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Federal Register

Thursday
May 8, 1997

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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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

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

General Crop Insurance Regulations and Almond Endorsement; and Common Crop Insurance Regulations, Almond Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of almonds. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current almond endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current almond endorsement to the 1997 and prior crop years.

EFFECTIVE DATE: June 9, 1997.

FOR FURTHER INFORMATION CONTACT: Arden Routh, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

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

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and an acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity.

The insured must also annually certify to the previous year's production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements.

The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Friday August 9, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 41531–41535 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.123, Almond Crop Insurance Provisions. The new

provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring almonds found at 7 CFR 401.110 (Almond Endorsement). FCIC also amends 7 CFR 401.110 to limit its effect to the 1997 and prior crop years.

Following publication of that proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 2 comments were received from the crop insurance industry and FCIC. The comments received, and FCIC's responses, are as follows:

Comment: One comment received from the crop insurance industry agreed with the definition of ''Insurable rejects'' and ''Rejects,'' but did not find these terms being used in the provisions except in the definitions. The commenter believes that insurable rejects should not be included in production to count when finalizing a claim. The commenter recommended adding the following sentence to section 11(c)(2) ''Harvested almonds which cannot be marketed due to an insurable cause (insurable rejects), as determined by us, will not be considered production to count.''

Response: FCIC has amended this provision so that only harvested production which was accepted by a buyer is included as production to count, provided that production not accepted by the buyer has been rejected because it is damaged by an insurable cause of loss. This change will allow rejects to be included as production to count when the rejects are included in the weight for which the producer receives payment; however, will not include rejects as production to count when payment is not received for them.

Comment: One comment received from the insurance industry recommended that the requirement for a written agreement to be renewed each year be removed. If no substantive changes occur from one year to the next, the written agreement should be allowed to be effective.

Response: Written agreements are intended to permit insurance coverage to be available in unusual or previously unknown situations. If the situation exists from year to year, it should be incorporated into the crop provisions or Special Provisions. It is important to minimize exceptions to the policy to ensure that the insured is well aware of the specific terms of the policy.

FCIC has made the following changes to the Almond Provisions:

1. Section 2(c)—Clarified provisions regarding premium refunds when optional units are combined into a basic unit.

2. Section 2(e)(1)—Clarified that records must be provided by the production reporting date as one of the requirements for optional units.

3. Section 8(a)(1)—Clarified the date on which coverage begins for the year the application is first signed.

4. Section 8(b)—Added a provision to clarify that acreage acquired after the acreage reporting date is not insurable. Also, added a provision to clarify that a person to whom coverage is transferred must be eligible for insurance.

5. Section 9—Added insects, disease and wildlife as insurable causes of loss, unless damage is due to insufficient or improper application of control measures to be consistent with other perennial crops. Clarified that failure of the irrigation water supply is a covered loss only if caused by a peril for which insurance is provided.

List of Subjects in 7 CFR Parts 401 and 457

Almond, Almond endorsement, Crop insurance.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Section 401.110 introductory paragraph is amended to read as follows:

§ 401.110 Almond endorsement.

The provisions of the Almond Crop Insurance Endorsement for the 1988 through the 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

4. Section 457.123 is added to read as follows:

§ 457.123 Almond crop insurance provisions.

The Almond Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Almond Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Days. Calendar days.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The removal of mature almonds from the orchard.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Meat pounds. The total pounds of almond meats (whole, chipped and broken, and in-shell meats) and rejects. Unshelled almonds will be converted to meat pounds in accordance with FCIC approved procedures.

Non-contiguous land. Any two or more tracks of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway or an irrigation canal will be considered as contiguous.

Production guarantee (per acre). The quantity of almonds (total meat pounds per acre) determined by multiplying the approved actual production history (APH) yield per acre by the coverage level percentage you elect.

Set out. Transplanting the tree into the orchard.

Written agreement. A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit, you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have provided records by the production reporting date, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must be located on non-contiguous land unless otherwise provided by a written agreement.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the almonds in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each almond type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by type if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting patterns;

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed, the age of the crop that is interplanted with the almonds, and type if applicable, and the planting pattern; and

(5) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are December 31.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the almonds in the county for which a premium rate is provided by the Actuarial Table:

(a) In which you have a share unless allowed otherwise by section 8(b);

(b) That are grown for harvest as almonds;

(c) That are irrigated;

(d) That are grown in an orchard that, if inspected, is considered acceptable to us; and

(e) On acreage where at least 90 percent of the trees have reached at least the seventh growing season after set out, unless we agree in writing to insure trees not meeting this requirement.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, almonds interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on January 1 of each crop year, except that for the year of application, if your application is received after December 21, but prior to January 1, insurance will attach on the 10th day after your properly completed application is received in our local office unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is November 30.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. Acreage acquired after the acreage reporting date will not be insured.

