the 'Hobson's Choice' that now exists between legal certainty and the use of clearing to reduce systemic risk'' (*id.*); and that the nonrepudiation provisions would deal directly with the ''main source of legal risk under the CEA'' (*id.* at 5). As ISDA noted, the substantial growth of the OTC swaps market since the Commission first promulgated part 35 in 1993:

> did not occur in a vacuum. It was fostered by this Commission in an earlier regulatory initiative commencing with the release of the Swaps Policy Statement in 1989 and continuing with the promulgation of the Swaps Exemption * * * and the Hybrids Exemption * * * These latter actions were of course entirely consistent with the intent of Congress, as reflected in the enactment of the Futures Trading Practices Act of 1992. * * * The pivotal role that OTC derivatives transaction [sic] now play in our economy is an outgrowth of these earlier policies of the Commission and the continuing expressions of support for those policies by Congress. ISDA believes that the proposed regulatory initiative now under consideration can and should be viewed as a vital and positive step in carrying out the Commission's long-standing policy with respect to OTC derivatives.
>
> ISDA believes that * * * the proposed regulatory initiative is an important change for the better. We applaud the sensitivity of both the Commission and its professional staff to the need to avoid structuring the proposals in ways that could result in legal *un*certainty, and we believe that the proposals *will not* have this effect. We likewise applaud the decision of the Commission to propose specific actions intended to increase, within the parameters of the CEA, legal certainty and we believe the proposals *will* have this effect. * * *

(CL 24–8 at 2; emphasis in original).

One commenter, however, the Regulatory Studies Program of the Mercatus Center (Mercatus), expressed the view that, by expanding the category of products to which the exemption applies, the Commission may exacerbate rather than reduce legal uncertainty. CL 24–21 at 4–5. Mercatus is concerned about the ''implications'' of the broad definitions used, commenting that, if adopted as proposed, the Commission could attempt to exercise its antifraud authority over contracts, agreements and transactions as to which it has no jurisdiction. *Id.* Mercatus suggests that the Commission instead limit the scope of part 35 to instruments over which the Act vests the Commission with jurisdiction, such as ''contracts of sale of a commodity for future delivery.'' *Id.* at 9.[13]

These amendments, however, do not expand the Commission's jurisdiction. To the contrary, the substance of part 35's scope provision remains unchanged from the current part 35 exemption.[14] Furthermore, the Commission's antifraud authority in rule 35.3, as proposed and as being adopted herein, is limited to ''*transactions and persons otherwise subject to those [antifraud] provisions*'' (emphasis added). Thus, the antifraud provisions will continue to apply only to those transactions already covered by them. The Commission's approach is consistent with how Congress intended the Commission to exercise its exemptive authority.[15]

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rulemaking on multilateral transaction execution facilities, parts 36–38, are contained in file No. 21, on the notice of proposed rulemaking on intermediaries in file No. 22, on the notice of proposed rulemaking on clearing organizations in file No. 23 and on the notice of proposed rulemaking on the part 35 exemption in file No. 24. These letters are available through the Commission's internet web site, http://www.cftc.gov.

[5] The associations that filed comment letters are the Managed Funds Association, the International Swaps and Derivatives Association, Inc., the National Grain and Feed Association, the Futures Industry Association, the Commodity Floor Brokers & Traders Association, the Silver Users Association, the Weather Risk Management Association, the Association for Investment Management and Research, Advocacy Advisory Committee, Derivatives Subcommittee, and the Securities Industry Association, OTC Derivatives Products Committee.

[6] The futures exchanges that filed comment letters are the Chicago Board of Trade, the New York Mercantile Exchange and the Chicago Mercantile Exchange.

[7] The brokerage firms that filed comment letters are Merrill Lynch & Co. Inc. and J.P. Morgan Securities Inc.

[8] The coalition of commercial and investment banks (the Coalition) consists of the following financial institutions: The Chase Manhattan Bank, Citigroup Inc., Credit Suisse First Boston Inc., Goldman Sachs & Co., Merrill Lynch & Co., Inc. and Morgan Stanley Dean Witter & Co.

[9] The law firms that filed comment letters are Covington & Burling, McDermott, Will & Emery, on behalf of Virginia Electric & Power Company, Vinson and Elkins, and Gardner, Carter and Douglas.

[10] The representatives of the energy services community that filed comment letters are Williams Energy Marketing and Trading Company, the California Power Exchange, Oxy Energy Services, Inc. and Petrocosm Corporation.

[11] The agricultural firm that filed a comment letter is Cargill.

[12] The others filing comment letters are the National Futures Association, the Financial Markets Lawyers Group, the Federal Reserve Bank of Chicago, the U.S. Department of the Treasury, the Regulatory Studies Program of the Mercatus Center, Reuters Group PLC, and The EBS Partnership.

[13] J.P. Morgan Securities Inc. (J.P. Morgan) raises jurisdictional issues similar to those raised by Mercatus, while specifically focusing on the Commission's proposed rules concerning exempt multilateral transaction execution facilities and recognized clearing organizations. CL 24–19 at 2–5. The Commission is responding to those comments more thoroughly in its companion releases on those matters.

[14] Commission rule 35.1(a) provides that the provisions of the exemption apply to any transaction ''*which may be subject to the Act*'' (emphasis added). The final rules amend this scope provision to incorporate a technical amendment which substitutes the phrase ''any contract, agreement or transaction'' for ''any swap agreement.'' This change merely conforms the formal statement of scope in rule 35.1(a) to the substantive provisions of the rule.

[15] When it adopted section 4(c) in 1992, the Conferees of the Congress stated:

> The Conferees do not intend that the exercise of exemptive authority by the Commission [under section 4(c)] would require any determination

Continued

Moreover, the contract nonrepudiation provision that the Commission is adopting today further removes any potential legal uncertainty. As one commenter, McDermott, Will & Emery, on behalf of Virginia Electric & Power Company, noted, this provision ''would prevent economically disappointed counterparties from bringing a private cause of action seeking to void the contract on the theory that it is illegal.'' CL 24–25 at 2. This provision, as ISDA commented, will reduce legal uncertainty because ''[it] deal[s] directly with the main source of legal risk under the CEA.'' CL 24–8 at 5.

The expansion of the exemption to cover all bilateral ''contracts, agreements and transactions'' was endorsed by most other commenters. As one commenter, Reuters Group PLC, noted, this amendment should permit a ''substantially broader range of transactions to enjoy a new level of legal certainty.'' CL 24–30 at 2. In this regard, the Commission believes that certain pending matters may now be considered within the context of the new regulatory framework.

Two commenters, a coalition of commercial and investment banks (the Coalition)[16] and the OTC Derivatives Products Committee of the Securities Industry Association (SIA), recommended two changes regarding the operation of the exemption. CL 24–31; CL 24–36. First, they suggested that the Commission delete the requirement of the exemption that, in cases where a transaction is not submitted for clearing,[17] the creditworthiness of the counterparty be a material consideration in entering into the transaction. These commenters believe that retention of the creditworthiness requirement for non-cleared transactions will create uncertainty and confusion as to what types of non-cleared transactions are permissible. The Commission agrees and has deleted the creditworthiness requirement from part 35.

The Coalition and SIA also recommended that rule 35.2(d) be amended to authorize explicitly the netting of deliveries or delivery obligations in connection with transactions pursuant to part 35. Currently, part 35 permits bilateral arrangements for the netting of *payment obligations.* It also permits multilateral arrangements for the netting of *payments* ''provided that the underlying gross obligations among the parties are not extinguished until all netted obligations are fully performed.'' 58 FR at 5591. SIA commented that many categories of OTC derivatives require or permit settlement by delivery, that it can see no policy reason for excluding netting of such deliveries while permitting netting of payments, and that permitting such netting would be consistent with the goal of reducing systemic risk for OTC derivatives. CL 24–36 at 10. In light of these comments, the Commission is clarifying that the types of netting agreements that are permissible under part 35 include arrangements for the netting of delivery obligations or deliveries, respectively. As is currently the case for multilateral netting of payments, multilateral netting of deliveries would be permitted provided that the underlying gross obligations among the parties are not extinguished until all netted obligations are fully performed.

ISDA, the Coalition and SIA suggested that the Commission clarify that the determination whether a party is an eligible participant is to be determined by whether there was a reasonable belief at the time the transaction was entered into that a party was an eligible participant. CL 24–8 at 3; CL 24–31 at 8; CL 24–36 at 8. The language of the exemption currently tracks the language of the statute, which provides that the Commission shall not grant an exemption under section 4(c) of the Act unless the Commission determines that the exempted transaction ''will be entered into solely between appropriate persons.'' 7 U.S.C. 6(c)(2)(B)(i). However, as the Commission noted when it adopted the swaps exemption in 1993 (58 FR at 5589; footnotes omitted):

> As the Act specifies that the swap agreement may only be ''entered into'' by appropriate persons, this determination is to be made at the inception of the transaction. Further, it is sufficient that the parties have a reasonable basis to believe that the other party is an eligible swap participant at such time.

Furthermore, the Commission notes that the nonrepudiation provision specifically exempts a party from a rescission action based solely on the failure of the agreement to comply with the terms of the exemption when that party entered into the agreement with an eligible participant or with a counterparty ''reasonably believed by such party at the time the transaction was entered into'' to be an eligible counterparty.[18]

As part of its proposed amendments to part 35, the Commission proposed to publish its Swaps Policy Statement as Appendix A to part 35 and to include its Swaps Policy Statement and its Statutory Interpretation Concerning Certain Hybrid Instruments (55 FR 13582 (April 11, 1990)) (Hybrid Interpretation) within the nonrepudiation provision. The commenters generally supported these proposals, but recommended that the Commission update the Swaps Policy Statement, provide additional relief regarding the Treasury Amendment (7 U.S.C. 2(ii)) and revise and update the Hybrid Interpretation. CL 24–31 at 14–16; CL 24–36 at 3–7. As the Commission has noted, nothing in these rules affects the continuing vitality of the Commission's existing exemptions, policy statements or interpretations. The Commission is persuaded, however, that these commenters have raised important issues which, although outside the scope of this rulemaking, should be addressed expeditiously. The Commission plans to address these issues through a separate rulemaking or other appropriate action.

B. Eligible Participants

A number of commenters suggested changes to the definition of ''eligible participant'' in rule 35.1. The Commission proposed applying the definition of eligible participant set forth in the 1993 swaps exemption[19] to the revised and amended bilateral transaction exemption in part 35. Two commenters, the Managed Funds Association (MFA) and the Futures

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beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward.

H.R. Rep. No. 978, 102d Cong., 2d Sess. 82–83 (1992). The Commission did not make a determination in 1993 that the transactions that it was exempting under part 35 were or were not subject to its jurisdiction. The Commission similarly declined to make any such determination in proposing the current amendments to part 35 and will not make any such determination now.

[16] See note 8, *supra.*

[17] For rules pertaining to clearing, see part 39 which the Commission is adopting in a companion release in this edition of the **Federal Register**.

[18] The Commission has made a technical change to the nonrepudiation provision in rule 35.3(b) to make clear that the reasonable belief is to exist at the time the transaction is entered into. In addition, the Commission has reorganized the nonrepudiation provisions of section 35.3.

[19] That definition generally uses the list of ''appropriate persons'' set forth in section 4(c)(3)(A) through (J) of the Act, and utilizes the authority granted by section 4(c)(3)(K) to determine other persons to be appropriate persons (specifically, natural persons with total assets exceeding at least $10 million). The Commission placed certain financial and other limitations on various categories of appropriate persons, consistent with Congress' intent that the Commission may limit the terms of an exemption to some, but not all, of the listed categories of appropriate persons. See H.R. Rep. No. 978, 102nd Cong., 2d Sess. 79 (1992).

Industry Association (FIA), suggested that the Commission create a new category of eligible participant that would include certain large commodity trading advisors. CL 24–4 at 4; CL 24–12 at 11. Specifically, MFA and FIA suggested that commodity trading advisors (CTAs) with at least $25 million in assets under management be permitted to trade in all exempt markets on behalf of their customers, without regard to the individual customers' financial qualifications. FIA also suggested that registered investment advisers (IAs) with at least $25 million in assets under management be included in this category of eligible participant.

Several other commenters suggested additional modifications to the definition of eligible participant. ISDA, the Coalition, The EBS Partnership and SIA recommended that the definition of eligible participant be expanded to include several additional categories of financial institutions and to include agency transactions by eligible participants on behalf of other eligible participants. CL 24–8; CL 24–31; CL 24–34; CL 24–36. Certain commenters, including the California Power Exchange, the National Grain and Feed Association (NGFA) and the Weather Risk Management Association, suggested that the financial thresholds for corporations and other entities were too restrictive. CL 24–5; CL 24–10; CL 24–28. Other commenters, including the FIA, the Coalition and SIA, commented that the financial threshold for natural persons who enter into exempt transactions for risk management purposes should be reduced from a total asset test of $10 million to a total asset test of $5 million. CL 24–12; CL 24–31; CL 24–36. Finally, the National Futures Association suggested that the Commission impose a $5 million asset test on investment companies to conform the standard for those collective investment vehicles to that which applies to commodity pools. CL 24–4.[20]

After careful consideration of these comments, the Commission is modifying the definition of eligible participant to permit agency transactions by eligible participants on behalf of other eligible participants,[21] to include foreign banks and their U.S. branches and agencies and the regulated subsidiaries and affiliates of insurance companies within that definition and to include a $5 million asset test for investment companies (as is required for investment companies under the current part 36). The Commission will consider MFA's and NFA's suggestion that a new category of eligible participant be added for registered CTAs and IAs with at least $25 million in assets under management in conjunction with its subsequent review of relief for CPOs and CTAs.[22]

In response to the comments regarding expanding the categories of eligible financial institutions and reducing the financial thresholds for corporations and other entities, the Commission notes that the current definition of eligible participant contains a general corporate category, which itself contains alternative means of qualifying, and that this general corporate category enables many different types and sizes of entities (including financial institutions) to qualify as eligible participants under part 35. As the Coalition acknowledges (CL 24–31 at 6), many financial institutions that are not specifically encompassed by the definition of eligible participant fall within this general corporate category. The Commission believes that this general corporate category is an appropriate standard to determine corporate eligibility.[23]

C. Agricultural Trade Options

Finally, the NGFA and Cargill opined that the bilateral transaction exemption should be available for all transactions in the agricultural commodities enumerated in section 1a(3) of the Act, including agricultural trade options. CL 24–10 at 3; CL 24–15 at 1–2. The Commission is retaining in part 35 its reservation of rule 32.13 which governs trading in certain agricultural trade options at this time.[24] The Commission has not yet had sufficient experience with rule 32.13, which the Commission recently reconsidered and adopted (64 FR 68011 (December 6, 1999)), to determine whether the $10 million net worth level should be modified. Furthermore, at the time the Commission adopted that exemptive level it noted the lack of industry consensus on the issue. *Id.* at 68015. The Commission has no reason to believe that a greater level of consensus has been reached since that time.

The Commission reiterates that these amendments to the part 35 exemption are designed to enhance legal certainty. In adopting these amendments to part 35, the Commission is not making any determination that the exempted transactions are or are not subject to its jurisdiction. When it adopted section 4(c) in 1992, the Conferees of the Congress stated:

> The Conferees do not intend that the exercise of exemptive authority by the Commission [under section 4(c)] would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward.[25]

Moreover, these changes in no way call into question any transaction undertaken under part 35 before the adoption of these amendments. In recognition of its continuing vitality and to assist the public in locating it, the Commission as proposed is incorporating its 1989 Swaps Policy

[20] Many commenters also suggested modifications to the Commission's proposed definition of ''multilateral transaction execution facility'' in part 36. These comments are addressed in a companion release being issued by the Commission today adopting final rules governing multilateral transaction execution facilities. In this regard, the Commission notes that the use of the term ''bilateral'' in the title of part 35 does not import any independent requirements regarding the exemption. Taken together, however, part 35 governing bilateral transactions and parts 36 through 38 governing multilateral transactions execution facilities are intended to be seamless in the sense that transactions that do not fall within the definition of multilateral transaction execution facility in part 36 will be considered to be bilateral.

[21] In light of this general agency authorization by eligible participants on behalf of other eligible participants, the Commission is deleting the language in paragraphs 35.1(b)(2)(i), (ix) and (x) which specifically authorizes certain entities such as banks and futures commission merchants that are eligible participants to act in an agency capacity on behalf of other eligible participants. See 7 U.S.C. 6(c)(3)(A), (I) and (J). This specific authorization is now unnecessary.

[22] In a companion release being issued in this edition of the **Federal Register**, however, the Commission has modified the access standards for CTAs to provide that CTAs with at least $25 million under management may trade on a recognized derivatives transaction facility through any registered futures commission merchant. Moreover, in response to the comments of the futures exchanges, in the same companion release being issued today, the Commission has modified the eligibility standards for recognized derivatives transaction facilities to include certain registered floor brokers and floor traders. The Commission, however, is retaining the existing eligibility standards for floor brokers and floor traders when entering into bilateral transactions under part 35 (and when trading on exempt multilateral transaction execution facilities).

[23] Furthermore, with regard to the comments suggesting that some of the financial thresholds in the definition are too restrictive, the Commission notes that the part 35 definition of eligible participant has worked well over the years and that the amounts in real terms are less restrictive than when the exemption was first adopted.

[24] Rule 32.13 includes its own exemption which imposes a different financial threshold than part 35. Under rule 32.13(g), an option is exempt from various regulatory requirements if, among other things, each party to the option has a net worth of not less than $10 million. The Commission has reserved the application of rule 32.13 in part 35, see rule 35.3(a), and it is that reservation to which NGFA and Cargill object.

[25] H.R. Rep. No. 978, 102d Cong., 2d Sess. 82–83 (1992).

Statement as Appendix A to part 35.[26] Finally, the Commission again affirms the continuing applicability of its Energy Interpretation and its Energy Exemption which are not being changed or altered in any way by these part 35 amendments.

III. Section 4(c) Findings

These rule amendments are being promulgated under section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may by rule, regulation or order exempt any class of agreements, contracts or transactions, either unconditionally or on stated terms or conditions from any of the requirements of any provision of the Act. For any exemption granted pursuant to section 4(c), the Commission must find that the exemption would be consistent with the public interest. For any exemption granted pursuant to section 4(c) from the requirements of section 4(a), the Commission must further find that the section 4(a) requirements should not be applied to the agreement, contract or transaction to be exempted, that the exemption would be consistent with the public interest and the purposes of the Act, that the agreement, contract or transaction to be exempted would be entered into solely between appropriate persons and that the exemption would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.[27]

No one commented directly on the Commission's section 4(c) findings. Two U.S. futures exchanges, the Chicago Board of Trade and the Chicago Mercantile Exchange, however, cautioned the Commission to ensure that traditional exchange markets would not be put at an unfair competitive disadvantage within this new regulatory regime contemplated by this and the Commission's companion **Federal Register** releases. CL 24–7 at 12–13; CL 24–17 at 13–14. In this regard, the Commission believes that the regulatory lines that it has drawn are necessary and appropriate to protect the public interests embodied in the Act. Under the framework as a whole, the degree of regulation will turn on whether the market is multilateral, whether the market participants are eligible and whether or not the commodity is susceptible to manipulation. The Commission believes that these are appropriate factors on which to base regulatory differences and that, within the framework, the exchanges will be able to fairly compete with the OTC market.

The proposed exemption for bilateral transactions is available only to appropriate persons. Moreover, these amendments to part 35 will promote financial innovation and fair competition and reduce systemic risk. The Commission further finds that these proposed amendments would have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act. Finally, the Commission finds that these amendments are consistent with the public interest.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. A small entity is defined to include, *inter alia,* a ''small business'' and a ''small organization.'' 5 U.S.C. 601(6).[28] The Commission previously has formulated its own standards of what constitutes a small business with respect to the types of entities regulated by it. The Commission has determined that contract markets, futures commission merchants, registered commodity pool operators, and large traders should not be considered small entities for purposes of the RFA.[29]

The Commission believes that it is unlikely that firms defined as small businesses under Section 3 of the Small Business Act could offer or be offered transactions subject to the part 35 exemption and thus be affected by the rules exempting such transactions. See 58 FR 5587, 5593 (January 22, 1993). Further, the amendments to part 35 that the Commission is adopting today remove the requirement that the exempt transactions not be fungible or standardized as to their material economic terms and makes the expanded relief available to a broader category of transactions.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the amendments to part 35 will not have a significant economic impact on a substantial number of small entities. In this regard, the Commission notes that it did not receive any comments regarding the RFA implications of the amendments to part 35.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. As the Commission noted in proposing these amendments, it has determined that the PRA does not apply to these amendments because they do not contain information collection requirements which require the approval of the Office of Management and Budget. No comments were received concerning the Commission's determination in this regard.

List of Subjects in 17 CFR Part 35

Commodity futures, Commodity Futures Trading Commission.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2, 4, 4c, and 8a thereof, 7 U.S.C. 2, 6, 6c, and 12a, the Commission hereby revises part 35 of title 17 of the Code of Federal Regulations to read as follows:

PART 35—EXEMPTION OF BILATERAL AGREEMENTS

Sec.
35.1 Scope and definitions.
35.2 Exemption.
35.3 Enforceability.
Appendix A to Part 35—Policy Statement Concerning Swap Transactions

Authority: 7 U.S.C. 2, 6, 6c, and 12a.

§ 35.1 Scope and definitions.

(a) *Scope.* The provisions of this part shall apply to any contract, agreement or transaction which may be subject to the Act, and which has been entered into on or after October 23, 1974.

(b) *Definition.* As used in this part, ''eligible participant'' means, and shall be limited to, the following persons or classes of persons, either trading for their own account or through another eligible participant:

(1) A bank or trust company or a foreign bank or a branch or agency of a

[26] The Swaps Policy Statement originally was published at 54 FR 30694 (July 21, 1989). In this republication, the Commission has corrected certain typographical errors that appeared in the original publication.

[27] See 7 U.S.C. 6(c).

[28] ''Small organization,'' as used in the RFA, means ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field * * *.'' 5 U.S.C. 601(4). The RFA does not incorporate the size standards of the Small Business Administration for small organizations. Agencies are expressly authorized to establish their own definition of small organization. *Id.*

[29] 47 FR 18618–20 (Apr. 20, 1982).

foreign bank (as defined in section 1(b) of the International Bank Act of 1978 (12 U.S.C. 3101(b));

(2) A savings association or credit union;

(3) An insurance company that is regulated by a State or that is regulated by a foreign government and is subject to comparable regulation (including a regulated subsidiary or affiliate of such an insurance company);

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such investment company or foreign person is not formed solely for the specific purpose of constituting an eligible participant and has total assets exceeding $5,000,000;

(5) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an eligible participant and has total assets exceeding $5,000,000;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an eligible participant:

(i) Which has total assets exceeding $10,000,000, or

(ii) The obligations of which under the contract, agreement or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in paragraph (b)(6) of this section or by an entity referred to in paragraph (b)(1), (2), (3), (4), (5), (6) or (8) of this section; or

(iii) Which has a net worth of $1,000,000 and enters into the agreement in connection with the conduct of its business; or which has a net worth of $1,000,000 and enters into the agreement to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(7) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation: *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of either paragraph (b)(6) or (11) of this section;

(10) A futures commission merchant, floor broker, or floor trader subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation: *Provided, however,* that if such futures commission merchant, floor broker, or floor trader is a natural person or proprietorship, the futures commission merchant, floor broker, or floor trader must also meet the requirements of paragraph (b)(6) or (b)(11) of this section; or

(11) Any natural person with total assets exceeding at least $10,000,000.

§ 35.2 Exemption.

A contract, agreement or transaction is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to such contract, agreement or transaction, is exempt for such activity from all provisions of the Act (except in each case the provisions enumerated in § 35.3(a)) provided the following terms and conditions are met:

(a) The contract, agreement or transaction is entered into solely between eligible participants either trading for their own account or through another eligible participant;

(b) The contract, agreement or transaction is not entered into and traded on or through a multilateral transaction execution facility as defined in § 36.1 of this chapter; and

(c) The contract, agreement or transaction, if cleared, is submitted for clearance or settlement to a clearinghouse that is authorized under § 39.2 of this chapter.

(d) The provisions of paragraphs (b) and (c) of this section shall not be deemed to preclude:

(1) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment or delivery obligations resulting from such contracts, agreements or transactions;

(2) Arrangements or facilities among parties to such contracts, agreements or transactions that provide for netting of payments or deliveries resulting from such contracts, agreements or transactions; or

(3) The use of an electronic or non-electronic market or similar facility used solely as a means of communicating bids or offers by market participants or the use of such a market or facility by a single counterparty to offer to enter into or to enter into bilateral transactions with multiple counterparties.

(e) Any person may apply to the Commission for exemption from any of the provisions of the Act (except section 2(a)(1)(B)) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited thereto, the applicability of other regulatory regimes.

§ 35.3 Enforceability.

(a) Notwithstanding the exemption in § 35.2, sections 2(a)(1)(B), 4b, and 4o of the Act, § 32.9 of this chapter as adopted under section 4c(b) of the Act, § 32.13 of this chapter, and sections 6(c) and 9(a)(2) of the Act to the extent that they prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, continue to apply to transactions and persons otherwise subject to those provisions.

(b) A party to a contract, agreement or transaction that is with a counterparty that is an eligible participant (or counterparty reasonably believed by such party at the time the contract, agreement or transaction was entered into to be an eligible participant) shall be exempt from any claim, counterclaim or affirmative defense by such counterparty under section 22(a)(1) of the Act or any other provision of the Act:

(1) That such contract, agreement or transaction is void, voidable or unenforceable, or

(2) To rescind, or recover any payment made in respect of, such contract, agreement or transaction, based solely on the failure of such party or such contract, agreement or transaction to comply with the terms or conditions of the exemption under this part.

(c) A party to a contract, agreement or transaction that is entered into pursuant to the Statement of Policy Concerning Swap Transactions in appendix A to

this part 35 or the Statutory Interpretation Concerning Certain Hybrid Instruments, as the same may be revised by the Commission from time to time, shall be exempt from any claim under section 22(a)(1) of the Act or any other provision of the Act:

(1) That such contract, agreement or transaction is void, voidable or unenforceable, or

(2) To rescind, or recover any payment made in respect of, such contract, agreement or transaction, based solely on the failure of such party, or such contract, agreement or transaction, to comply with the Statement of Policy Concerning Swap Transactions in appendix A to this part 35 or the Statutory Interpretation Concerning Certain Hybrid Instruments, as the same may be revised by the Commission from time to time, respectively, or with any provision of the Act or other Commission rule or exemption, excluding, in the case of this paragraph, any claim for manipulation or fraud arising under a provision of the Act or Commission rules applicable by its terms to a contract, agreement or transaction that is not otherwise subject to regulation under the Act.

Appendix A to Part 35—Policy Statement Concerning Swap Transactions

(a) Background.

(1) Section 2(a)(1)(A) of the Commodity Exchange Act (CEA or Act) grants the Commission exclusive jurisdiction over ''accounts, agreements (including any transaction which is of the character of * * * an 'option' * * *), and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market * * * or any other board of trade, exchange, or market. * * *'' 7 U.S.C. 2. The CEA and Commission regulations require that transactions in commodity futures contracts and commodity option contracts, with narrowly defined exceptions, occur on or subject to the rules of contract markets designated by the CFTC.[1] In several recent releases[2] and in response to requests for case-by-case review of various proposed offerings,[3] the Commission has addressed the applicability of the Act and Commission regulations to various forms of commodity-related instruments offered and sold other than on designated contract markets. An overview of off-exchange transactions and issues was commenced by issuance in December 1987 of an Advance Notice of Proposed Rulemaking (Advance Notice). The Advance Notice requested comment concerning, among other things, a proposed no-action position concerning certain commercial transactions, which, as described, would have extended to certain categories of swap transactions.

(2) Based upon careful review of the comments received in response to the Advance Notice, indicating generally a need for greater clarity in this area, representations from market users, and consultations with other federal regulators concerning the issues raised by swap transactions, the Commission is issuing this policy statement to clarify its view of the regulatory status of certain swap transactions. This statement reflects the Commission's view that at this time most swap transactions, although possessing elements of futures or options contracts, are not appropriately regulated as such under the Act and regulations. This policy statement is intended to recognize a non-exclusive safe harbor for transactions satisfying the requirements set forth in this Appendix.

(b) Safe harbor standards. (1) In determining whether a transaction constitutes a futures contract, the Commission and the courts have assessed the transaction ''as a whole with a critical eye toward its underlying purpose.''[4] Such an assessment entails a review of the ''overall effect'' of the transaction as well as a determination as to ''what the parties intended.''[5] Although there is no definitive list of the elements of futures contracts, the CFTC and the courts recognize certain elements as common to such contracts.[6] Futures contracts are contracts for the purchase or sale of a commodity for delivery in the future at a price that is established when the contract is initiated, with both parties to the transaction obligated to fulfill the contract at the specified price. In addition, futures contracts are undertaken principally to assume or shift price risk without transferring the underlying commodity. As a result, futures contracts providing for delivery may be satisfied either by delivery or offset.

(2) In addition to these necessary elements, the CFTC and the courts also recognize certain additional elements common to exchange-traded futures contracts, including standardized commodity units, margin requirements related to price movements, clearing organizations which guarantee counterparty performance, open and competitive trading in centralized markets, and public price dissemination.[7] These additional elements facilitate the trading of futures contracts on exchanges and historically have developed in conjunction with the growth of organized contract

[1] 7 U.S.C. 6(a), 6c(b), 6c(c). Section 4(a) of the CEA provides, inter alia, that it is unlawful to enter into a commodity futures contract that is not made ''on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity.'' 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. 7 U.S.C. 6(a). The exchange trading requirement reflects Congress's view that such an environment would control speculation and promote hedging. H.R. Rep. No. 44, 67th Cong., 1st Sess. 2 (1921). See also 7 U.S.C. 5 (Congressional findings concerning necessity for regulation of futures and commodity option transactions). Pursuant to sections 4c(b) and 4c(d), 7 U.S.C. 6c(b) and 6c(d), of the CEA, the Commission has authority to permit transactions in commodity options which do not take place on contract markets. Currently, only two narrow categories of such option transactions exist: trade options (in which the offeree is a ''commercial user'' of the underlying commodity) and dealer options (in which the grantor fulfills the criteria of section 4c(d)(1) of the CEA). See also 54 FR 1128 (January 11, 1989) (Proposed Rules Concerning Regulation of Hybrid Instruments). Final Rules Concerning Regulation of Hybrid Instruments.

[2] 52 FR 47022 (December 11, 1987) (Advance Notice of Proposed Rulemaking); 54 FR 1139 (January 11, 1989) (Statutory Interpretation Concerning Certain Hybrid Instruments); 54 FR 1128 (January 11, 1989) (Proposed Rules Concerning Regulation of Hybrid Instruments). See also 50 FR 42963 (October 23, 1985) (Statutory Interpretation and Request for Comments Concerning Trading in Foreign Currencies for Future Delivery).

[3] The Commission staff's Task Force on Off-Exchange Instruments has addressed a number of proposed offerings of hybrid instruments in a series of published ''no-action'' letters. See, *e.g.,* CFTC Advisory No. 39–88, June 23, 1988 [Interpretative Letter No. 88–10, June 20, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,262] (notes indexed to dollar/Yen exchange rate); CFTC Advisory No. 45–88, July 19, 1988 [Interpretative Letter No. 88–11, July 13, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,284] (notes indexed to dollar/Yen exchange rate); CFTC Advisory No. 48–88, July 26, 1988 [Interpretative Letter No. 88–12, July 22, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,285] (notes indexed to dollar/foreign currency exchange rate); CFTC Advisory No. 58–88, August 30, 1988 [Interpretative Letter No. 88–16, August 26, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,312] (federally-chartered corporation issuing notes indexed to nationally disseminated measure of inflation published by a U.S. government agency); CFTC Advisory No. 63–88, September 21, 1988 [Interpretative Letter No. 88–17, September 6, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,320] (fixed-rate debentures with additional payments indexed to the price of natural gas over an established base price); CFTC Advisory No. 66–88, September 23, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,321 (certificates of deposit with interest payable at maturity indexed in part to the spot price of gold). See also CFTC Advisory No. 18–19, March 17, 1989 (letter dated November 23, 1988, concerning proposed sale of hay for delayed delivery).

[4] CFTC v. Co Petro Marketing Group, Inc., 680 F.2d 573, 581 (9th Cir. 1982).

[5] CFTC v. Trinity Metals Exchange, No. 85–1482–CV–W–3 (W.D. Mo. January 21, 1986) [citing CFTC v. National Coal Exchange, Inc. [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,424 at 26,046 (W.D. Tenn. 1982)].

[6] See generally, 52 FR 47022, 47023 (December 11, 1987) (citing In the Matter of First National Monetary Corp., [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 (CFTC 1985)); Letter to the Honorable Patrick Leahy and the Honorable Richard Lugar, Committee on Agriculture, Nutrition and Forestry, United States Senate, from Wendy L. Gramm, Chairman, Commodity Futures Trading Commission, dated May 16, 1989 (Attachment at 7–8). The Commission has explained that this does not mean that ''all commodity futures contracts must have all of these elements * * *'' In re Stovall, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 (CFTC 1979). To hold otherwise would permit ready evasion of the CEA.

[7] E.g., Advance Notice, 52 FR 47023; Letter to the Honorable Patrick Leahy and the Honorable Richard Lugar, Committee on Agriculture, Nutrition and Forestry, United States Senate, from Wendy L. Gramm, Chairman, Commodity Futures Trading Commission, dated May 16, 1989 (Attachment at 8); OGC Statutory and Regulatory Interpretation (Regulation of Leverage Transactions and Other Off-Exchange Future Delivery-Type Instruments), 50 FR 11656, 11657, n.2 (March 25, 1985); CFTC v. Co Petro Marketing Group, Inc., 680 F.2d 573 (9th Cir. 1982).

markets. The presence or absence of these additional elements, however, is not dispositive of whether a transaction is a futures contract.[8]

(3) In general, a swap may be characterized as an agreement between two parties to exchange a series of cash flows measured by different interest rates, exchange rates, or prices with payments calculated by reference to a principal base (notional amount).[9] Commenters have described the swap market as one in which the customary large transaction size effectively limits the market to institutional participants rather than the retail public.[10] Market participants also have noted that swaps typically involve long-term contracts, with maturities ranging up to twelve years.[11] In addition to these characteristics, many comparisons between swaps and futures contracts have stressed the tailored, non-standardized nature of swap terms; the necessity for particularized credit determinations in connection with each swap transaction (or series of transactions between the same counterparties); the lack of public participation in the swap markets; and the predominantly institutional and commercial nature of swap participants. Other commenters have stressed that, despite these distinctions in the manner of trading of swaps and exchange products, the economic reality of swaps nevertheless resembles that of futures contracts.

(4) The Commission recognizes that swaps generally have characteristics, such as individually-tailored terms, predominantly commercial and institutional participants, and expectation of being held to maturity, rather than offset during the term of the agreement, that may warrant distinguishing them from futures contracts. The criteria set forth in this Appendix identify certain swaps for which regulation under the CEA and Commission regulations is unnecessary. These safe harbor standards are consistent with policies reflected in the CEA's jurisdictional exclusion for forward contracts,[12] the Treasury Amendment,[13] and the trade option exemption,[14] and are otherwise consistent with section 2(a)(1)(A) of the CEA. Although these jurisdictional and exemptive or exclusionary provisions are not sufficiently broad to provide clear exemptive boundaries for many swaps, they reflect policies relevant to the safe harbor policy set forth in this Appendix and may encompass certain swap transactions.[15]

(5) Consequently, the Commission has determined that a greater degree of clarity may be achieved through safe harbor guidelines establishing specific criteria for swap transactions to which the Commission's regulatory framework will not be applied. Swaps satisfying the requirements set forth in this Appendix will not be subject to regulation as futures or commodity option transactions under the Act and regulations. This policy statement addresses only swaps settled in cash, with foreign currencies considered to be cash.[16]

(i) Individually-tailored terms. (A) Individual tailoring of the terms of swap agreements is frequently cited as indispensable to the operation of the swap market. Commenters have indicated that swap agreements are based upon individualized credit determinations and are tailored to reflect the particular business objectives of the counterparties. Tailoring occurs through private negotiations between the parties and may involve not only financial terms but issues such as representations, covenants, events of default, term to maturity, and any requirement for the posting of collateral or other credit enhancement. Such tailoring and counterparty credit assessment distinguish swap transactions from exchange transactions, where the contract terms are standardized and the counterparty is unknown. In addition, the tailoring of swap terms means that, unlike exchange contracts, which are fungible, swap agreements are not fully standardized.

(B) To qualify for safe harbor treatment, swaps must be negotiated by the parties as to their material terms, based upon individualized credit determinations, and documented by the parties in an agreement or series of agreements that is not fully standardized.[17] This requirement is intended to exclude from safe harbor treatment instruments which are fungible and therefore may be readily transferred and traded.

(ii) Absence of exchange-style offset. (A) Exchange-traded futures contracts generally

[8] In addition, the Commission and the courts have consistently recognized that ''the requirement that a futures contract be executed on a designated contract market is what makes the contract legal, not what makes it a futures contract.'' In the Matter of First National Monetary Corp., [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 at 30,975 (CFTC 1985); In re Stovall, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 at 23,776 (CFTC 1979). See, also, Interpretative Statement, ''The Regulation of Leverage Transactions and Other Off-Exchange Future Delivery Type Investments-Statutory Interpretation,'' 50 FR 11656 (March 25, 1985).

[9] See generally, Bank for International Settlements, Recent Innovations in International Banking at 37–60 (April 1986); S.K. Henderson, ''Swap Credit Risk: A Multi-Perspective Analysis,'' 44 Business Lawyer 365 (1989). Interest rate swaps have been described as having three primary forms: coupon swaps (fixed rate to floating rate swaps); basis swaps (swap of one floating rate for another floating rate); and cross-currency interest rate swaps (swaps of fixed rate payments in one currency to floating rate payments in another currency). Currency swap transactions involve agreements between two parties providing for exchanges of amounts in different currencies which are calculated on the basis of a pre-established interest rate, a specified exchange rate, and a specified notional amount. Commodity swaps generally include swap transactions similar in structure to interest rate swaps, except that payments are calculated by reference to the price of a specified commodity, such as oil.