(2) If you relinquish your insurable share on any insurable acreage of almonds on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Earthquake;

(6) Volcanic eruption;

(7) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period; or

(8) Wildlife, unless control measures have not been taken.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to the inability to market the almonds for any reason other than actual physical damage to the almonds from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you intend to claim an indemnity on any unit, you must notify us prior to the beginning of harvest so that we may inspect the damaged production. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(l) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for the type;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see subsection 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the result in section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

(c) The total production to count, specified in meat pounds, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is damaged solely by uninsured causes; or

(C) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested meat pounds which has been accepted by a buyer and all harvested meat pounds rejected by a buyer unless the meat pounds are rejected due to an insured cause of loss.

12. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington DC, on May 2, 1997.

Suzette M. Dittrich,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–11959 Filed 5–7–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANE–11]

Amendment to Class E Airspace; Nashua, NH, Newport, RI, Mansfield, MA, Providence, RI, and Taunton, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of the direct final rule which modifies the Class E airspace at Nashua, NH, Newport, RI, Mansfield, MA, Providence, RI, and Taunton, MA by removing from their descriptions references to Class E airspace areas removed by previous actions. The direct final rule is necessary to keep the descriptions of controlled airspace areas operationally current.

EFFECTIVE DATE: The direct final rule is effective on 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 7, 1997 (62 FR 10425). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 22, 1997. No adverse comments were received, and thus this document confirms that this final rule will become effective on that date.

Issued in Burlington, MA, on April 28, 1997.

John J. Boyce,

Assistant Manager, Air Traffic Division, New England Region.

[FR Doc. 97–11661 Filed 5–7–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28908; Amdt. No. 1798]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

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

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination—

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

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

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 2, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective Upon Publication.

FDC date	State	City	Airport	FDC No.	SIAP
04/14/97	NC	Fayetteville	Fayetteville Regional Grannis Field.	7/2133	VOR or GPS Rwy 22 Amdt 4A...
04/16/94	LA	Tallulah/Vicksburg	Vicksburg Tallulah Regional ..	7/2126	LOC Rwy 36, Orig–A...
04/16/97	LA	Tallulah/Vicksburg	Vicksburg Tallulah Regional ..	7/2125	GPS Rwy 18, Orig–A...
04/16/97	LA	Tallulah/Vicksburg	Vicksburg Tallulah Regional ..	7/2127	NDB Rwy 36, Orig–A...
04/18/97	IL	Chicago	Chicago-O'Hare Intl	7/2182	ILS Rwy 32L Amdt 1...
04/18/97	MD	Baltimore	Baltimore-Washington Intl	7/2187	ILS/DME RWY 33R, Amdt 2A...
04/18/97	WA	Bellingham	Bellingham Intl	7/2185	GPS Rwy 34, Orig...

FDC date	State	City	Airport	FDC No.	SIAP
04/18/97	WA	Bellingham	Bellingham	7/2186	GPS Rwy 16, Orig...
04/21/97	AR	Fayetteville	Drake Field	7/2231	VOR or GPS–A, Amdt 24...
04/21/97	AR	Fayetteville	Drake Field	7/2237	Radar-1, Orig...
04/21/97	AZ	Chandler	Chandler Muni	7/2248	NDB Rwy 4R Orig...
04/21/97	AZ	Chandler	Chandler Muni	7/2247	VOR or GPS Rwy 4L Amdt 5A...
04/21/97	UT	Ogden	Ogden-Hinckley	7/2241	ILS Rwy 3, Amdt 3...
04/23/97	IL	Peoria	Greater Peoria Regional	7/2275	ILS Rwy 13 Amdt 6...
04/25/97	KS	Hutchinson	Hutchinson Muni	7/2312	GPS Rwy 31, Orig...
04/25/97	KS	Hutchinson	Hutchinson Muni	7/2313	VOR or GPS Rwy 3 Amdt 18A...
04/25/97	KS	Hutchinson	Hutchinson Muni	7/2315	LOC BC Rwy 31, Amdt 13...
04/25/97	KS	Hutchinson	Hutchinson Muni	7/2316	VOR/DME Rwy 21, Amdt 5A...
04/25/97	KS	Hutchinson	Hutchinson Muni	7/2321	ILS Rwy 13, Amdt 15...
04/25/97	KS	Hutchinson	Hutchinson Muni	7/2323	NDB or GPS Rwy 13, Amdt 14A...
04/25/97	MS	Jackson	Jackson Intl	7/2332	Radar 1 Amdt 11...
04/25/97	NE	Hebron	Hebron Muni	7/2348	NDB or GPS Rwy 12, Amdt 3...
04/25/97	SC	Spartanburg	Spartanburg Downtown Memorial.	7/2341	NDB or GPS–A Amdt 8A...
04/28/97	IA	Algona	Algona Muni	7/2387	NDB or GPS Rwy 12, Amdt 4...
04/28/97	IA	Algona	Algona Muni	7/2388	VOR/DME or GPS–A, Amdt 5...
04/28/97	SC	Spartanburg	Spartanburg Downtown Memorial.	7/2389	RNAV or GPS Rwy 5, Amdt 6A...
04/28/97	SC	Spartanburg	Spartanburg Downtown Memorial.	7/2391	VOR–B Amdt 2A...
04/29/97	TX	Marshall	Harrison County	7/2421	GPS Rwy 33, Orig–B...

[FR Doc. 97–12053 Filed 5–7–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28907; Amdt. No. 1797]

RIN 2120–AA65

Standard Instruction Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination—

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

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

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

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

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC)

Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

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

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington DC on May 2, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

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

Part 97—Standard Instrument Approach Procedures

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective May 22, 1997*

St. Louis, MO, Arrowhead, VOR OR GPS RWY 2, Amdt 5, CANCELLED
St. Louis, MO, Arrowhead, VOR OR GPS–B, Amdt 3, CANCELLED
Burlington, NC, Burlington-Alamance Regional, LOC Rwy 6, Orig
Burlington, NC, Burlington-Alamance Regional, NDB OR GPS RWY 6, Amdt 4
Bellingham, WA, Bellingham Intl, MLS RWY 34, Orig

** * * Effective June 19, 1997*

Brunswick, GA, Malcolm McKinnon, NDB RWY 4, Amdt 4A, CANCELLED
Brunswick, GA, Malcolm McKinnon, NDB RWY 22, Amdt 4A, CANCELLED
Brunswick, GA, Malcolm McKinnon, NDB RWY 4, Orig
Brunswick, GA, Malcolm McKinnon, NDB RWY 22, Orig
New Iberia, LA, Acadiana Regional, LOC RWY 34, Amdt 8, CANCELLED
New Iberia, LA, Acadiana Regional, ILS RWY 34, Orig

** * * Effective July 17, 1997*

Arkadelphia, AR, Arkadelphia Muni, GPS RWY 4, Orig
Burlington, CO, Kit Carson County, NDB RWY 15, Amdt 1
Hayden, CO, Yampa Valley, GPS–A, Orig
Hayden, CO, Yampa Valley, GPS–B, Orig
Marco Island, FL, Marco Island, GPS RWY 17, Orig
Milton, FL, Peter Prince Field, GPS RWY 36, Orig
Macon, GA, Middle Georgia Regional, VOR OR GPS RWY 13, Amdt 8
Macon, GA, Middle Georgia Regional, VOR OR GPS RWY 23, Amdt 2
Macon, GA, Middle Georgia Regional, NDB OR GPS RWY 5, Amdt 21
Macon, GA, Middle Georgia Regional, ILS RWY 5, Amdt 25
Macon, GA, Middle Georgia Regional, GPS RWY 13, Orig
Macon, GA, Middle Georgia Regional, GPS RWY 23, Orig
Macon, GA, Middle Georgia Regional, GPS RWY 31, Orig
Washington, IN, Daviess County, NDB RWY 18, Amdt 6
Washington, IN, Daviess County, GPS RWY 18, Orig
New Orleans, LA, New Orleans/Moisant Field, GPS RWY 1, Orig
Kansas City, MO, Richards-Gebaur Memorial, VOR/DME–A, Orig
Chadron, NE, Chadron Muni, VOR/DME RWY 2, Amdt 2
Chadron, NE, Chadron Muni, VOR/DME RWY 20, Orig
Chadron, NE, Chadron Muni, NDB RWY 2, Amdt 1
Chadron, NE, Chadron Muni, NDB RWY 20, Amdt 12
Chadron, NE, Chadron Muni, ILS RWY 2, Amdt 1
Chadron, NE, Chadron Muni, GPS RWY 2, Orig
Chadron, NE, Chadron Muni, GPS RWY 20, Orig
Hornell, NY, Hornell Muni, GPS RWY 18, Orig
Johnstown, NY, Fulton County, GPS RWY 10, Orig
Lincolnton, NC, Lincoln County, GPS RWY 5, Orig
Hatteras, NC, Billy Mitchell, GPS RWY 25, Orig
Bedford, PA, Bedford County, GPS RWY 14, Orig
Bedford, PA, Bedford County, GPS RWY 32, Orig
Meadville, PA, Port Meadville, GPS RWY 25, Orig
Kutztown, PA, Kutztown, VOR–A, Orig
Myrtle Beach, SC, Myrtle Beach Intl, GPS RWY 35, Orig
Lafayette, TN, Lafayette Muni, GPS RWY 19, Orig
Marfa, TX, Marfa Muni, VOR RWY 30, Amdt 5