[10] The average notional amount for swaps has been estimated at $24 million. Letter from the New York Clearing House to CFTC, dated April 6, 1989, commenting on Proposed Rule and Statutory Interpretation Concerning Certain Hybrid and Related Instruments.

[11] E.g., Letter to CFTC from the International Swap Dealers Association, Inc., dated April 8, 1988, concerning Advance Notice; letter to CFTC from Morgan Guaranty Trust Company of New York, dated April 11, 1988, concerning Advance Notice.

[12] Section 2(a)(1)(A) of the CEA provides that the term ''future delivery'' does not include sales of any cash commodity for deferred shipment or delivery. 7 U.S.C. 2. Sales of cash commodities for deferred delivery, or forward contracts, generally have been recognized to be commercial, merchandising transactions in physical commodities entered into by commercial counterparties who have the capacity to make or take delivery of the underlying commodity but in which delivery ''may be deferred for purposes of convenience or necessity.'' 52 FR 47027; In re Stovall, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 at 23,777–78 (CFTC 1979). The forward contract exclusion may apply to certain types of swap transactions.

[13] The Treasury Amendment provides that ''[n]othing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade.'' 7 U.S.C. 2. See generally, 50 FR 42963 (October 23, 1985) (CFTC Statutory Interpretation). See also, Commodity Futures Trading Commission v. American Board of Trade, 473 F. Supp. 117 (S.D.N.Y. 1979), aff'd, 803 F.2d 1242 (2d Cir. 1986). The Treasury Amendment may apply to some types of transactions also characterized as swaps.

[14] The trade option exemption, which is set forth in Rule 32.4(a), 17 CFR 32.4(a) (1988), authorizes commodity option transactions, other than those on commodities specified in rule 32.2(a), that are not executed on a designated contract market and that are:

Offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such. It should be noted that under Rule 32.4(a), only the offeree of the trade option need qualify as a ''commercial user'' or ''merchant.'' Rule 32.4(a) is silent concerning which party to a trade option may be the option buyer of a put or call or ''long,'' and which party may be the option seller of a put or call or ''short.'' As a result, provided that the qualifying commercial offeree is entering the trade option transaction solely for non-speculative purposes demonstrably related to its commercial business in the commodity which is the subject of the option transaction, the requirements of Rule 32.4(a) are met.

[15] The forward contract exclusion facilitates commodity transactions within the commercial merchandising chain. The trade option exemption similarly may be viewed as facilitating principal-to-principal transactions in which the offeree is a commercial party with respect to the underlying commodity. The Treasury Amendment reflects Congressional intent to avoid duplicative regulation of foreign currency transactions and other transactions in the interbank market supervised by bank regulatory agencies.

[16] As noted previously, certain categories of swap transactions may be subject to the forward contract exclusion, the Treasury Amendment and the trade option exemption. The safe harbor criteria set forth in this Appendix apply equally to options on swaps.

[17] Formation of swaps pursuant to a master agreement between two counterparties that establishes some or all contract terms for one or more individual swap transactions between those counterparties is not precluded by this requirement, provided that material terms of the master agreement and transaction specifications are individually tailored by the parties.

may be terminated by offset,[18] that is, liquidated through establishment of an equal and opposite position. For exchange-traded futures contracts, the universal counterparty to each cleared position is the clearing organization. Prior consent of the clearing organization, as counterparty, is unnecessary to offset.[19]

(B) In contrast, swap transactions have been described as transactions which create performance obligations terminable only with counterparty consent and which generally are expected to be maintained to maturity. A swap counterparty who seeks to eliminate the economic effect of a swap agreement may enter into a reverse swap agreement, that is, a second swap with the same maturity and payment requirements, with the same or a new counterparty, but in which the party seeking to eliminate its economic exposure assumes the reverse position (in this case the obligations of each party to both transactions continue to maturity). A swap counterparty who seeks to terminate, absent default, its obligations under a swap agreement may: Undertake a swap sale in which, based upon consent of the counterparty, it assigns its rights and obligations under the swap to a third party or negotiate an early termination of the transaction, or swap ''closeout,'' in which it negotiates a lump-sum payment with its counterparty to terminate the swap.[20] In the latter two cases, termination of the obligations created by a swap is dependent upon consent of the counterparty.

(C) To qualify for safe harbor treatment, the swap must create obligations that are terminable, absent default, only with the consent of the counterparty. If consent to termination is given at the outset of the agreement and a termination formula or price fixed, the consent provision must be privately negotiated. This requirement is intended to confine safe harbor treatment to instruments that are not readily used as trading vehicles, that are entered into with the expectation of performance, and that are terminated as well as entered into based upon private negotiation.

(iii) Absence of clearing organization or margin system. (A) As noted in paragraph (b)(5)(ii) of this Appendix, the necessity for individualized credit determinations has been described as a hallmark of swap transactions. A number of commenters have stressed both the dependence of the current swap market on such determinations and the absence of a multilateral ''credit support'' mechanism, such as a clearing organization, for swaps. In accordance with the concept of swaps as dependent upon private negotiation and individualized credit determinations as to the capacity of certain parties to perform, this safe harbor is applicable only to swap transactions that are not supported by the credit of a clearing organization and that are not primarily or routinely supported by a marked-to-market margin and variation settlement system designed to eliminate individualized credit risk.[21] The ability to impose individualized credit enhancement requirements to secure either changes in the credit risk of a counterparty or increases in the credit exposure between two counterparties consistent with the criteria in paragraph (b)(5)(ii) would not be affected.

(B) [Reserved]

(iv) The Transaction is Undertaken in Conjunction With a Line of Business.

(A) The absence of public participation in the swaps market has frequently been cited as a factor supporting different regulatory treatment of swaps and futures contracts. Swap market participants are predominantly institutional and commercial entities such as corporations, commercial and investment banks, thrift institutions, insurance companies, governments, and government-sponsored or chartered entities.[22]

(B) The safe harbor set forth in this Appendix is limited to swap transactions undertaken in conjunction with the parties' line of business.[23] This restriction is intended to preclude public participation in qualifying swap transactions and to limit qualifying transactions to those based upon individualized credit determinations. This restriction does not preclude dealer transactions in swaps undertaken in conjunction with a line of business, including financial intermediation services.

(v) Prohibition Against Marketing to the Public. Swap transactions eligible for safe harbor treatment may not be marketed to the public. This restriction reflects the institutional and commercial nature of the existing swap market and the Commission's intention to restrict qualifying swap transactions to those undertaken as an adjunct of the participant's line of business.

(c) Conclusion. This policy statement is intended to clarify the regulatory treatment of certain transactions in order to facilitate legitimate market transactions in a field distinguished by innovation and rapid growth. Consequently, the Commission proposes to continue to review on a case-by-case basis transactions that do not meet the criteria set out in this Appendix and that are not otherwise excluded from Commission regulation.

Issued in Washington, DC, this 21st day of November, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

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[18] In the context of exchange-traded futures, offset refers to the liquidation of a futures position through the acquisition of an opposite position. Availability of such offset, resulting in the liquidation of the position, typically is established by exchange rules governing exchange members' relationships with the clearing house. See, e.g., Chicago Mercantile Exchange Rule 808 (''a clearing member long or short any commodity to the Clearing House as a result of substitution may liquidate the position by acquiring an opposite position for its principal''); Board of Trade Clearing Corporation Regulation 705.00 (''Where a member buys and sells the same commodity for the same delivery, and such contracts are cleared through the Clearing House, the purchases and sales shall be offset to the extent of their equality, and the member shall be deemed a buyer from the Clearing House to the extent that his purchases exceed his sales, or a seller to the Clearing House to the extent that his sales exceed his purchases''); New York Futures Exchange Rule 3–4 (''As between the Clearing Corporation and the original parties to futures contracts and option contracts, such contracts shall be binding upon the original parties until liquidated by offset, delivery, exercise or expiration, as the case may be''). Of course, the ability to offset in any given case depends upon the availability of a counterparty to enter into an offsetting transaction at an acceptable price.

[19] However, the ability to liquidate contractual positions through offset is established by clearing organization rules to which all clearing members consent.

[20] Swap parties may agree in advance upon a termination formula or price for the swap.

[21] Several commenters urged the Commission to adopt a safe harbor for swaps that would be conditioned upon, among other things, the absence of a credit support mechanism. See Letter to CFTC from Sullivan & Cromwell, dated April 8, 1988, concerning Advance Notice, at 41–42; Letter to CFTC from Manufacturers Hanover, dated April 11, 1988, concerning Advance Notice, at 4. The safe harbor standard is based upon individualized credit determinations at the outset and during the pendency of the contract.

[22] Letter dated April 8, 1988, to CFTC from International Swap Dealers Associations, Inc. concerning Advance Notice.

[23] Swap transactions entered into with respect to exchange rate, interest rate, or other price exposure arising from a participant's line of business or the financing of its business would be consistent with this standard.

Federal Register

Wednesday,
December 13, 2000

Part III

Department of Housing and Urban Development

Notice of Funding Availability; Fair Share Allocation of Incremental Voucher Funding, Fiscal Year 2001; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–4632–N–01]

Notice of Funding Availability; Fair Share Allocation of Incremental Voucher Funding, Fiscal Year 2001

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability (NOFA).

SUMMARY: *Purpose of the Program.* The purpose of this NOFA is to invite public housing agencies (PHAs) to apply for vouchers on a fair share allocation basis under the Housing Choice Voucher Program. The vouchers are for issuance to families on a PHA's housing choice voucher waiting list to enable these families to rent decent, safe, and affordable housing of their choice on the private rental market.

Available Funds. Approximately $452,907,000 in one-year budget authority for approximately 79,000 housing choice vouchers. Prior to the funding of any new applications under this NOFA for FY 2001, $4,191,788 of this budget authority will be used to correct the underfunding of four PHAs under the FY 2000 Fair Share NOFA due to an error on the part of HUD. See Section II(C)(3) of this NOFA regarding the specific PHAs, dollar amounts and corresponding number of vouchers that each of the four PHAs will receive to correct the underfunding error. This will leave $448,715,212 in one-year budget authority available for the funding of approximately 78,475 vouchers for applications submitted in FY 2001 under this NOFA.

Eligible Applicants. Public housing agencies (PHAs). Indian Housing Authorities (IHA), Indian tribes and their tribally designated housing entities are not eligible applicants. The Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new housing choice voucher (Section 8) annual contributions contracts (ACC) with IHAs after September 30, 1997.

Application Due Date. January 29, 2001.

Match. None.

SUPPLEMENTARY INFORMATION: If you are interested in applying for funding under this NOFA, please read the balance of this NOFA which will provide you with detailed information regarding the submission of an application, Housing Choice Voucher Program requirements, the application selection process to be used by HUD in selecting applications for funding, and other valuable information relative to a PHA's application submission and participation in the program covered by this NOFA.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application (an original and one copy) is due on or before January 29, 2001 at the address shown below. This application deadline is firm. In the interest of fairness to all competing PHAs, HUD will not consider any application that is received after the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Address for Submitting Applications. Submit your original application and one copy to Michael E. Diggs, Director of the Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, D.C. 20024.

The Grants Management Center is the official place of receipt for all applications in response to this NOFA. A copy of the application is not required to be submitted to the local HUD Field Office. For ease of reference, the term ''local HUD Field Office'' will be used in this NOFA to mean the local HUD Field Office Hub and local HUD Field Office Program Center.

Hand Carried Applications. If you are hand delivering your application, your application is due by not later than 8:45 am to 5:00 pm, Eastern time, on the application due date to the Office of Public and Indian Housing's Grants Management Center (GMC) in Washington, DC.

Mailed Applications. Applications sent by U.S. mail will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received on or within ten (10) days of that date at the Grants Management Center.

Applications Sent By Overnight/Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received by the Grants Management Center before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

For Application Kit. An application kit is not available and is not necessary for submitting an application for funding under this NOFA. This NOFA contains all of the information necessary for the submission of an application for voucher funding in connection with this NOFA.

For Further Information and Technical Assistance. Prior to the application due date, you may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Room 4216, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1872, ext. 4064. Subsequent to application submission, you may contact the Grants Management Center at (202) 358–0273. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

II. Authority, Purpose, Fair Share Allocation Amount, Voucher Funding, and Eligibility

(A) Authority

Authority for the approximately $452,907,000 in one-year budget authority for housing choice vouchers for low-income families is found in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, FY 2001 (Pub.L. 106–377, approved October 27, 2000, referred to as the FY 2001 HUD Appropriations Act. The allocation of housing assistance budget authority for housing choice vouchers, by allocation area based on fair share factors, is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213(d) of the Housing and Community Development Act of 1974, as amended. Funding in the amount of $4,191,788 will be subtracted from the one-year budget authority of $452,907,000 in order to correct an underfunding error affecting four PHAs funded by HUD in FY 2000 under the FY 2000 Fair Share NOFA (see Section II(C)(3), Underfunding Corrections, in this NOFA).

(B) Purpose

The purpose of the housing choice voucher funding being made available under this NOFA is to provide housing assistance to very low-income families

to enable them to rent decent, safe, and affordable housing of their choice on the private market.

(C) Fair Share Allocation Amount

This NOFA announces the availability of approximately $452,907,000 in one-year budget authority for a fair share formula allocation which will provide rental assistance to approximately 79,000 very low-income families. Funding in the amount of $4,191,788 for 525 vouchers for four PHAs will first be subtracted from the $452,907,000 (leaving a balance of $448,715,212 for approximately 78,475 vouchers for FY 2001 applications submitted in response to this NOFA) to correct an underfunding error attributable to HUD under the FY 2000 Fair Share NOFA that affected four PHAs. (See Section II(C)(3), Underfunding Corrections.)

(1) Fair Share Allocation for Each Allocation Area

Appendix A of this NOFA lists the allocation of housing assistance budget authority for vouchers for each allocation area, based on fair share factors. Appendix A also provides an estimate of the total number of vouchers that could be funded from the housing assistance available for each allocation area based on the weighted local average costs of voucher assistance for a two-bedroom unit. The actual number of units assisted within each allocation area will vary from the estimates prepared by Headquarters since the actual costs of voucher assistance for each PHA vary from the average.

(2) Potential Additional Funding

If additional voucher funding becomes available for fair share use during FY 2001, HUD plans to distribute any additional funding to allocation areas using the same percentage distribution as reflected in Appendix A to this NOFA. Any additional funding will be used under the competitive requirements of this NOFA to fund PHA applications which were approvable but not funded, or approved and funded at less than 100 percent of the requested amount for which the PHA was eligible under this NOFA.

(3) Underfunding Corrections

If prior to the award of Fair Share funding under this NOFA, HUD determines that any awardees under the FY 2000 Fair Share NOFA have been underfunded due to an error attributable to HUD, funding will be increased to the amount that the awardee should have received. The Grants Management Center will, in coordination with the local HUD Field Office and the affected PHA, determine the number of units that should have been awarded the PHA under the FY 2000 NOFA and the funding amount that would currently be appropriate to fund that number of units under the voucher funding procedures in Section II.(D) of this FY 2001 Fair Share NOFA.

Prior to the issuance of this NOFA the determination was made that four PHA awardees under the FY 2000 Fair Share NOFA were underfunded due to HUD's failure to include these PHAs' Moving to Work (MTW) units when calculating the number of certificates and vouchers being administered for purposes of the number of vouchers a PHA was eligible to apply for and be funded. Funding in the amount of $4,191,788 will be subtracted from the Fair Share funding available under this NOFA to fund these four PHAs as follows: Seattle, Washington Housing Authority—$1,621,534 for 231 vouchers; Portland Oregon Housing Authority—$841,788 for 117 vouchers; Cambridge, Massachusetts Housing Authority—$1,514,386 for 133 vouchers; and Portage, Ohio Housing Authority—$214,080 for 44 vouchers.

(D) Voucher Funding

(1) Determination of Funding Amount for the PHA's Requested Number of Vouchers

HUD will determine the amount of funding that a PHA will be awarded under this NOFA based upon an actual annual per unit cost {except that for Moving to Work (MTW) agencies the per unit cost will be calculated in accordance with the agency's MTW Agreement} using the following three step process (as may be modified based upon a percentage of annual per unit cost if necessary to produce the 79,000 vouchers provided for under this NOFA):

(a) HUD will extract the total expenditures for all the PHA's housing choice voucher and certificate programs and the unit months leased information from the most recent approved year end statement (form HUD–52681) that the PHA has filed with HUD. HUD will divide the total expenditures for all of the PHA's housing choice voucher and certificate programs by the unit months leased to derive an average monthly per unit cost.

(b) HUD will multiply the monthly per unit cost by 12 (months) to obtain an annual per unit cost.

(c) HUD will multiply the annual per unit cost derived under paragraph (b) above by the Housing Choice Voucher Program (Section 8) Housing Assistance Payments Program Contract Rent Annual Adjustment Factor (with the highest cost utility included) to generate an adjusted annual per unit cost. For a PHA whose jurisdiction spans multiple annual adjustment factor areas, HUD will use the highest applicable annual adjustment factor.

(E) Eligible Applicants

A PHA established pursuant to State law may apply for funding under this NOFA. A regional (multi-county) or State PHA is also eligible to apply for funding.

A PHA may submit only one application under this NOFA. This one application per PHA limit applies regardless of whether or not the PHA is a State or regional PHA, except in those instances where such a PHA has more than one PHA code number due to its operating under the jurisdiction of more than one HUD Field Office. In such an instance, a separate application under each code shall be considered for funding, with the cumulative total of vouchers applied for under the applications not to exceed the maximum number of vouchers the PHA is eligible to apply for under Section V.(B) of this NOFA; *i.e.,* no more than the number of vouchers the same PHA would be eligible to apply for if it only had one PHA code number.

Two or more divisions within State government comprising separate PHAs shall require the State to determine which division shall submit an application to HUD under this NOFA. As with other PHAs, only one application per PHA shall be considered (see sole exception referenced immediately above).

A contract administrator which does not have an annual contributions contract (ACC) with HUD for housing choice vouchers or certificates, but which constitutes a PHA under 24 CFR 791.102 by reason of its administering housing choice vouchers or certificates on behalf of another PHA, shall not be eligible to submit an application under this NOFA.

Indian Housing Authorities (IHA), Indian tribes and their tribally designated housing entities are not eligible to apply because the Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new housing choice voucher annual contributions contracts (ACC) with IHAs after September 30, 1997.

Applicants are limited to those PHAs currently administering housing choice vouchers or certificates.

Some PHAs currently administering the housing choice voucher and certificate programs have, at the time of

publication of this NOFA, major program management findings from Inspector General audits, HUD management reviews, or independent public accountant (IPA) audits that are open and unresolved or other significant program compliance problems. HUD will not accept applications for additional funding from these PHAs as contract administrators if, on the application due date, the findings are either not closed, or sufficient progress toward closing its findings has not been made to HUD's satisfaction. The PHA must also, to HUD's satisfaction, be making satisfactory progress in addressing any program compliance problems. If the PHA wants to apply for funding under this NOFA, the PHA must submit an application that designates another housing agency, nonprofit agency, or contractor, that is acceptable to HUD. The PHA's application must include an agreement by the other housing agency, nonprofit agency, or contractor to administer the new funding increment on behalf of the PHA, and a statement that outlines the steps the PHA is taking to resolve the program findings and the program compliance problems. *Immediately after the publication of this NOFA, the local HUD Field Office will notify, in writing, those PHAs that are not eligible to apply without such an agreement. Concurrently, the local HUD Field Office will provide a copy of each such written notification to the GMC.* The PHA may appeal the decision, in writing, if HUD has mistakenly classified the PHA as having outstanding management or compliance problems. Any appeal must be accompanied by conclusive evidence of HUD's error (*i.e.,* documentation showing that the finding has been cleared or satisfactory progress toward closing the findings or addressing the compliance problems has been made) and must be received prior to the application deadline. The appeal should be submitted to the local HUD Field Office where a final determination shall be made. Concurrently, the local HUD Field Office shall provide the GMC with a copy of its written response to the appeal, along with a copy of the PHA's written appeal. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new housing choice voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(F) Eligible Participants

Eligible participants must be income eligible under 24 CFR 982.201(b)(1) in order to receive a voucher. Eligible participants include very low-income families, and on an exception basis some low-income families, who are on the PHA's housing choice voucher waiting list and who are determined to be eligible for housing assistance under the housing choice voucher regulations at 24 CFR part 982 and part 5.

III. General Program Requirements

(A) General Program Requirements

(1) Compliance With Fair Housing and Civil Rights Laws

All applicants must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If an applicant: (a) has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, the applicant's application will not be evaluated under this NOFA if, prior to the application deadline, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken necessary to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(2) Additional Nondiscrimination Requirements

In addition to compliance with the civil rights requirements listed at 24 CFR 5.105(a), each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*), Title IX of the Education Amendments Act of 1972, and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) Affirmatively Furthering Fair Housing

Each successful applicant will have a duty to affirmatively further fair housing. Applicants will be required to identify the specific steps that they will take to:

(a) Examine the PHA's own programs or proposed programs, including an identification of any impediments to fair housing (identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice—in its Consolidated Plan); develop a plan to (i) address those impediments in a reasonable fashion in view of the resources available; and (ii) work with local jurisdictions to implement any of the jurisdictions' initiatives to affirmatively further fair housing; and maintain records reflecting this analysis and actions.

(b) Remedy discrimination in housing; or

(c) Promote fair housing rights and fair housing choice.

Further, applicants have a duty to carry out the specific activities cited in their responses under this NOFA to address affirmatively furthering fair housing.

(4) Certifications and Assurances

Each applicant is required to submit signed copies of Assurances and Certifications. The standard Assurances and Certifications are on Form HUD–52515, Funding Application, which includes the Equal Opportunity Certification, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements.

(B) PHA Responsibilities and Rental Assistance Requirements

(1) Housing Choice Voucher Regulations

PHAs must administer the housing choice vouchers received under this NOFA in accordance with HUD regulations and requirements governing the Housing Choice Voucher Program.

(2) Housing Choice Voucher Program Admission Requirements

Housing choice voucher assistance must be provided to eligible applicants in conformity with regulations and requirements governing the Housing Choice Voucher Program and the PHA's administrative plan.

(3) Turnover

When a voucher under this NOFA becomes available for reissue (*e.g.,* the family initially selected for the program drops out of the program or is unsuccessful in the search for a unit), the voucher may be used only for the next eligible family on the PHA's housing choice voucher waiting list.

IV. Fair Share Application Rating Process

(A) Selection Criteria

The GMC will use the Selection Criteria shown below for the rating of applications submitted in response to this NOFA. The maximum score under the selection criteria for fair share funding is 100 points.

(1) Selection Criterion 1: Housing Needs (65 points)

(a) *Description:* This criterion assesses the housing need in the primary market area specified in the PHA's application compared with the housing need for the State. Housing need is defined as the number of very low-income renter households with severe rent burden, based on 1990 Census data. Very low-income is defined as income at or below the housing choice voucher (Section 8) very low-income limits. Severe rent burden is defined as a household paying 50 percent or more of its gross income for rent.

(b) *Needs Data:* For the purpose of this criterion, housing needs are based on a tabulation of 1990 Census data prepared for the Department by the Bureau of the Census. Data on housing needs are available for all States, all counties (county equivalents), and places with populations of 10,000 or more as of 1990. Information will be posted on the HUD Home Page site on the Internet's world wide web (http://www.hud.gov), under ''funds available'' for the Fair Share NOFA, indicating the proportion of each State's housing needs for primary markets.

(c) *Rating and Assessment:* The number of points assigned is based on the percentage of the State's housing need that is within the PHA's primary market area. The primary market area is defined as the jurisdiction (or its closest equivalent in terms of areas for which housing needs data are available) in which the PHA is legally authorized to operate and where the vouchers will be used, as described in its application. (See Section VI. (C) of this NOFA regarding the description of the primary market area required to be included in each PHA's application.)

(1) The GMC will assign one of the following point totals:

- 65 points (maximum). For each percentage point of the State's housing need (rounded to the nearest percentage point), the PHA will receive three points.

(2) A State or regional (multi-county) PHA will receive points based on the areas it serves where the vouchers will be used, *e.g.,* the entire State or the sum of the housing needs for the counties and/or localities comprising its primary market area.

(3) A PHA with a primary market area that is a community with a population of 10,000 or less, or a PHA for which housing needs data are not available, will receive three points.

(2) Selection Criterion 2: Efforts of PHA to Provide Area-Wide Housing Opportunities for Families (15 points)

(a) *Description:* Many PHAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this selection criterion must be beyond those required by federal law or regulation such as the portability provisions of the housing choice voucher program. The GMC will assign points to PHAs that are not using/will not use a residency preference, or will use a residency preference in a limited manner for selection of families to participate in the voucher program. In addition, the GMC will assign points to PHAs that have established relationships with non-profit groups to provide families with additional counseling, or have directly provided counseling, to increase the likelihood of a successful move by the families to areas that do not have large concentrations of poverty. The GMC will also assign points to PHAs that demonstrate they have implemented other initiatives that have resulted in expanding housing opportunities.

A PHA having more than one housing authority code number and submitting an application under one or more of these code numbers (see Section II. (E) of this NOFA) will be eligible to receive points under the categories in Selection Criterion 2 if it meets the qualifications for points under any one or more of the separate applications it submits.

(b) *Rating and Assessment:* The GMC will assign point values for any of the following assessments for which the PHA qualifies and add the points for all the assessments (maximum of 15 points) to determine the total points for this Selection Criterion:

- 5 Points—Assign 5 points if the PHA certifies that (i) its administrative plan does not include a ''residency preference'' for selection of families to participate in its voucher program, or (ii) it will eliminate immediately any ''residency preference'' currently in its administrative plan, or (iii) it will limit applicability of residency preferences to up to 50% of all new admissions.
- 5 Points—Assign 5 points if the PHA documents that it has established a contractual relationship with a non-profit agency or the local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas. The five PHAs approved for the FY 93 Moving to Opportunity (MTO) for Fair Housing Demonstration, PHAs participating in the Regional Opportunity Counseling (ROC) Program, and any other PHAs that receive counseling funds from HUD in connection with the demolition of public housing, public housing vacancy consolidation, or settlement of litigation involving desegregation may qualify for points under this assessment. However, these PHAs must identify all activities undertaken, other than those funded and required under the MTO Demonstration, ROC Program, or the court-ordered plans or plans for relocating public housing families, to expand housing opportunities.
- 5 Points—Assign 5 points if the PHA documents that it has implemented other initiatives that have resulted in expanding housing opportunities.

(3) Selection Criterion 3: Disabled Families (15 points)

(a) *Description:* The GMC will assign 15 points to PHAs that indicate at least 15 percent or more of the vouchers they are requesting (or funded by HUD) under this NOFA will be used to house disabled families. The PHA's application must be specific as to the exact percentage of vouchers that will be issued solely to disabled families. Disabled families are defined as follows:

(i) *Disabled Family.* A family whose head, spouse, or sole member is a person with disabilities. The term ''disabled family'' may include two or more such persons with disabilities living together, and one or more such persons with disabilities living with one or more persons who are determined essential to the care and well-being of the person or persons with disabilities (live-in aides).

(ii) *Person with disabilities.* A person who—

a. Has a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or

b. Is determined to have a physical, mental or emotional impairment that:

1. Is expected to be of long-continued and indefinite duration;

2. Substantially impedes his or her ability to live independently; and

3. Is of such a nature that such ability could be improved by more suitable housing conditions, or

c. Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term ''person with disabilities'' does not exclude persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome (HIV).

Note: While the above definition of a ''person with disabilities'' is to be used for purposes of determining a family's eligibility for a housing choice voucher designated as being for a disabled family under this NOFA, the definition of a person with disabilities contained in section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of meeting the requirements of Fair Housing laws, including providing reasonable accommodations.

No individual shall be considered a person with disabilities for the purpose of determining eligibility solely on the basis of any drug or alcohol dependence.

(b) *Rating and Assessment:* The GMC will assign one of two point values, as follows:

- 15 points: The PHA will use not less than 15 percent of the vouchers being requested (or funded by HUD) to house disabled families.
- 0 points: The PHA will use less than 15 percent of the vouchers it is requesting (or funded by HUD) to house disabled families.

(4) Selection Criterion 4: Medicaid Home and Community Based Services Waivers Under Section 1915(c) of the Social Security Act (5 points)

(a) *Description:* This selection criterion is for PHAs interested in the provision of housing choice voucher assistance to families within their jurisdiction who are disabled and also covered under a waiver of Section 1915(c) of the Social Security Act. Section 1915(c) waivers are approved by the Health Care Financing Administration within the Department of Health and Human Services (HHS) for the agency within each State responsible for the administration of the medicaid program. Contacting the responsible State agency (for example, the Agency for Health Care Administration in the State of Florida) will assist the PHA in determining how many, if any, individuals are covered by a Section 1915(c) waiver in the PHA's legal area of operation. These waivers allow medicaid-eligible individuals at risk of being placed in hospitals, nursing facilities or intermediate care facilities the alternative of being cared for in their homes and communities. These individuals are thereby assisted in preserving their independence and ties to family and friends at a cost no higher than that of institutional care.

While a Section 1915(c) waiver may cover individuals other than those who are disabled, the focus of Selection Criterion 4 is on disabled families only. The definition of disabled families listed under Selection Criterion 3 will be used by PHAs for purposes of the issuance of vouchers to disabled families in connection with Selection Criterion 4; i.e., only those individuals that meet the definition of a disabled family in this NOFA are to be considered in connection with a PHA determining how many such disabled families are covered by a Section 1915(c) waiver in their legal area of operation and whether to try to qualify for the 5 points available under Selection Criterion 4. The PHA's application must be specific as to the percentage of vouchers that will be issued to such disabled families.

Any PHA attempting to qualify for the 5 points available under Selection Criterion 4 should also include information within its application indicating the collaborative efforts already undertaken with the responsible State agency to identify eligible families, as well as agreements reached with that agency for future referrals of such families. HUD reserves the right at some future point in time to conduct an evaluation of the success of the PHA's efforts to collaborate with the State agency and to successfully house individuals that meet the requirements of being covered by a Section 1915(c) waiver, qualify as a disabled family under this NOFA, and are otherwise eligible for a housing choice voucher.

(b) *Rating and Assessment:* The GMC will assign one of two point values as follows:

- 5 points: The PHA will use not less than 3 percent of the vouchers being requested (or funded by HUD) to house voucher eligible, disabled families covered by a waiver under Section 1915(c) of the Social Security Act.
- 0 points: The PHA will use less than 3 percent of the vouchers it is requesting (or funded by HUD) to house voucher eligible, disabled families covered by a waiver under Section 1915(c) of the Social Security Act.

(c) *Prohibition Against Double Counting.* The number (percentage) of disabled families that a PHA indicates it will issue vouchers to when qualifying for the 5 points available under Selection Criterion 4 cannot be used to also qualify for the 15 points available under Selection Criterion 3 or conversely.

V. Fair Share Application Selection Process

(A) Maximum Funding Allowed

The GMC may recommend for approval the maximum funding for a PHA under this NOFA that does not exceed the lesser of 25 percent of the PHA vouchers and certificates [including Moving to Work (MTW) units] reserved; i.e., the number of units in its adjusted baseline (see 24 CFR 982.102(d)(ii)), or 25 percent of the number of vouchers available in the allocation area. The determination of reserved units shall be made in accordance with the methodology indicated in Appendix B.

(B) Funding Procedure

HUD seeks to maximize, insofar as practical, the number of PHAs awarded funding under this NOFA. The GMC will recommend applications for approval in rank order (highest to lowest score) within each allocation area. No PHA shall be eligible to request or be funded at more than the maximum funding indicated under Section V.(A) above of this NOFA. The number of vouchers for which a PHA will first receive consideration by the GMC for funding will be based upon initially using the lesser of a 5 percent calculation for a PHA's reserved units, or 25 percent of the vouchers available for the allocation area. If funding remains available within the allocation area, the percentage used for the PHA's reserved units will increase to the percent required to use all funding within the allocation area, not to exceed 25 percent.

Where the GMC finds it has some number of vouchers left but not enough to fully fund the next ranked application or applications receiving the same score, funding will be recommended by the GMC for the application indicating it will accept the lesser number of vouchers (see Section VI. (B) of this NOFA). In the event there are two or more PHAs ranked at the same position (same number of rating points) indicating they will accept the lesser number of vouchers, the PHA whose application is eligible for the largest number of vouchers among these PHAs will be recommended by the GMC for funding.

(C) Reallocations Between Allocation Areas

The GMC will make every reasonable effort to use all available funds. It may be necessary, however, to reallocate funds from one allocation area to another when the funds cannot be used in the allocation area to which they

were initially allocated. (See 24 CFR 791.405(d).) In such cases, the GMC will re-allocate funds to the allocation area having the largest number of approvable vouchers remaining unfunded due to lack of sufficient fair share funding.

(D) Applications Recommended by the GMC for Funding

After the GMC has screened PHA applications and disapproved any applications found unacceptable for further processing, the GMC will review all acceptable applications to ensure they are technically adequate and responsive to the requirements of the NOFA. As PHAs are selected, the cost of funding the applications will be subtracted from the funds available. Applications will be funded for the total number of units recommended for approval by the GMC in accordance with this NOFA.

VI. Fair Share Application Submission Requirements

(A) Form HUD–52515

All PHAs must complete and submit form HUD–52515, Funding Application, for housing choice vouchers (Section 8), (dated January 1996). Section C of the form should be left blank. PHAs are requested to enter their housing authority code number, as well as their electronic mail address, telephone number, and facsimile telephone number in the same space at the top of the form where they are also to enter the PHA's name and mailing address.

This form includes all necessary certifications for Fair Housing, Drug Free Workplace and Lobbying Activities.

Appendix A to this NOFA lists the estimate of the number of vouchers and budget authority available for each allocation area. PHAs should limit their applications for the ''fair share'' program to a reasonable number of vouchers based on the capacity of the PHA to lease-up within 12 months of ACC execution. The number of vouchers on the PHA application may not exceed that allowed under Section V.(A) of this NOFA. Copies of form HUD–52515 may be obtained from the local HUD Field Office or may be downloaded from the HUD Home Page site on the Internet's world wide web (http://www.hud.gov). (On the HUD website click on ''handbooks and forms,'' then click on ''forms'', then click on ''HUD–5'' and click on ''HUD–52515''.) The form must be completed in its entirety, with the exception of section C, signed and dated.

(1) A PHA may submit only one application (Form HUD–52515). (See Section II(E), Eligible Applicants, of this NOFA which fully addresses this one application per eligible applicant requirement and the one very limited exception allowed under that requirement.)

(2) The GMC will reduce the number of vouchers requested in any application that exceeds the established application limit in Section V(A) of this NOFA above.

(B) Letter of Intent and Narrative

The PHA must state in its cover letter to the application whether it will accept a reduction in the number of vouchers, and the minimum number of vouchers it will accept, since the funding is limited and HUD may only have enough funds to approve a smaller amount than the number of vouchers requested. The application should include a narrative description of how the application meets, or will meet, the application selection criteria in Section IV(A) of this NOFA. Failure to submit a narrative description is not cause for application rejection; however, the GMC can only rate and rank the application based on information it has on-hand.

(C) Description of Primary Market Area

Each PHA must specify in the application its primary market area; *i.e.,* the area in which it is authorized to operate and in which the housing choice vouchers will be used. This information may be different than that entered by such a PHA on the form HUD–52515, as the form calls for the PHA to identify its ''legal area of operation'' which may be far more geographically expansive than the specific city, county, or area within a State where a PHA, particularly a regional or State PHA, intends to use the fair share vouchers. This information is critical because, as indicated in Section IV(A)(1)(c) of this NOFA, the geographic area in which the vouchers are intended to be used and in which the PHA is legally authorized to operate a Housing Choice Voucher Program will be used to determine the percentage of the state's housing needs that are within the PHA's primary market area under Selection Criterion 1. For example, although a PHA may be legally authorized to operate throughout the entire county in which it is located, if the vouchers will be used only in two cities within that county then the primary market area is those two cities and not the entire county. Likewise, for a State PHA which may be legally authorized to operate throughout the entire State, but which intends to use the fair share vouchers in only one county, the primary market area is solely that county. In addition, the primary market area shall not include a geographic area in which the PHA is issuing vouchers, outside its normally legally authorized area of operation, based upon an agreement with another PHA(s) to issue vouchers in the other PHA's jurisdiction.

(D) Statement Regarding the Steps the PHA Will Take to Affirmatively Further Fair Housing

The areas to be addressed in the PHA's statement should include, but not necessarily be limited to:

(1) An examination of the PHA's own programs or proposed programs, including an identification of any impediments to fair housing (identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice—in its Consolidated Plan); and a description of a plan developed to (a) address those impediments in a reasonable fashion in view of the resources available and (b) work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing; and the maintenance of records reflecting this analysis and actions;

(2) Remedy discrimination in housing; or

(3) Promote fair housing rights and fair housing choice.

(E) Moving to Work (MTW) PHA Information and Certification

See Section VII(B)(2)(c)regarding the information to be submitted by an MTW PHA required to report under the Section 8 Management Assessment Program (SEMAP) but not meeting the 95 percent lease-up or budget authority utilization requirements, or the lease-up or budget authority utilization certification to be submitted by an MTW PHA not required to report under SEMAP.

(F) Multifamily Tenant Characteristics System (MTCS) Reporting Certification

In order to be eligible to submit an application under this NOFA, the PHA must have had a minimum reporting rate of not less than 85 percent for housing choice voucher and certificate resident records to HUD's MTCS (see 24 CFR Part 908 and Notice PIH 98–30) for the period ending December 1999, and must submit a certification with its application certifying to having met this requirement.

VII. Corrections to Deficient Applications

(A) Acceptable Applications

An acceptable application is one which meets all of the application submission requirements in Section VI

of this NOFA and does not fall into any of the categories listed in Section VII (B) of this NOFA. The GMC will initially screen all applications and notify PHAs of technical deficiencies by letter.