Note: The FAA published an Amendment in Docket No. 28863, Amdt No. 1789 to Part 97 of the Federal Aviation Regulations (VOL 62, No. 68, Page 17068, dated Wednesday, April 9, 1997) under Section 97.33 effective 22 MAY 1997, which is hereby amended as follows:

Roseburg, OR, Roseburg Regional, GPS–B, Orig

Note: The following procedures published in Docket No. 28898, Amdt No. 1796 to Part 97 of the Federal Aviation Regulations (Vol 62, No. 83, Page 23350, dated Thursday, April 10, 1997) under Section 97.23 effective 22 May 97, are rescinded:

Wooster, OH, Wayne County, VOR or GPS RWY 10, Orig–A, CANCELLED
Wooster, OH, Wayne County, VOR RWY 10, Orig–A,

[FR Doc. 97–12063 Filed 5–7–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93)

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

ACTION: Final rule.

SUMMARY: The Department of the Treasury (''Treasury'' or ''Department'') is issuing in final form an amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). This final rule codifies in the Code of Federal Regulations a change in the way the offering amounts for Treasury bill auctions are announced and auction amounts are awarded to the Federal Reserve Banks for their own account, also referred to as the System Open Market Account. The change involves treating such auction awards as additions to the announced offering amount rather than making such awards within this amount.

EFFECTIVE DATE: May 8, 1997.

ADDRESSES: This final rule has been made available for downloading from the Bureau of the Public Debt's Internet site at the following address: www.publicdebt.treas.gov.

FOR FURTHER INFORMATION CONTACT: Ken Papaj (Director), Lee Grandy or Kurt Eidemiller (Government Securities Specialists), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 219–3632.

SUPPLEMENTARY INFORMATION: 31 CFR Part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable Treasury bills, notes, and bonds. The uniform offering circular, in conjunction with offering announcements, represents a comprehensive statement of those terms and conditions.[1] This rule amends the defined term ''public offering'' in section 356.2 and makes an unrelated, administrative correction to paragraph (a) of section 356.13 of the uniform offering circular pertaining to the reporting of net long positions.

The current rules provide that, when the Department issues an offering announcement for a regular Treasury bill auction (i.e., 13-, 26-, and 52-week bills), the stated public offering amount of each security issue includes any amounts that would be awarded in the auction to the Federal Reserve Banks for their own account and for the accounts of foreign and international monetary authorities up to the amount of maturing securities held by each. This practice differs from the treatment of these amounts in the announcements and auctions of cash management bills (''CMBs''), notes, and bonds. In these announcements and auctions, the rules provide that the amounts to be awarded to the Federal Reserve Banks for both their own account and for the accounts of foreign and international monetary authorities are in addition to the announced public offering amounts.

In a press release dated March 18, 1997, Treasury announced a change in the way bill auctions are announced, beginning with the auction of 52-week bills that were auctioned on March 26, 1997. The press release stated that amounts to be awarded to the Federal Reserve Banks for their own account will be treated as additions to the announced offering amount of Treasury bill auctions. As a result, awards to the Federal Reserve Banks for their own account in bill auctions are now treated as additions to the amount sold to the public. The Department made this change to provide market participants with more complete information and greater certainty as to the supply of bills available to the public in an auction. Awards to the Federal Reserve Banks for their own account in bill auctions will continue to be at the weighted average discount rate of accepted competitive tenders. The treatment of the amount to be awarded to the Federal Reserve Banks for the accounts for foreign and international monetary authorities in regular Treasury bill auctions remains unchanged.