With respect to correction of deficient applications, HUD may not, after the application due date and consistent with HUD's regulations in 24 CFR part 4, subpart B, consider any unsolicited information an applicant may want to provide. HUD may contact an applicant to clarify an item in the application or to correct technical deficiencies. Please note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of a response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case under this NOFA, the GMC will notify the applicant in writing by describing the clarification or technical deficiency. The applicant must submit clarifications or corrections of technical deficiencies in accordance with the information provided by the GMC within 7 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding.

(B) Unacceptable Applications

(1) After the 7-calendar day technical deficiency correction period, the GMC will disapprove all PHA applications that it determines are not acceptable for processing. The GMC's notification of rejection letter must state the basis for the decision.

(2) Applications from PHAs that fall into any of the following categories will not be processed:

(a) Applications from PHAs that do not meet the requirements of Section III(A)(1) of this NOFA, Compliance With Fair Housing and Civil Rights Laws.

(b) The PHA has major program management findings in an Inspector General audit, HUD management review, or independent public accountant (IPA) audit for its voucher or certificate programs that are not closed or on which satisfactory progress in resolving the findings is not being made; or program compliance problems for its voucher or certificate programs on which satisfactory progress is not being made. The only exception to this category is if the PHA has been identified under the policy established in Section II.(E) of this NOFA and the PHA makes application with a designated contract administrator. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new Section 8 voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(c) The PHA has failed to achieve a lease-up rate of 95 percent for its combined certificate and voucher units under contract for its fiscal year ending in 1999. Category (c) may be passed, however, if the PHA achieved a combined certificate and voucher budget authority utilization rate of 95 percent or greater for its fiscal year ending in 1999. In the event the PHA is unable to meet either of these percentage requirements, it may still pass category (c) if it submits information to the GMC, as part of its application, demonstrating that it was able to either increase its combined certificate and voucher lease-up rate to 95 percent or greater for its fiscal year ending in 2000, or was able to increase combined certificate and voucher budget authority utilization to 95 percent or more for its fiscal year ending in 2000. PHAs that have been determined by HUD to have passed either the 95 percent lease-up, or 95 percent budget authority utilization requirement for their fiscal year ending in 1999 will be listed with the Fair Share NOFA under ''funds available'' on the HUD Home Page site on the Internet's world wide web (http://www.hud.gov). A PHA not listed must either submit information (following the format of Appendix B of this NOFA) in its application supportive of its 95 percent lease-up or 95 percent budget authority utilization performance for its fiscal year ending in 2000, or submit information (following the format of Appendix B of this NOFA) as part of its application supportive of its contention that it should have been included among those PHAs HUD listed on the HUD Home Page as having achieved either a 95 percent lease-up rate or 95 percent budget authority utilization rate for fiscal years ending in 1999. Appendix B of this NOFA indicates the methodology and data sources used by HUD to calculate the lease-up and budget authority utilization percentage rates for PHAs with fiscal years ending in 1999. Any PHA wishing to submit information to the GMC in connection with its 1999 fiscal year or 2000 fiscal year for the purposes described immediately above (so as to be eligible under category (c) to submit an application) will be required to use the same methodology and data sources indicated in Appendix B.

Moving To Work (MTW) agencies that are required to report under the Section 8 Management Assessment Program (SEMAP) shall be held to the 95 percent lease-up and budget authority utilization requirements referenced above, except where such an MTW agency provides information in its application demonstrating to HUD that a lower percentage is the result of the implementation of specific aspects of its program under its MTW Agreement with HUD. MTW agencies which are not required to report under SEMAP must submit a certification with their application certifying that they are not required to report under SEMAP, and that they meet the 95 percent lease-up or budget authority utilization requirements.

(d) The PHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to administer the vouchers.

(e) A PHA's application that does not comply with the requirements of 24 CFR 982.102 and this NOFA after the expiration of the 7-calendar day technical deficiency correction period will be rejected from processing.

(f) The PHA's application was submitted after the application due date.

(g) The application was not submitted to the official place of receipt as indicated in the paragraph entitled ''Address for Submitting Applications'' at the beginning of this NOFA.

(h) The applicant has been debarred or otherwise disqualified from providing assistance under the program.

(i) The applicant has failed to achieve a minimum 85 percent submission rate for housing choice voucher and certificate resident records to HUD's Multifamily Tenant Characteristics System (MTCS), as set forth by 24 CFR Part 908 and Notice PIH 98–30, for the period ending December 1999.

VIII. Findings and Certifications

(A) Paperwork Reduction Act Statement

The Housing Choice Voucher Program (Section 8) information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and

assigned OMB control number 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Environmental Impact

In accordance with 24 CFR 50.19(b)(11) of the HUD regulations, tenant-based rental activities under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under the related laws and authorities. This NOFA provides funding for these activities under 24 CFR part 982, which does not contain environmental review provisions because of the categorical exclusion of these activities from environmental review. Accordingly, under 24 CFR 50.19(c)(5), issuance of this NOFA is also categorically excluded from environmental review under NEPA.

(C) Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance number for this program is 14.857.

(D) Federalism Impact

Executive Order 13132 (captioned ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. None of the provisions in this NOFA will have federalism implications and they will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. As a result, the notice is not subject to review under the Order.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) Disclosures

HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(F) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(G) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

Dated: December 4, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Appendix A

HOUSING CHOICE VOUCHERS—FY 2001 FAIR SHARE ALLOCATIONS

Allocation area	Dollars	Units
Alabama	3,832,512	986
Alaska & Washington	8,490,178	1,466
Arizona	5,674,314	1,058
Arkansas	2,259,847	593
California	80,985,425	11,176
Colorado	6,109,188	1,008

HOUSING CHOICE VOUCHERS—FY 2001 FAIR SHARE ALLOCATIONS—Continued

Allocation area	Dollars	Units
Connecticut	5,822,038	891
Delaware	872,723	149
District of Columbia & Maryland	9,073,520	1,556
Florida	18,168,761	3,295
Georgia	9,376,338	1,762
Hawaii & Pacific Islands	2,952,114	407
Idaho	1,069,276	262
Illinois	21,352,392	3,626
Indiana	6,143,219	1,353
Iowa	3,311,913	803
Kansas	2,486,578	626
Kentucky	3,831,993	1,015
Louisiana	5,095,557	1,283
Maine	1,671,828	336
Massachusetts	14,279,752	2,112
Michigan	13,632,265	2,651
Minnesota	5,488,976	1,043
Mississippi	2,485,561	672
Missouri	5,662,051	1,337
Montana	1,187,042	245
Nebraska	1,905,039	445
Nevada	2,671,352	442
New Hampshire	1,495,658	243
New Jersey	16,581,017	2,210
New Mexico	1,678,279	383
New York	71,902,793	9,830
North Carolina	8,022,284	1,664
North Dakota	721,896	176
Ohio	15,518,163	3,266
Oklahoma	3,079,623	792
Oregon	4,588,121	948
Pennsylvania	18,177,238	3,558
Puerto Rico & Virgin Islands	3,726,802	1,005
Rhode Island	2,033,286	357
South Carolina	3,520,083	815
South Dakota	936,014	215
Tennessee	5,247,465	1,229

HOUSING CHOICE VOUCHERS—FY 2001 FAIR SHARE ALLOCATIONS—Continued

Allocation area	Dollars	Units
Texas	25,394,562	4,955
Utah	2,095,813	398
Vermont	1,019,047	179
Virginia	6,958,322	1,475
West Virginia	1,778,802	492
Wisconsin	7,908,238	1,655
Wyoming	439,954	105
US Total*	448,715,212	78,475

*Budget authority was reduced from $452,907,000 to $448,715,212 in order to correct the underfunding of four PHAs under the FY 2000 Fair Share NOFA due to a HUD error (see Section II(C)(3), Underfunding Corrections, of this NOFA). Vouchers have likewise been reduced from 79,000 to 78,475 in order to first fund the 525 vouchers that should have been funded for the four PHAs under the FY 2000 Fair Share NOFA. The four PHAs were located in the Alaska/Washington, Massachusetts, Ohio, and Oregon fair share allocation areas, so the dollar/voucher reductions were effectuated for these allocation areas consistent with the dollars and vouchers per PHA cited in Section II(C)(3) of this NOFA.

Appendix B

Methodology for Determining Lease-Up and Budget Authority Utilization Percentage Rates

Using data from the HUDCAPS system, HUD determined which PHAs met the 95% budget authority utilization or 95% lease-up criteria. The data used in the determination was based on PHA fiscal years ending in 1999. The budget authority utilization and lease-up rates were determined based upon the methodology indicated below.

Budget Authority Utilization

Percentage of budget authority utilization was determined by comparing the total contributions required to the annual budget authority (ABA) available for the PHA 1999 year combining the certificate and voucher programs.

Total contributions required were determined based on the combined actual costs approved by HUD on the form HUD–52681, Year End Settlement Statement. The components which make up the total contributions required are the total of housing assistance payments, ongoing administrative fees earned, hard to house fees earned, and IPA audit costs. From this total any interest earned on administrative fees is subtracted. The net amount is the total contributions required.

ABA is the prorated portion applicable to the PHA 1999 year for each funding increment which had an active contract term during all or a portion of the PHA year.

Example. PHA ABC Fiscal year 10/1/98 through 9/30/99.

HUD 52681 Approved Data:	
HAP	$2,500,000
Administrative Fee	250,000
Hard to House Fee	1,000
Audit	2,000
Total	2,753,000
Interest earned on administrative fee	(2,500)
Total contributions required	2,750,500

CALCULATION OF ANNUAL BUDGET AUTHORITY

Increments	Contract term	Total BA	ABA
001	11/01/98–10/31/99	$1,300,000	$1,191,667
002	01/01/99–12/31/99	1,200,000	900,000
003	04/01/99–03/31/00	950,000	475,000
004	07/01/99–06/30/00	1,500,000	375,000
Totals		4,950,000	2,941,667

Budget Authority Utilization

Total contributions required divided by $2,750,000
Annual budget authority equals $2,941,667
Budget Authority Utilization—93.5%

Lease-up Rate

The lease-up rate was determined by comparing the reserved units (funding increments active as of the end of the PHA 1999 year) to the unit months leased (divided by 12) reported on the combined HUD 52681, Year End Settlement Statement(s) for 1999.

Active funding increments awarded by HUD for special purposes such as litigation, relocation/replacement, housing conversions. Welfare to Work, and new units awarded to the PHA during the last twelve months were excluded from the reserved units as the Department recognizes that many of these unit allocations have special requirements which require extended periods of time to achieve lease-up.

Example.

Increments	Contract term	Units
001	11/01/98–10/31/99	242
002	01/01/99–12/31/99	224
003	04/01/99–03/31/00	178
004	07/01/99–06/30/00	280
Totals		924
Increment 003 litigation		(178)
Adjusted contract units		746

Unit months leased reported by PHA—8,726
Divided by 12—727
Units Leased—727

Lease-up Rate

Units leased—727
Divided by adjusted contract units equals—746
Lease-up Rate—97.5%

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Federal Register

Wednesday,
December 13, 2000

Part IV

Department of Labor

Pension and Welfare Benefits Administration

Publication of Year 2000 Form M–1; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Publication of Year 2000 Form M–1

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice on the availability of the Year 2000 Form M–1.

SUMMARY: This document announces the availability of the Year 2000 Form M–1, Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception. A copy of this new form is attached.

FOR FURTHER INFORMATION CONTACT: Amy Turner, Pension and Welfare Benefits Administration, Department of Labor, at (202) 219–7006.

SUPPLEMENTARY INFORMATION:

I. Background

The Form M–1 is required to be filed under section 101(g)(h) [1] and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2520.101–2.

II. The Year 2000 Form M–1

This document announces the availability of the Year 2000 Form M–1, Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs). A copy of this new form is attached.

This year's Form M–1 has been revised to incorporate clarifications already published by the Department of Labor's Pension and Welfare Benefits Administration (PWBA) in question-and-answer guidance with respect to the 1999 Form M–1. In addition, the filing deadlines for the Year 2000 Form M–1 are different from those for the Year 1999 Form M–1. Specifically, the Year 2000 Form M–1 is generally due March 1, 2001, with an extension until May 1, 2001 available. These Year 2000 deadlines were also previously published; they are included in the Department of Labor's regulations implementing the Form M–1 filing requirement and they were set forth in last year's Form M–1.

PWBA is committed to working together with administrators to help them comply with this filing requirement. Additional copies of the Form M–1 are available on the Internet at: *http://www.dol.gov/dol/pwba.* In addition, after printing, copies will be available by calling the PWBA toll-free publication hotline at 1–800–998–7542. Questions on completing the form are being directed to the PWBA help desk at (202) 219–8770.

Statutory Authority

Sec. 29 U.S.C. 1024, 1027, 1059, 1132(c)(5), 1135, 1171–1173, 1181–1183, 1191–1194; Sec. 101, Pub. L. 104–191, 101 Stat. 1936 (29 U.S.C. 1181); Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

Signed at Washington, DC, this 29th day of November, 2000.

Alan D. Lebowitz,

Deputy Assistant Secretary for Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

BILLING CODE 4510–29–P

[1] Both the Small Business Job Protection Act of 1996 (Pub. L. 104–188) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) created a new section 101(g) of ERISA. Accordingly, section 101(g) of ERISA that relates to reporting by certain arrangements is referred to in this document as section 101(g)(h) of ERISA.

2000 Form M-1 MEWA/ECE Form This Form is Open to Public Inspection	Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) This report is required to be filed under section 101(g)(h) of the Employee Retirement Income Security Act of 1974 (as amended) and 29 CFR 2520.101-2. ➤ See separate instructions before completing this form.	OMB No. 1210-0116 Department of Labor Pension and Welfare Benefits Administration

PART I REPORT IDENTIFICATION INFORMATION

Complete either Item **A** or Item **B**, as applicable.

A If this is an annual report, specify whether it is for:
(*1*) ☐ The 2000 calendar year; or
(*2*) ☐ The fiscal year beginning _____, _____ and ending _____, _____.

B If this is a special filing, specify whether it is:
(*1*) ☐ A 90-day origination report;
(*2*) ☐ An amended report; or
(*3*) ☐ A request for an extension.

PART II MEWA OR ECE IDENTIFICATION INFORMATION

1a Name and address of the MEWA or ECE	**1b** Telephone number of the MEWA or ECE
	1c Employer Identification Number (EIN)
	1d Plan Number (PN)
2a Name and address of the administrator of the MEWA or ECE	**2b** Telephone number of the administrator
	2c Employer Identification Number (EIN)
3a Name and address of the entity sponsoring the MEWA or ECE	**3b** Telephone number of the sponsor
	3c Employer Identification Number (EIN)

PART III REGISTRATION INFORMATION

4 Specify the most recent date the MEWA or ECE was originated ..... ➤ _____

5 Complete the following chart. (See Instructions for **Item 5**)

5a	5b	5c	5d	5e	5f	5g
Enter all States where the entity provides coverage.	Is the entity a licensed health insurance issuer in this State?	If you answer "yes" to **5b**, list any NAIC number.	If you answer "no," to **5b**, is the entity fully-insured?	If you answer "yes" to **5d**, enter the name of the insurer and its NAIC number.	Does the entity purchase stop-loss coverage?	If you answer "yes" to **5f**, enter the name of the stop-loss insurer and its NAIC number.
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	

6 Of the States identified in **Item 5a**, list those States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

7 Total number of participants covered under the MEWA or ECE ..... ➤ _____

PART IV INFORMATION FOR COMPLIANCE WITH PART 7 OF ERISA

8a Has the MEWA or ECE been involved in any litigation or enforcement proceeding in which noncompliance with any provision of Part 7 of Subtitle B of Title I (Part 7) of ERISA was alleged? Answer for the year to which this filing applies and any time since then up to the date of completing this form. Answer "Yes" for any State or federal litigation or enforcement proceeding (including any administrative proceeding), whether the allegation concerns a provision under Part 7 of ERISA, a corresponding provision under the Internal Revenue Code or Public Health Service Act, a breach of any duty under Title I of ERISA if the underlying violation relates to a requirement under Part 7 of ERISA, or a breach of a contractual obligation if the contract provision relates to a requirement under Part 7 of ERISA. (The instructions to this form contain additional information that may be helpful in answering this question.) ..... ➤ ☐ Yes ☐ No

8b If you answered "Yes" to **Item 8a**, identify each litigation or enforcement proceeding. With respect to each, include (if applicable): (1) the case number, (2) the date, (3) the nature of the proceedings, (4) the court, (5) all parties (for example, plaintiffs and defendants or petitioners and respondents), and (6) the disposition. You may answer this question by attaching a copy of the complaint with the name of the MEWA or ECE, the disposition of the case, and the phrase "Item 8b Attachment," noted in the upper right corner.

9 Complete the following. (Note: The instructions to this form contain four detailed worksheets which may be helpful in completing this item. Please read the instructions carefully before answering the following questions.)

9a	Is the coverage provided by the MEWA or ECE in compliance with the portability provisions of the Health Insurance Portability and Accountability Act of 1996 and the Department's regulations issued thereunder? (See Worksheet A) .... ➤ ☐ Yes ☐ No ☐ N/A
9b	Is the coverage provided by the MEWA or ECE in compliance with the Mental Health Parity Act of 1996 and the Department's regulations issued thereunder? (See Worksheet B) ..... ➤ ☐ Yes ☐ No ☐ N/A
9c	Is the coverage provided by the MEWA or ECE in compliance with the Newborns' and Mothers' Health Protection Act of 1996 and the Department's regulations issued thereunder? (See Worksheet C) ..... ➤ ☐ Yes ☐ No ☐ N/A
9d	Is the coverage provided by the MEWA or ECE in compliance with the Women's Health and Cancer Rights Act of 1998? (See Worksheet D) ..... ➤ ☐ Yes ☐ No ☐ N/A

IF MORE SPACE IS REQUIRED FOR ANY ITEM, YOU MAY ATTACH ADDITIONAL PAGES . (SEE INSTRUCTIONS SECTION 2.4)

Caution: *Penalties may apply in the case of a late or incomplete filing of this report.*

Under penalty of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including any accompanying attachments, and to the best of my knowledge and belief, it is true and correct. Under penalty of perjury and other penalties set forth in the instructions, I also declare that, unless this is an extension request, this report is complete.

Signature of administrator ➤ _____ Date ➤ _____

Type or print name of administrator ➤ _____

Department of Labor
Pension and Welfare Benefits Administration

Year 2000
Instructions for Form M-1
Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)
ERISA refers to the Employee Retirement Income Security Act of 1974, as amended

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the law as specified in ERISA. You are required to give us the information. We need it to determine whether the MEWA or ECE is operating according to law. You are not required to respond to this collection of information unless it displays a current, valid OMB control number.

The average time needed to complete and file the form is estimated below. These times will vary depending on individual circumstances.

Learning about the law or the form	Preparing the form
2 hrs.	50 min. - 1 hr and 35 min.

Contents

The instructions are divided into three main sections.

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Changes to Note for 2000

- This year's Form M-1 has been revised to incorporate clarifications already published by the Department of Labor's Pension and Welfare Benefits Administration in question-and-answer guidance with respect to the 1999 Form M-1. This revised Form M-1 is intended to incorporate all comprehensive guidance about the scope of the reporting requirement for the Year 2000.
- In addition, the filing deadlines for the Year 2000 Form M-1 are different from those for the Year 1999 Form M-1. Specifically, the Year 2000 Form M-1 is generally due March 1, 2001, with an extension until May 1, 2001 available. These Year 2000 deadlines were also previously published; they are included in the Department of Labor's regulations implementing the Form M-1 filing requirement and they were set forth in last year's Form M-1.

Introduction

This form is required to be filed under section 101(g){h}* and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2520.101-2.

The Department of Labor, Pension and Welfare Benefits Administration (PWBA) is committed to working together with administrators to help them comply with this filing requirement. Additional copies of the Form M-1 are available by calling the PWBA toll-free publication hotline at 1-800-998-7542 and on the Internet at: http://www.dol.gov/dol/pwba. If you have any questions (such as whether you are required to file this report) or if you need any assistance in completing this report, please call the **PWBA help desk** at **(202) 219-8770**.

All Form M-1 reports are subject to a computerized review. It is, therefore, in the filer's best interest that the responses accurately reflect the circumstances they were designed to report.

SECTION 1

1.1 Definitions

"Administrator"
For purposes of this report, the "administrator" is the person specifically designated by the terms of the MEWA or ECE. However, if the MEWA or ECE is a group health plan and the administrator is not so designated, the "plan sponsor" is the administrator. ("Plan sponsor" is defined in ERISA section 3(16)(B) as (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.) Moreover, in the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, the administrator is the person or persons actually responsible (whether or not so designated under the terms of the MEWA or ECE) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent or trustee designated by such person or persons.

"Employer Identification Number" or "EIN"
An EIN is a nine-digit employer identification number. For example, 00-1234567. Entities who do not have an EIN can apply for one on Form SS-4, Application for Employer Identification Number. This form can be obtained at most IRS or Social Security Administration offices. PWBA does NOT issue EINs.

"Entity Claiming Exception" or "ECE"
For purposes of this report, the term "entity claiming exception" or "ECE" means any plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, and that claims it is not a MEWA because the plan or other arrangement claims the exception relating to plans established or maintained pursuant to one or more collective bargaining

* Both the Small Business Job Protection Act of 1996 (Pub. L. 104-188) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191) created a new section 101(g) of ERISA. Accordingly, section 101(g) of ERISA that relates to reporting by certain arrangements is referred to in this document as section 101(g){h} of ERISA.

agreements (contained in section 3(40)(A)(i) of ERISA).

The administrator of an ECE must file this report each year for the first three years after the ECE is "originated". (Warning: An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

"Employee Welfare Benefit Plan"
In general, an employee welfare benefit plan means any plan, fund, or program established or maintained by an employer or by an employee organization, or by both, to the extent such plan, fund, or program provides its participants or beneficiaries the benefits listed in section 3(1) of ERISA (including benefits for medical care).

"Excepted benefits"
Part 7 of Subtitle B of Title I (Part 7) of ERISA does not apply to any group health plan or group health insurance issuer in relation to its provision of excepted benefits.

Certain benefits that are generally not health coverage are excepted in all circumstances. These benefits are: coverage only for accident (including accidental death and dismemberment), disability income insurance, liability insurance (including general liability insurance and automobile liability insurance), coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, automobile medical payment insurance, credit-only insurance (for example, mortgage insurance), and coverage for on-site medical clinics.

Other benefits that generally are health coverage are excepted if certain conditions are met. Specifically, limited scope dental benefits, limited scope vision benefits, and long-term care benefits are excepted if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of the group health plan. For more information on these limited excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.732(b)(3).

In addition, noncoordinated benefits may be excepted benefits. The term "noncoordinated benefits" refers to coverage for a specified disease or illness (such as cancer-only coverage) or hospital indemnity or other fixed dollar indemnity insurance (such as insurance that pays $100/day for a hospital stay as its only insurance benefit), if three conditions are met. First, the benefits must be provided under a separate policy, certificate, or contract of insurance. Second, there can be no coordination between the provision of these benefits and another exclusion of benefits under a group health plan maintained by the same plan sponsor. Third, benefits must be paid without regard to whether benefits are provided with respect to the same event under a group health plan maintained by the same plan sponsor. For more information on these noncoordinated excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.701.732(b)(4).

Finally, supplemental benefits may be excepted benefits if certain conditions are met. Specifically, the benefits are excepted only if they are provided under a separate policy, certificate or contract of insurance, and the benefits are medicare supplemental (commonly known as "Medigap" or "MedSupp") policies, CHAMPUS supplements, or supplements to certain employer group health plans. Such supplemental coverage cannot duplicate primary coverage and must be specifically designed to fill gaps in primary coverage, coinsurance, or deductibles. Note that retiree coverage under a group health plan that coordinates with Medicare may serve a supplemental function similar to that of a Medigap policy. However, such employer-provided retiree "wrap around" benefits are not excepted benefits (because they are expressly excluded from the definition of a Medicare supplement policy in section 1882(g)(1) of the Social Security Act). For more information on supplemental excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.732(b)(5).

"Group Health Plan"
In general, a group health plan means an employee welfare benefit plan to the extent that the plan provides benefits for medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. See ERISA section 733(a).

"Health Insurance Issuer" or "Issuer"
The term "health insurance issuer" or "issuer" is defined, in pertinent part, in § 2590.701-2 of the Department's regulations as "an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law which regulates insurance . . . . Such term does not include a group health plan."

"Multiple Employer Welfare Arrangement" or "MEWA"
In general, a multiple employer welfare arrangement (MEWA) is an employee welfare benefit plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that the term does not include any such plan or other arrangement that is established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. See ERISA section 3(40).

(Note: Many States regulate entities as a MEWA using their own, State definition of the term. Whether or not an entity meets a State's definition of a MEWA for purposes of regulation under State law is a matter of State law.)

For more information on MEWAs, visit the Pension and Welfare Benefits Administration's (PWBA's) website at www.dol.gov/dol/pwba or call the PWBA toll free publications hotline at 1-800-998-7542 and ask for the booklet entitled, "MEWAs: Multiple Employer Welfare Arrangements Under the Employee Retirement Income Security Act: A Guide to Federal and State Regulation."

For information on State MEWA regulation, contact your State Insurance Commissioner's Office.

"Originated"
For purposes of this report, a MEWA or ECE is "originated" each time any of the following events occur:

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);

(2) The MEWA or ECE begins offering or providing such coverage after any merger of MEWAs or ECEs (unless all MEWAs or ECEs involved in the merger were last originated at least three years prior to the merger); or

(3) The number of employees to which the MEWA or ECE offers or provides coverage for medical care is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless such increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

Therefore, a MEWA or ECE may be originated more than once.

"Plan Number" or "PN"
A PN is a three-digit number assigned to a plan or other entity by an employer or plan administrator. For plans or other entities providing welfare benefits, the first plan number should be number 501 and additional plans should be numbered consecutively.

"Sponsor"
For purposes of this report, the "sponsor" means:

(1) If the MEWA or ECE is a group health plan, the sponsor is the "plan sponsor," which is defined in ERISA section 3(16)(B) as (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan; or

(2) If the MEWA or ECE is not a group health plan, the sponsor is the entity that establishes or maintains the MEWA or ECE.

1.2 Who Must File

General rules
The administrator of a multiple employer welfare arrangement (MEWA) generally must file this report for every calendar year, or portion thereof, that the MEWA offers or provides benefits for medical care to the employees of two or more employers (including one or more self-employed individuals). The administrator of an entity claiming exception (ECE) must file the report if the ECE was last originated at any time within three years before the annual filing due date. (See the definition of "originated" in Section 1.1 and the discussion of when to file in Section 1.3.) (**Caution:** An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

Exception
Irrespective of the general rules (described above), in no event is reporting required by the administrator of a MEWA or ECE if the MEWA or ECE is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees (or to their beneficiaries).

Additional guidance
(1) In response to comments, and consistent with the question-and-answer guidance published in April and June of 2000, no penalties will be assessed against the administrator of a MEWA or ECE if the MEWA or ECE meets any of the following conditions –

(i) It provides coverage that consists solely of excepted benefits (defined above),which are not subject to Part 7 of ERISA. (However, if the MEWA or ECE provides coverage that consists both of excepted benefits and other benefits for medical care that are not excepted benefits, the administrator of the MEWA or ECE is required to file the Form M-1.)

(ii) It is an employee welfare benefit plan that is not subject to ERISA, including a governmental plan, church plan, or plan maintained only for the purpose of complying with worker's compensation laws, within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively.

(iii) It provides coverage only through employee welfare benefit plans that are not covered by ERISA, including governmental plans, church plans, and plans maintained only for the purpose of complying with worker's compensation laws, within the meaning of sections 4(b)(1), 4(b)(2), and 4(b)(3) of ERISA, respectively.

(2) In addition, in response to comments, and consistent with the question-and-answer guidance published in April and June of 2000, no penalties will be assessed against the administrator of an entity that would not constitute a MEWA or ECE but for the following circumstances:

(i) It provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying principles similar to the principles applied under section 414 of the Internal Revenue Code.

(ii) It is created by a change in control of businesses (such as a merger or acquisition) that is for a bona fide business purpose (that is, for a purpose other than avoiding Form M-1 filing) and is temporary in nature (that is, it does not extend beyond the end of the plan year following the year in which the change in control occurs).

(iii) It is a group health plan that covers a very small number of participants who are not employees (or former employees) of the plan sponsor, such as non-employee members of the board of directors or independent contractors. The number of non-employee participants covered by the plan is very small if it does not exceed one percent of the total number of participants, determined as of the last day of the year to be reported (or, in the case of a 90-day origination report, determined as of the 60th day following the origination date).

Good Faith Determinations Regarding Whether an Entity is an ECE
Accordingly, subject to the exceptions described above, the administrator of a MEWA is required to file annually. By contrast, the administrator of an ECE is required to file for three years following an origination.

Whether or not an entity is a MEWA or ECE is determined by the administrator acting in good faith. Therefore, if an administrator makes a good faith determination at the time of the filing that the entity is maintained pursuant to one or more collective bargaining agreements, then the entity is an ECE. Moreover, if the administrator makes a further good faith determination at the time of the filing that the ECE is not required to file because its most recent origination was more than three years ago, then a filing is not required. Even if the entity is later determined to be a MEWA, filings are not required prior to the determination that the entity is a MEWA if at the time the filings were due, the administrator made a good faith determination that the entity was an ECE. However, filings are required for years after the determination that the entity is a MEWA.

In contrast, while an administrator's good faith determination that an entity is an ECE may eliminate the requirement that the administrator of the entity file under this section for more than three years after the entity's origination date, the administrator's determination does not affect the applicability of State law to the entity. Accordingly, incorrectly claiming the exception may eliminate the need to file under this section, if the claiming of the exception is done in good faith. However, the claiming of the exception for ECEs under this filing requirement does not prevent the application of State law to an entity that is later determined to be a MEWA. This is because the filing, or the failure to file, under this section does not in any way affect the application of State law to a MEWA.

1.3 When to File

General Rule
The administrator of a MEWA or ECE that is required to file must file the Form M-1 no later than March 1 following any calendar year for which a filing is required (unless March 1 is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the following business day).

90-Day Origination Report
In general, an expedited filing is also required after a MEWA or ECE is originated. To satisfy this requirement, the administrator must complete and file the Form M-1 within 90 days of the date the MEWA or ECE is originated (unless the last day of the 90-day period is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the following business day).

Exception to the 90-Day Origination Report Requirement
No 90-Day Origination Report is required if the entity was originated in October, November, or December.

Extensions
A one-time extension of time to file will automatically be granted if the administrator of the MEWA or ECE requests an extension. To request an extension, the administrator must: (1) complete Parts I and II of the Form M-1 (and check Box B(3) in Part I); (2) sign, date, and type the administrator's name at the end of the form; and (3) file this request for extension no later than the normal due date for the report. In such a case, the administrator will have an additional 60 days to file a completed Form M-1. A copy of this request for extension must be attached to the completed Form M-1 when filed.

1.4 Where to File
Completed copies of the Form M-1 should be sent to:

Public Documents Room, Pension and Welfare Benefits Administration
Room N-5638, U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

1.5 Penalties
ERISA provides for the assessment or imposition of a penalty for failure to file a report, failure to file a completed report, and late filings. In the event of no filing, an incomplete filing, or a late filing, a penalty may apply of up to $1,000 a day for each day that the administrator of the MEWA or ECE fails or refuses to file a complete report. In addition, certain other penalties may apply.

SECTION 2

2.1 Year to be Reported
General rule
The administrator of a MEWA or ECE that is required to file should complete the form using the previous calendar year's information. (Thus, for example, for a filing that is due by March 1, 2001, calendar year 2000 information should be used.)

Fiscal year exception
The administrator of a MEWA or ECE that is required to file may report using fiscal year information if the administrator of the MEWA or ECE has at least six continuous months of fiscal year information to report. (Thus, for example, for a filing that is due by March 1, 2001, fiscal year 2000 information may be used if the administrator has at least six continuous months of fiscal year 2000 information to report.) In this case, the administrator should check Box A(2) in Part I and specify the fiscal year.

2.2 The 90-Day Origination Report
When a MEWA or ECE is originated, a 90-Day Origination Report is generally required. (See Section 1.3 on When to File). When filing a 90-Day Origination Report, the administrator is required to complete the Form M-1 using information based on at least 60 continuous days of operation by the MEWA or ECE.

Remember, there is an exception to the 90-Day Origination Report requirement. No 90-Day Origination Report is required if the entity was originated in October, November, or December.

2.3 Signature and Date
The administrator must sign and date the report. The signature must be original. The name of the individual who signed as the administrator must be typed or printed clearly on the line under the signature line.

2.4 Attaching Additional Pages
If more space is needed to complete any item on the Form M-1, additional pages may be attached. Additional pages must be the same size as this form (8 ½" x 11") and should include the name of the MEWA or ECE, the Item number, and the word "Attachment" in the upper right corner. In addition, the attachment for any item should be in a format similar to that item on the form.

2.5 Amended Report
To correct errors and/or omissions on a previously filed Form M-1, submit a completed Form M-1 with Part I, Box B(2) checked and an original signature. When filing an amended report, answer all questions and circle the amended line numbers.

SECTION 3
Important: "Yes/No" questions must be marked "Yes" or "No," but not both. "N/A" is not an acceptable response unless expressly permitted in the instructions to that line.

3.1 Line-By-Line Instructions
Part I - Report Identification Information
Complete either Item A or Item B, as applicable.

Annual Reports: If this is an annual report, check either box A(1) or box A(2).

Box A(1): Check this box if calendar year information is being used to complete this report. (See Section 2.1 on Year to be Reported.)

Box A(2): Check this box if fiscal year information is being used to complete this report. Also specify the fiscal year. (For example, if fiscal year 2000 information is being used instead of calendar year 2000 information, specify the date the fiscal year begins and ends.) (See Section 2.1 on Year to be Reported.)

Special Filings: If this is a special filing, check either box B(1), box B(2), or box B(3).

Box B(1): Check this box if this filing is a 90-Day Origination Report. (See Section 1.2 on Who Must File, Section 1.3 on When to File, and Section 2.2 on 90-Day Origination Reports.)

Box B(2): Check this box if this filing is an Amended Report. (See Section 2.5 on Amended Reports.)

Box B(3): Check this box if the administrator of the MEWA or ECE is requesting an extension. (See Section 1.3 on When to File.)

Part II - MEWA or ECE Identification Information

Items 1a through 1d: Enter the name and address of the MEWA or ECE, the telephone number of the MEWA or ECE, and any employer identification number (EIN) and plan number (PN) used by the MEWA or ECE in reporting to the Department of Labor or the Internal Revenue Service. If the MEWA or ECE does not have any EINs associated with it, leave Item 1c blank. If the MEWA or ECE does not have any PNs associated with it, leave Item 1d blank. In answering these questions, list only EINs and PNs used by the MEWA or ECE itself and not those used by group health plans or employers that purchase coverage through the MEWA or ECE. For more information on EINs or PNs, see Section 1.1 on Definitions.

Items 2a through 2c: Enter the name and address of the administrator of the MEWA or ECE, the telephone number of the administrator, and the EIN used by the administrator in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the administrator as a separate entity. Do not use any EIN associated with the MEWA or ECE itself. For more information on the definition of "administrator," and on EINs or PNs, see Section 1.1 on Definitions.

Items 3a through 3c: Enter the name and address of the entity sponsoring the MEWA or ECE, the telephone number of the sponsor, and any EIN used by the sponsor in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the sponsor. Do not use any EIN associated with the MEWA or ECE itself. For more information on the definition of "sponsor," and on EINs or PNs, see Section 1.1 on Definitions. If there is no such entity, leave Item 3 blank and skip to Item 4.

Part III - Registration Information

Item 4: Enter the date the MEWA or ECE was most recently "originated." For this purpose, see the definition of "originated" in Section 1.1.

Item 5: Complete the chart. If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.) When completing the chart, complete Item 5a first. Then for each row, complete Item 5b through Item 5g as it applies to the State listed in Item 5a.

Item 5a. Enter all States in which the MEWA or ECE provides benefits for medical coverage. For this purpose, list the State(s) where the employers (of the employees receiving coverage) are domiciled. In answering this question, a "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Northern Mariana Islands. Enter one State per row.

Item 5b. For each State listed in Item 5a, specify whether the MEWA or ECE is licensed or otherwise authorized to operate as a health insurance issuer in the State listed in that row. (For a definition of the term "health insurance issuer," see Section 1.1.) For more information on whether an entity that is a licensed or registered MEWA in a State meets the definition of a health insurance issuer in that State, contact the State Insurance Commissioner's Office.

Item 5c. For each "yes" answer in Item 5b, enter the National Association of Insurance Commissioners (NAIC) number.

Item 5d. For each "no" answer in Item 5b, specify whether the MEWA or ECE is fully-insured through one or more health insurance issuers in each State.

Item 5e. For each "yes" answer in Item 5d, enter the name of the insurer, and its NAIC number (if available). If there is more than one insurer, enter all insurers, and their NAIC numbers (if applicable).

Item 5f. In each State listed in Item 5a, specify whether the MEWA or ECE has purchased any stop-loss coverage. For this purpose, stop-loss coverage includes any coverage defined by the State as stop-loss coverage. For this purpose, stop-loss coverage also includes any financial reimbursement instrument that is related to liability for the payment of health claims by the MEWA or ECE, including reinsurance and excess loss insurance.

Item 5g. For each "yes" answer in Item 5f, enter the name of the stop-loss insurer, and its NAIC number (if available). If there is more than one stop-loss insurer, enter all stop-loss insurers, and their NAIC numbers (if applicable).

Item 6: Of the States identified in Item 5a, identify all States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

For example, consider a MEWA that offers or provides coverage to the employees of six employers. Two employers are located in State X and 70 participants in the MEWA receive coverage through these two employers. Three employers are located in State Y and 30 participants in the MEWA receive coverage through these three employers. Finally, one employer is located in State Z and 200 participants in the MEWA receive coverage through this employer. In this example, the administrator of the MEWA should specify State X and State Z under Item 6 because the MEWA conducts 23⅓% of its business in State X (70÷300 = 23⅓%) and 66⅔% of its business in State Z (200÷300 = 66⅔%). However, the administrator should not specify State Y because the MEWA conducts only 10% of its business in State Y (30÷300 = 10%).

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Item 7: Identify the total number of participants covered under the MEWA or ECE. For more information on determining the number of participants, see the Department of Labor's regulations at 29 CFR 2510.3-3(d).

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Part IV - Information for Compliance with Part 7 of ERISA

Background Information on Part 7 of ERISA: On August 21, 1996, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted. On September 26, 1996, both the Mental Health Parity Act of 1996 (MHPA) and the Newborns' and Mothers' Health Protection Act of 1996 (Newborns' Act) were enacted. On October 21, 1998, the Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted. All of the foregoing laws amended Part 7 of Subtitle B of Title I (Part 7) of ERISA with new requirements for group health plans. With respect to most of these requirements, corresponding provisions are contained in Chapter 100 of Subtitle K of the Internal Revenue Code (Code) and Title XXVII of the Public Health Service Act (PHS Act). These provisions generally are substantively identical.

The Departments of Labor, the Treasury, and Health and Human Services first issued interim final regulations implementing HIPAA's portability, access, and renewability provisions on April 1, 1997 (published in the Federal Register on April 8, 1997, 62 FR 16893). Two clarifications of the HIPAA regulations were published in the Federal Register on December 29, 1997 at 62 FR 67687. Regulations implementing the MHPA provisions were published in the Federal Register on December 22, 1997 at 62 FR 66931. Also, regulations implementing the substantive provisions of the Newborns' Act were published in the Federal Register on September 9, 1998 at 63 FR 48372 and on October 27, 1998 at 63 FR 57545. Moreover, the notice requirements with respect to group health plans that provide coverage for maternity or newborn infant coverage are described in the Department's summary plan description content regulations at § 2520.102-3(u), 63 FR 48372 (September 9, 1998). Finally, the Department of Labor has published two sets of informal, question-and-answer guidance on WHCRA. These sets of question-and-answer guidance are available on the

Department's website at www.dol.gov/dol/pwba and via the Pension and Welfare Benefits Administration's toll-free publications hotline at 1-800-998-7542.

General Information Regarding the Applicability of Part 7: In general, the foregoing provisions apply to group health plans and health insurance issuers in connection with a group health plan.

Many MEWAs and ECEs are group health plans or health insurance issuers. However, even if a MEWA or ECE is neither a group health plan nor a health insurance issuer, if

the MEWA or ECE offers or provides benefits for medical care through one or more group health plans, the coverage is required to comply with Part 7 of ERISA and the MEWA or ECE is required to complete Item 8a through Item 9d.

Relation to Other Laws: States may, under certain circumstances, impose stricter laws with respect to health insurance issuers. Generally, questions concerning State laws should be directed to the State Insurance Commissioner's Office.

For More Information: To obtain copies of the Department of Labor's booklet, "Questions and Answers: Recent Changes in Health Care Law," which includes information on HIPAA, MHPA, the Newborns' Act, and WHCRA, you may call the Pension and Welfare Benefits Administration's (PWBA's) toll-free publication hotline at 1-800-998-7542. This booklet is also available on the Internet at: www.dol.gov/dol/pwba. If you have any additional questions concerning Part 7 of ERISA, you may call the PWBA office nearest you or the PWBA technical assistance hotline at 202-219-8776.

Items 8a and 8b: With respect to Item 8a, check "yes" or "no" as applicable. For this purpose, do not include any audit that does not result in required corrective action. If you answer "yes" under Item 8a, identify, in Item 8b, any such litigation or enforcement proceeding.

Item 9a: The portability requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) added sections 701, 702, and 703 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if either of the following paragraphs apply:

(1) The MEWA or ECE is a small health plan (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations). Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet A may be helpful. **Item 9b:** The Mental Health Parity Act of 1996 (MHPA) added section 712 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if any of the following paragraphs apply:

(1) The MEWA or ECE is a small group health plan (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(3) The MEWA or ECE does not provide both medical/surgical benefits and mental health benefits.

(4) The MEWA or ECE offers or provides coverage only to small employers (as described in the small employer exemption contained in section 712(c)(1) of ERISA and § 2590.712(e) of the Department's regulations).

(5) The coverage has satisfied the requirements for the increased cost exemption (described in section 712(c)(2) of ERISA and § 2590.712(f) of the Department's regulations).

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet B may be helpful.

Item 9c: The Newborns' and Mothers' Health Protection Act of 1996 (Newborn's Act) added section 711 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if either of the following paragraphs apply:

(1) The MEWA or ECE does not provide benefits for hospital lengths of stay in connection with childbirth.

(2) The MEWA or ECE is subject to State law regulating such coverage, instead of the federal Newborns' Act requirements, in all States identified in Item 5a, in accordance with section 711(f) of ERISA and § 2590.711(e) of the Department's regulations.

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet C may be helpful.

Item 9d: The Women's Health and Cancer Rights Act of 1998 (WHCRA) added section 713 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if any of the following paragraphs apply:

(1) The MEWA or ECE is a small health plan (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(3) The MEWA or ECE does not provide medical/surgical benefits with respect to a mastectomy.

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet D may be helpful.

3.2 Voluntary Worksheets

Voluntary worksheets, which may be used to help assess an entity's compliance with Part 7 of ERISA, are included on the following pages of these instructions. These worksheets may also be helpful in answering Items 9a through 9d of the Form M-1.

Worksheet A (Form M-1)	Determining Compliance with the HIPAA Provisions in Part 7 of Subtitle B of Title I of ERISA Do NOT file this worksheet.	Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the HIPAA provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to any of the questions below, you should review your entity's operations because the entity may not be in full compliance with the HIPAA provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) Does the coverage provided by the MEWA or ECE issue complete certificates of creditable coverage automatically to individuals who lose coverage under the MEWA or ECE and to individuals upon request? . . . . . ➤ ☐ Yes ☐ No

- Section 701(e) of ERISA and § 2590.701-5 of the Department's regulations require group health plans and group health insurance issuers to issue, free of charge, certificates of creditable coverage automatically to individuals who lose coverage and to any individual upon request.
- To be complete, the certificate must include: the date, the name of the plan, the participant and/or beneficiary's name and identification information, the plan administrator's contact information (name, address, and telephone number, a telephone number to call for further information (if different than the plan administrator's number)), and the individual's creditable coverage information, as described below. (**__TIP__: Don't forget dependent information.)
- With respect to an individual's creditable coverage information, the certificate must reflect either – (1) that an individual has at least 18 months of creditable coverage; or (2) the date any waiting period (or affiliation period) began and the date creditable coverage began. In addition, the certificate must reflect either – (1) the date creditable coverage ended; or (2) that coverage is continuing. (**__TIP__: Don't forget waiting period information.)
- For a certificate issued automatically upon loss of coverage, the certificate should reflect the last continuous period of coverage. For a certificate issued upon request, the certificate should reflect each period of continuous coverage that the individual had in the 24 months prior to the date of request (up to 18 months of creditable coverage).
- Most health coverage is creditable coverage. However, coverage consisting solely of excepted benefits is not creditable coverage. Examples of benefits that __may__ be excepted benefits include limited-scope dental benefits, limited-scope vision benefits, hospital indemnity benefits, and Medicare supplemental benefits.
- If you have a question about whether health coverage offered by a MEWA or ECE is creditable coverage or is coverage consisting solely of excepted benefits, contact the PWBA office nearest you or call the PWBA Division of Technical Assistance and Inquiries at 202-219-8776. This is not a toll-free number.

(2) Does the coverage provided by the MEWA or ECE make available a procedure for individuals to request and receive certificates? . . . . . ➤ ☐ Yes ☐ No

- Section 2590.701-5(a)(4)(ii) of the Department's regulations requires group health plans and group health insurance issuers to establish a procedure for individuals to request and receive certificates.

(3) If the coverage provided by the MEWA or ECE imposes a preexisting condition exclusion period, are notices provided informing individuals of the exclusion, the terms of the exclusion, and the right of individuals to demonstrate creditable coverage to reduce the period of the exclusion? . . . . . ➤ ☐ Yes ☐ No ☐ N/A

- Section 2590.701-3(c) of the Department's regulations requires that a group health plan, and a group health insurance issuer, may not impose a preexisting condition exclusion with respect to a participant or a dependent of the participant before notifying the participant, in writing, of the existence and terms of any preexisting condition exclusion under the plan and of the rights of individuals to demonstrate creditable coverage.

Question # 3 is continued on the next page.

- **TIP: Check for "hidden" preexisting condition exclusion periods. Coverage or exclusion provisions that limit benefits based on the fact that a condition was present before an individual's effective date of coverage are preexisting condition exclusions and must either be eliminated, or must comply with HIPAA's limitations on preexisting condition exclusion periods, including this general notice provision, the individual notice provision described in Question #4, and HIPAA's other limits on preexisting condition exclusion periods, described in Question #5.

- The description of the rights of individuals to demonstrate creditable coverage includes a description of the right of the individual to request a certificate from a prior plan or issuer, if necessary, and a statement that the current plan or issuer will assist in obtaining a certificate from any prior plan or issuer, if necessary.

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(4) If the coverage provided by the MEWA or ECE imposes a preexisting condition exclusion period, are letters of determination and notification of creditable coverage provided within a reasonable time after the receipt of individuals' creditable coverage information? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 2590.701-5(d) of the Department's regulations states that, within a reasonable time following receipt of evidence of creditable coverage, a plan or issuer seeking to impose a preexisting condition exclusion with respect to an individual is required to disclose to the individual, in writing, its determination of any preexisting condition exclusion period that applies to the individual, and the basis for such determination, including the source and substance of any information on which the plan or issuer relied.

- In addition, the plan or issuer is required to provide the individual with a written explanation of any appeal procedures established by the plan or issuer, and with a reasonable opportunity to submit additional evidence of creditable coverage.

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(5) If the coverage provided by the MEWA or ECE imposes a preexisting condition exclusion, does it comport with HIPAA's other limitations on preexisting condition exclusions? ..... ➤ ☐ Yes ☐ No ☐ N/A

- **TIP: Again, check for "hidden" preexisting condition exclusion periods. Coverage or exclusion provisions that limit benefits based on the fact that a condition was present before an individual's effective date of coverage are preexisting condition exclusions and must either be eliminated, or must comply with HIPAA's limitations on preexisting condition exclusion periods.

- Section 701(a)(1) of ERISA and § 2590.701-3(a)(1)(i) of the Department's regulations provide that a plan or issuer may impose a preexisting condition exclusion period only if it relates to a condition for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the individual's enrollment date in the plan or coverage. (Therefore, genetic information is not treated as a preexisting condition in the absence of a diagnosis of the condition related to such information.) (In addition, for health insurance issuers, State law may prescribe a shorter period than the 6-month period that generally applies.)

- The enrollment date, for purposes of the HIPAA limitations on preexisting condition exclusion periods, is the first day of coverage or, if there is a waiting period, the first day of the waiting period. (**TIP: If the MEWA or ECE imposes a waiting period, ensure that the 6-month look-back period ends on the first day of the waiting period, not the first day of coverage.)

- Section 701(a)(2) of ERISA and section § 2590.701-3(a)(1)(ii) of the Department's regulations provide that any preexisting condition exclusion period is limited to 12 months (18 months for late enrollees) after an individual's enrollment date in the plan or coverage. (For health insurance issuers, State law may prescribe a shorter period.) (**TIP: If the MEWA or ECE imposes a waiting period, ensure that the 12-month (or 18-month for late enrollees) maximum preexisting condition exclusion period begins on the first day of the waiting period, not the first day of coverage.)

- Section 701(a)(3) of ERISA and § 2590.701-3(a)(1)(iii) of the Department's regulations provide that any preexisting condition exclusion period is reduced by the number of days of an individual's creditable coverage prior to his or her enrollment date.

- When determining the number of days of creditable coverage, the plan or issuer is not required to take into account any days that occur prior to a significant break in coverage. The federal law defines a significant break in coverage as a break of 63 days or more. However, State law applicable to health insurance coverage offered or provided by health insurance issuers may provide for a longer period.

- In any case, section 701(d) of ERISA and § 2590.701-3(b) provide that a group health plan, and a group health insurance issuer, may not impose any preexisting condition exclusion period with regard to a child who enrolls in a group heath plan within 30 days of birth, adoption, or placement for adoption and who does not incur a subsequent significant break in coverage. In addition, a group health plan, and a group health insurance issuer, may not impose a preexisting condition exclusion relating to pregnancy. (For health insurance issuers, State law may further restrict the extent to which a preexisting condition exclusion may be imposed.)

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(6) Does the coverage provided by the MEWA or ECE provide notices of special enrollment rights to employees who are eligible to enroll in the plan or coverage? ..... ➤ ☐ Yes ☐ No

- Section 2590.701-6(c) of the Department's regulations requires that, on or before the time an employee is offered the opportunity to enroll in a group health plan or coverage, the plan or issuer provide the employee with a description of the plan's special enrollment rules.

- For this purpose, the plan may use the following model description of special enrollment rules:

  If you are declining enrollment for yourself or your dependents (including your spouse) because of other health insurance coverage, you may in the future be able to enroll yourself or your dependents in this plan, provided that you request enrollment within 30 days after your other coverage ends. In addition, if you have a new dependent as a result of marriage, birth, adoption, or placement for adoption, you may be able to enroll yourself and your dependents, provided that you request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption.

(7) Does the coverage provided by the MEWA or ECE provide special enrollment rights to individuals who lose other coverage and to individuals who acquire a new dependent, if they request enrollment within 30 days of the loss of coverage, marriage, birth, adoption, or placement for adoption? ..... ➤ ☐ Yes ☐ No

- Section 701(f) of ERISA and § 2590.701-6 of the Department's regulations require group health plans, and group health insurance issuers, if certain conditions are met, to permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if the individual either – (1) has a new dependent through marriage, birth, adoption, or placement for adoption; or (2) loses eligibility for other group health plan or health insurance coverage or employer contributions towards the other coverage terminate.

- **TIP: Ensure that the MEWA or ECE provides special enrollment to all individuals who qualify. Among other things, this includes individuals who lose eligibility for individual market coverage, individuals who voluntarily terminate employment and lose group health plan coverage (even if they are eligible for COBRA continuation coverage), individuals who exhaust COBRA, children who "age out" of eligibility under another parent's group health plan, individuals who move out of a group health plan's HMO service area, and individuals whose employers cease contributing towards their group health plan coverage (even if coverage does not cease).

- For individuals who special enroll after marriage or loss of other coverage, coverage must be made effective no later than on the first day of the first calendar month following the date the completed request for enrollment is received. For individuals who special enroll after birth, adoption, or placement for adoption, coverage must be made effective no later than the date of such birth, adoption, or placement for adoption. (**TIP: Ensure that effective dates of coverage for special enrollees are correct.)

- For State laws applicable to health insurance issuers that may provide individuals with additional special enrollment rights, check with an attorney or the Insurance Commissioner's Office in your State.

(8) Does the coverage provided by the MEWA or ECE provide rules for eligibility (including continued eligibility) that comply with the nondiscrimination requirements that prohibit discrimination against any individual or a dependent based on any health factor? ..... ➤ ☐ Yes ☐ No

- Section 702(a) of ERISA and § 2590.702(a) of the Department's regulations provide that a group health plan, and a group health insurance issuer, may not establish rules for eligibility (including continued eligibility, rules defining any applicable waiting periods, and rules relating to late and special enrollment) of any individual to enroll under the terms of the plan based on a health factor.

- The health factors are: health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence), and disability.

- However, nothing requires a plan or issuer to provide particular benefits other than those provided under the terms of the plan or coverage. In addition, nothing prevents a plan or issuer from establishing limitations or restrictions on the amount, level, extent, or nature of benefits or coverage for similarly situated individuals enrolled in the plan or coverage.

- **TIP: Ensure that the plan does not require individuals to present evidence of insurability in order to enroll in the plan, even at late enrollment.

(9) Does the coverage provided by the MEWA or ECE comply with the nondiscrimination requirements that prohibit requiring any individual (as a condition of enrollment or continued enrollment) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor? ..... ➤ ☐ Yes ☐ No

- Section 702(b) of ERISA and § 2590.702(b) of the Department's regulations provide that a group health plan, and a group health insurance issuer, may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor (defined above).

- However, nothing restricts the amount that an employer may be charged for coverage under a group health plan and nothing prevents a plan or issuer from establishing premium discounts or rebates or modifying applicable copayments or deductibles in return for adherence to bona fide wellness programs.

(10) If the entity is a group health plan which is a multiemployer plan or a MEWA, does it comply with the guaranteed renewability requirements, which generally prohibit it from denying an employer whose employees are covered under a group health plan continued access to the same or different coverage under the terms of the plan? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 703 of ERISA provides that a group health plan that is a multi-employer plan or a MEWA may not deny an employer whose employees are covered under the plan continued access to the same or different coverage under the terms of the plan, other than: for nonpayment of contributions; for fraud or other intentional misrepresentation of material fact by the employer; for noncompliance with material plan provisions; because the plan is ceasing to offer any coverage in a geographic area; in the case of a plan that offers benefits through a network plan, because there is no longer any individual enrolled through the employer who lives, resides, or works in the service area of the network plan and the plan acts without regard to the claims experience of the employer or any health factor in relation to those individuals or their dependents; and for failure to meet the terms of an applicable collective bargaining agreement, to renew a collective bargaining or other agreement requiring or authorizing contributions to the plan, or to employ employees covered by such an agreement.

- For other laws applicable to health insurance issuers that may provide additional guaranteed renewability requirements, check with an attorney or the Insurance Commissioner's Office in your State.

Worksheet B (Form M-1)	**Determining Compliance with the Mental Health Parity Act (MHPA) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the MHPA provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to the question below, you should review your entity's operations because the entity may not be in full compliance with the MHPA provisions in Part 7 of ERISA. If you need help answering this question or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits adviser.

Q. If the MEWA or ECE offers or provides coverage for both mental health benefits and medical/surgical benefits, does the coverage comply with the requirements of the MHPA provisions, which are contained in section 712 of ERISA? . . . . . ➤ ☐ Yes ☐ No ☐ N/A

- Section 712 of ERISA and § 2590.712 of the Department's regulations generally provide for parity in the application of aggregate lifetime dollar limits and in the application of annual dollar limits between benefits for medical and surgical care and benefits for mental health coverage.
- These provisions do not require a group health plan or group health insurance coverage to provide any mental health coverage. Further, MHPA does not apply to benefits for treatment of substance abuse or chemical dependency.
- There are also exemptions for small employers and certain plans or coverage with increased costs.
- Finally, MHPA does not apply to benefits for services furnished on or after September 30, 2001.
- To find out more about these provisions, you can call the PWBA toll-free publication hotline at 1-800-998-7542 and request a copy of "Recent Changes in Health Care Law." This information can also be downloaded from the PWBA website at: www.dol.gov/dol/pwba. If you have questions, you can call the PWBA office nearest you or call the PWBA Division of Technical Assistance and Inquiries at 202-219-8776.

Worksheet C (Form M-1)	**Determining Compliance with the Newborns' and Mothers' Health Protection Act (Newborns' Act) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the Newborns' Act provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to either of the questions below, you should review your entity's operations because the entity may not be in full compliance with the Newborns' Act provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) If the MEWA or ECE offers or provides benefits for hospital stays in connection with childbirth and is subject to the Newborns' Act, does the coverage comply with the Newborns' Act's substantive requirements, which are contained in section 711 of ERISA? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 711 of ERISA and § 2590.711 of the Department's regulations generally provide that a group health plan, and a group health insurance issuer, that offers benefits for hospital lengths of stay in connection with childbirth may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or her newborn child, following a vaginal delivery to less than 48 hours, and following a cesarean section to less than 96 hours, unless the attending provider, in consultation with the mother, decides to discharge earlier.

- In addition, such a plan or issuer may not require that the provider obtain authorization from the plan or issuer for prescribing any length of hospital stay up to 48 hours following a vaginal delivery and up to 96 hours following a cesarean section. Nor may such a plan or issuer penalize an attending provider for providing care in a manner consistent with this law or provide incentives to an attending provider to provide care in a manner that is inconsistent with this law. Nor may such a plan or issuer deny the mother or newborn eligibility or continued eligibility, or provide incentives to mothers to encourage them to accept less than the minimum length of stay required. Nor may such a plan or issuer restrict benefits for any portion of a period within a hospital length of stay required by this law in a manner that is less favorable than the benefits provided for any preceding portion of the stay.

- **TIP: Check whether the federal Newborns' Act's requirements in section 711 of ERISA apply, or whether the coverage is instead subject to State law regulating such coverage. For this purpose, the following information is helpful:

  (A) Self-insured coverage: The federal Newborns' Act's requirements in section 711 of ERISA apply to self-insured benefits offered in connection with childbirth.

  (B) Insured coverage: On the other hand, State law (rather than federal law) applies to health insurance coverage offered in connection with childbirth if the State law meets certain criteria specified in ERISA section 711(f). Based on a preliminary review of State laws as of July 1, 1999, State law rather than federal law applies to health insurance coverage offered in connection with childbirth in the following States:

  Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and West Virginia.

  Moreover, the following States appear to have a State law applicable to health insurance coverage that references the federal Newborns' Act provisions:

  Delaware, Hawaii, Idaho, and Oregon.

  Finally, the following States and other jurisdictions do not appear to have a law regulating coverage for newborns and mothers that meets the criteria specified in section 711(f) of ERISA. Therefore, the federal Newborns' Act provisions appear to apply to health insurance coverage in the following States:

  Michigan, Mississippi, Nebraska, Utah, Vermont, Wisconsin, Wyoming, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Northern Mariana Islands.

(2) If the MEWA or ECE offers or provides benefits in connection with childbirth, are the disclosure requirements under the Newborns' Act satisfied? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 2520.102-3(u) of the Departments regulations requires all group health plans providing maternity benefits to include a statement in their summary plan descriptions advising individuals of the Newborns' Act's requirements. (Note: Parallel disclosure requirements are contained in section 711(d) of ERISA, if applicable (see discussion of federal Newborns' Act applicability above under Question 1).)

- For this purpose, a MEWA or ECE that is subject to the Newborns' Act disclosure requirements through ERISA may use the following sample language:

  Group health plans and health insurance issuers generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

- A similar disclosure requirement applies to nonfederal governmental plans. For mandated language required to be used with respect to such plans, see 45 CFR § 146.130(d)(2) (published in the **Federal Register** at 63 FR 57561 on October 27, 1998).

Worksheet D (Form M-1)	**Determining Compliance with the Women's Health and Cancer Rights Act (WHCRA) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the WHCRA provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to the questions below, you should review your entity's operations because the entity may not be in full compliance with the WHCRA provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) If the MEWA or ECE offers or provides mastectomy coverage, does the coverage comply with WHCRA's substantive requirements, which are contained in section 713 of ERISA? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 713 of ERISA generally provides that a group health plan, and a group health insurance issuer, that offers mastectomy coverage must also provide coverage for reconstructive surgery in a manner determined in consultation with the attending physician and the patient. Coverage includes all stages of reconstruction of the breast on which the mastectomy was performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and treatment of physical complications of the mastectomy, including lymphedemas.

- In addition, a plan or issuer may not deny a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of WHCRA. Nor may a plan or issuer penalize or otherwise reduce or limit the reimbursement of an attending provide,; or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to furnish care to an individual participant or beneficiary in a manner inconsistent with WHCRA.

- Plans and issuers may impose deductibles or coinsurance requirements for reconstructive surgery, prostheses, and treatment of physical complications in connection with a mastectomy, but only if the deductibles and coinsurance are consistent with those established for other benefits under the plan or coverage.

- State law protections may apply to certain health insurance coverage if the State law was in effect on October 21, 1998 (the date of enactment of WHCRA) and the State law requires at least the coverage for reconstructive breast surgery that is required by WHCRA.

(2) If the MEWA or ECE offers or provides mastectomy coverage, are the disclosure requirements under WHCRA satisfied? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 713(b) of ERISA establishes a one-time notice requirement under which group health plans, and their health insurance issuers, must furnish a written description of the benefits that WHCRA requires. This notice is required to be furnished as part of the first general mailing made after October 21, 1998 by group health plans, and their health insurance issuers, or in any yearly information packet sent out regarding the plan, but, in any event, the one-time notice is required to be furnished not later than January 1, 1999.

- Section 713(a) of ERISA establishes a disclosure requirement under which group health plans, and their health insurance issuers, must again describe the benefits required under WHCRA, but the notice is to be provided to participants upon enrollment in the plan and annually thereafter.

- The enrollment notice must describe the benefits that WHCRA requires the group health plan, and its insurance companies or HMOs, to cover. If the following information is provided, then the group health plan is in compliance with this requirement. The enrollment notice indicates that, in the case of a participant or beneficiary who is receiving benefits in connection with a mastectomy, coverage will be provided in a manner determined in consultation with the attending physician and the patient, for all stages of reconstruction of the breast on which the mastectomy was performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and treatment of physical complications of the mastectomy, including lymphedema. Additionally, the enrollment notice describes any deductibles and coinsurance limitations applicable to such coverage. Under WHCRA, coverage of breast reconstruction benefits may be subject only to deductibles and coinsurance limitations consistent with those established for other benefits under the plan or coverage.

Question #2 is continued on the next page.

- WHCRA's annual notice must include: (1) information on the availability of benefits for the treatment of mastectomy-related services, including reconstructive surgery, prosthesis, and lymphedema under the plan; and (2) information (telephone number, web address, etc.) on how to obtain a detailed description of the mastectomy-related benefits available under the plan. The following examples illustrate how the annual notice requirement may be satisfied:

  (A) An entity distributes the enrollment notice to participants on an annual basis.

  (B) An entity annually distributes the following model notice informing participants: "Did you know that your plan, as required by the Women's Health and Cancer Rights Act of 1998, provides benefits for mastectomy-related services including reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy (including lymphedema)? Call your Plan Administrator [insert phone number] for more information."

  (C) In October of every year, an entity delivers to each participant (including those on COBRA) an issue of a periodical benefits newsletter with the following statement in a prominent place on the front page: "IMPORTANT NOTICE ABOUT YOUR RIGHTS UNDER YOUR GROUP HEALTH PLAN: October is National Breast Cancer Awareness Month. Your plan, [*or identify plan by name*], provides benefits for mastectomy-related services including reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy (including lymphedema). Keep this notice for your records and call your Plan Administrator for more information."

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Federal Register

Wednesday,
December 13, 2000

Part V

Department of Transportation

Federal Aviation Administration

Commercial Routes for the Grand Canyon National Park Special Flight Rules Area; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Routes for the Grand Canyon National Park Special Flight Rules Area

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on commercial routes for the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA). The commercial routes are not being published in today's **Federal Register** because they are on very large and very detailed charts that would not publish well in the **Federal Register.** The modifications are related to safety concerns identified by air tour operators and evaluated by the Federal Aviation Administration (FAA). With this notice, the FAA invites comments on the modifications of these routes. This notice solely proposes administrative changes in air tour routes to improve safety; it has no effect on the Airspace Modification rule published in April 2000 nor any effect on the Commercial Operations Limitation rule also approved in April 2000.

DATES: Comments must be received on or before January 12, 2001.

ADDRESSES: Comments on the proposed commercial air tour routes may be delivered or mailed, in duplicate to: Federal Aviation Administration, Attention: Gary Davis, Air Transportation Division, Flight Standards Service, AFS–201, Rm 831, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Special Assistant for National Parks, Flight Standards Service, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 493–4981.

SUPPLEMENTARY INFORMATION: The FAA is not publishing the commercial routes in today's **Federal Register** because they are on very large and very detailed charts that would not publish well in the **Federal Register.** You may obtain a copy of the commercial routes by contacting Denise Cashmere at (202) 267–3717, by faxing a request to (202) 267–5229, or by sending a request in writing to the Federal Aviation Administration, Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591. You may comment on the routes as you desire, but you must identify that you are commenting on the commercial routes for Grand Canyon National Park. The FAA will consider all comments received on or before the closing date for comments before finalizing the air tour routes. The FAA will consider late-filed comments to the extent practicable.

History

On April 4, 2000, the Federal Aviation Administration published two final rules the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (Air Space Modification), and the Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Commercial Air Tour Limitation). See 65 FR 17736; 65 FR 17708; April 4, 2000. The FAA also simultaneously published a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). See 65 FR 17698, April 4, 2000. The Commercial Air Tour Limitations final rule became effective on May 4, 2000. the Air Space Modification final rule and the routes set forth in the Routes Notice were scheduled to become effective December 1, 2000. The effective date of the Air Space Modification final rule and the new routes was extended to provide the air tour operators ample opportunity to train on the new route system during the non-tour season. The Final Supplemental Environmental Assessment for Special Flight Rules in the Vicinity of Grand Canyon National Park (SEA) was completed on February 22, 2000, and the Finding of No Significant Impact was issued on February 25, 2000.

On May 8, 2000, The United States Air Tour Association (USATA) and seven air tour operators (hereinafter collectively referred to as the Air tour Providers) filed a petition for review of the two final rules before the United States Court of Appeals for the District of Columbia Circuit. The FAA, The Department of Transportation, the Department of Interior, the National Park Service (NPS) and various federal officials were named as respondents in this action. On May 30, 2000, the Air Tour Providers filed a motion for stay pending review before the Court of Appeals. The federal respondents in this case filed a motion for summary denial on grounds that petitioners had not exhausted their administrative remedies. The Court granted the federal respondents summary denial on July 19, 2000. The Grand Canyon Trust, the National Parks and Conservation Association, the Sierra Club, the Wilderness Society, Friends of the Grand Canyon and Grand Canyon River Guides, Inc. (hereinafter will collectively referred to The Trust) filed a petition for review of the same rules on May 22, 2000. The Court, by motion of the federal respondents, consolidated that case with that of the Air Tour Providers. The Hualapai Indian Tribe of Arizona filed a motion to intervene in the Air Tour Providers petition for review on June 23, 2000. The Court granted that motion on July 19, 2000.

On July 31, 2000, the Air Tour Providers filed a motion for stay before the FAA. Both the Hualapai Indian Tribe and the Trust filed oppositions to the Air Tour Providers' stay motion. On October 11, 2000, (65 FR 60352) the FAA published a disposition of the stay request, denying the stay. On October 25, 2000, the Air Tour Providers filed a Motion for Stay and Emergency Relief Pending Review of an Agency Order with the Court of Appeals. The federal respondents filed their Opposition of Petitioner's Motion for Stay Pending Review and Notification of Administrative Stay of Route and Airspace Rules on November 2, 2000. The FAA then issued an administrative stay of the routes and airspace until December 28, 2000 so that it could further investigate some new safety allegations raised by the Air Tour Providers during the course of litigation (65 FR 69846 and 65 FR 69848; November 20, 2000).

Discussion

The Air Tour Providers petitioned the United States Court of Appeals for the District of Columbia Circuit for a review of the FAA's Commercial Air Tour Limitations final rule and the Airspace Modification final rule. During the ensuing litigation, the Air Tour Providers brought forth several new safety issues regarding the east end routes in the Dragon Corridor, the area north of the Zuni Point Corridor and around the Desert View Flight Free Zone that were not clearly articulated in prior comments to the agency during the rulemaking process. The FAA has investigated the safety issues and has, in consultation with the NPS, developed suggested map changes to the routes to improve safety in the Dragon Corridor and the area north of the Zuni Point Corridor, and around the Desert View Flight Free Zone. These changes are reflected in the map that is the subject of this Notice. The routes in the Marble Canyon area, Sanup region (the west end of GCNP), and the routes running

east to west across the SFRA are not reopened under this Routes Notice. However, for purposes of completeness, these routes are shown on the map together with the routes that are open for comment (Dragon, Zuni Point, Kaibab Plateau and around Desert View Flight Free Zone).

The Dragon Corridor (Green Route 2/2R) would be modified by extending the turnaround approximately up to the future incentive corridor for noise efficient aircraft (also sometimes referred to as the Bright Angel Corridor). This creates a turnaround in the same place as shown on the SFAR 50–2 map. This change is necessary for safety purposes because it was brought to the FAA's attention that the turnaround on the Green 2/2R, shown on the map published on April 4, 2000, occurs in an area where pilots on the Green 2/2R would be blind to the traffic descending from the southern portion of the southbound Green 1. The FAA originally believed that this turnaround was safe because entering traffic would be able to see the length of the corridor prior to the turnaround and would be able to proceed via radio reporting. However, after further investigation, the FAA has concluded that a turnaround just before the Dragon Head would create an unacceptable safety risk, especially in certain visibility conditions or when heavy radio traffic could block some radio transmissions. Thus for safety reasons, it was determined that the turnaround should be returned to its present location as depicted on the current SFAR 50–2 route map.

The proposed Green 2/2R route is shown at 7,500 feet MSL, which is consistent with the route under SFAR 5–2. The FAA Las Vegas Flight Standards District Office (FSDO) will maintain a procedure in the ''Las Vegas Grand Canyon National Park Special Flight Rules Area Procedures Manual'' requiring helicopters to climb to maintain adequate terrain clearance as the Green 2 passes over the Dragon's Head and to level off at 8,300 feet MSL in preparation for the 180 degree turn back down the Corridor. Helicopters flying South on the Green 1 coming off of the Kaibab Plateau would begin descending prior to the turnaround to ensure a smooth merging of the traffic.

The other alternative considered for addressing the safety concerns at the Dragon's Head was to locate the standard route turnaround approximately a mile and a half below its current location to where the weather turnaround currently is located on the Green 2/2R, as shown on the April 4, 2000 map. However, this alternative was not significantly different than the current route structure and still placed the turnaround south of the Dragon's Head. Thus, the FAA determined that this alternative would not provide adequate line of sight visibility for oncoming traffic just prior to the turnaround and therefore would fail to address the safety issues. The FAA invites comments on this decision.

The Green 1 and Black 1 routes north of the Zuni Point Corridor would be modified to address concerns that the climb between Gunther's Castle and Pete's Corner does not ensure adequate vertical separation between fixed wing aircraft and helicopters. The FAA has separated these two routes horizontally and there would now be a slight divergence between these two routes and then they would join up as they cross the plateau. This would allow helicopters to climb to the designated altitude without concern that the helicopters might pass through the airspace occupied by the fixed wing before the fixed wing have cleared the altitude. The FAA does not anticipate that this will be a significant change in the route structure.

Additionally, the Zuni Point Corridor routes would be modified by depicting a weather route turnaround on the Green 1 and Black 1 for fixed wing and helicopter operators after the operators cross the Saddle Mountain Ridge. Based on FAA's investigation, placement of the weather route at this point would to give the operators a better opportunity to assess the weather conditions over the Kaibab Plateau and make a decision whether to proceed or turn around. The route could be used during any weather condition that affected safety of flight (turbulence, winds, thunderstorms, precipitation, etc). The operator would file a deviation with the FSDO when using the weather route. The deviation is for record keeping purposes only and would not be used to penalize the operator in any way for making a safety of flight decision.

The route structure around the Desert View Flight Free Zone would be modified by depicting weather routes that provide larger, clearer landmark navigation aids to use in visibility minimums. This address the concern that there are not adequate navigation landmarks on the Black 2 and Green 3 over the Painted Desert. The FAA investigated this allegation and determined that the navigation landmarks were adequate during good visibility. However, during marginal visibility, the route landmarks could possibly be missed, although the FAA was not able to evaluate these routes in limited visibility conditions. To ensure that operators are able to navigate this area safely in visibility minimums, the FAA has added weather routes for both fixed wing and helicopters. These routes would be closer to the Little Colorado River and its canyons and thus should be easy to navigate in marginal conditions.

The placement of weather routes on the map simply depicts an established procedure for the operators should weather conditions require. Operators are always permitted to take whatever route is necessary for safety of flight in the event of adverse weather conditions. The FAA has projected that weather routes will be used less than 5 percent of the time. Thus, the depiction of the weather routes is not a significant change from the route structure adopted April 4, 2000.

Finally, north of the Desert View Flight Free Zone the FAA would add an entrance (2E–4) at 8,500 feet MSL for fixed wing aircraft, which responds to a request from the Navajo Nation. Pursuant to this request, the FAA reevaluated its decision in the April 4, 2000 notice to deny an entrance at this location. The FAA was initially concerned that this entrance would cause altitude congestion. However, based on further evaluation of traffic density the FAA believes that it can achieve proper vertical separation by modifying the altitude structure. Thus, the altitude on the 2X–4 as shown on the April 4, 2000 map is raised to 9,000 feet MSL to allow for adequate vertical separation and the altitude for helicopters on the Green 3X remains at 7,500 feet MSL. While this entrance is not necessary for safety of flight and thus is different than the other changes noted above, the FAA has decided to include this change at this time, provided that doing so does not hinder the adoption of any changes necessary for safety of flight. If this matter becomes controversial, the FAA may decide to remove this change from this map and handle it as a separate matter at a later date.

The FAA has determined that the revisions to the route map outlined in this Notice are not significant changes to the current route structure at GCNP. The location of the turnaround in the Dragon Corridor is depicted in the identical location as under SFAR 50–2. In addition, the slight route deviation north of Zuni Point Corridor between Gunther's Castle and Pete's Corner are minor changes that will make important improvements to the safety of flight. The weather routes north of the Zuni Point Corridor and around Desert View Flight Free Zone simply depict established deviations from the standard route

structure that operators currently could take if necessary for safety of flight. Finally, the addition of an entrance for fixed wing aircraft North of the Desert View Flight Free Zone will be located in the same area as the exit routes shown on the April 4, 2000 map.

The FAA is completing a written reevaluation to determine whether the contents of the previous Supplemental Environmental Assessment remain valid and what, if any, impact these slight route changes will have on substantial restoration of natural quiet at GCNP. While the FAA is not required to publish the written reevaluation, the FAA intends to make it publicly available in January 2001. The revisions to the route map outlined in this Notice will address the safety concerns and allow the FAA to implement these routes by spring 2001 so they will be in place by the summer 2001 season.

Issued in Washington, DC on December 11, 2000.

L. Nicholas Lacey,

Director of Flight Standards Service.

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H.J. Res. 128/P.L. 106–540

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Dec. 8, 2000; 114 Stat. 2571)

S. 2796/P.L. 106–541

Water Resources Development Act of 2000 (Dec. 11, 2000; 114 Stat. 2572)

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