Accordingly, to codify this change in determining the public offering amount for auctions of regular Treasury bills, section 356.2 of the uniform offering circular is amended by revising the definition of the term ''public offering.'' It is anticipated that the sample announcements of Treasury offerings, found in Exhibit A to Part 356, will be revised to reflect this change once the recent proposed amendments to accommodate three decimal bidding in .005 increments for Treasury bill auctions, as published in the **Federal Register** on May 5, 1997 (62 FR 24375), are finalized.

This final rule also makes an unrelated, administrative correction to section 356.13(a). The section is being restated in its entirety to reflect the intent of the revisions to the uniform offering circular that were published on July 16, 1996 (61 FR 37007) and January 6, 1997 (62 FR 846). This correction does not involve any substantive changes.

Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action'' pursuant to Executive Order 12866.

Because this rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to U.S.C. 553(a)(2).

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

There is no new collection of information contained in this final rule, and, therefore, the Paperwork Reduction Act does not apply. The collections of information of 31 CFR Part 356 have been previously approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 1535–0112. Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons set forth in the preamble, 31 CFR Chapter II, Subchapter B, Part 356, is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 continues to read as follows:

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

2. Section 356.2 is amended by revising the definition of ''public offering'' to read as follows:

§ 356.2 Definitions.

* * * * *

Public offering means the par amount of securities offered to the public for purchase in an auction. For all bills except cash management bills, the public offering is the amount specified in the offering announcement, less securities awarded in the auction to the Federal Reserve Banks for the accounts of foreign and international monetary authorities (up to the amount of maturing securities held by such accounts). For notes, bonds, and cash management bills, the public offering is

[1] The uniform offering circular was published as a final rule on January 5, 1993 (58 FR 412). Amendments to the circular were published on June 3, 1994 (59 FR 28773), March 15, 1995 (60 FR 13906), July 16, 1996 (61 FR 37007), August 23, 1996 (61 FR 43626), October 22, 1996 (61 FR 54908), and January 6, 1997 (62 FR 846).

the same as the amount specified in the offering announcement.

* * * * *

3. Section 356.13 is amended by revising paragraph (a) to read as follows:

§ 356.13 Net long position.

(a) *Reporting net long positions.* When bidding competitively, a bidder must report the amount of its net long position when the total of all of its bids in an auction plus the bidder's net long position in the security being auctioned equals or exceeds the net long position reporting threshold amount. The threshold amount for any particular security will be as stated in the offering announcement for that security. (See § 356.10.) That amount will be $2 billion for bills, notes, and bonds unless otherwise stated in the offering announcement. For example, the net long position reporting threshold amount may be less than $2 billion for smaller security offerings, e.g., certain inflation-indexed securities or cash management bills. If the bidder either has no position or has a net short position and the total of all of its bids equals or exceeds the threshold amount, e.g., $2 billion, a net long position of zero must be reported. In cases where a bidder that is required to report the amount of its net long position has more than one bid, the bidder's total net long position should be reported in connection with only one bid. A bidder that is a customer must report its reportable net long position through only one depository institution or dealer. (See § 356.14(c).)

* * * * *

Dated: April 30, 1997.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 97–12017 Filed 5–7–97; 8:45 am]

BILLING CODE 4810–39–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154, 155, and 156

46 CFR Parts 13, 15, 30, 35, 98, and 105

[CGD 79–116]

RIN 2115–AA03

Qualifications for Tankermen and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule sets out qualifications for tankermen, and for persons in charge of, and assisting in, the handling, transfer, and transport of oil and certain hazardous liquid cargoes in bulk on board vessels. It is necessary to protect our waterways. It will ensure that these persons are competent to perform their duties, even during emergencies; will improve the handling, transfer, and transport of these cargoes; and will reduce the risk and severity of spillage from tank vessels.

DATES: This final rule is effective June 9, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Mark C. Gould, Project Manager, Maritime Personnel Qualifications Division, (202) 267–6890.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 18, 1980, the Coast Guard published two notices of proposed rulemaking (NPRMs): CGD 79–116, which proposed rules for tankermen (45 FR 83290); and CGD 79-116a, which proposed rules for persons in charge of transfers of oil (45 FR 83268).

On October 17, 1989, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) entitled, ''Tankerman Requirements and Qualifications for Persons-in-Charge of Dangerous Liquid and Liquefied Gas Transfer Operations'' (54 FR 42624), which combined the two original rulemakings and officially closed CGD 79–116a as a distinct rulemaking. The Coast Guard received 42 comments on that SNPRM. No public meeting was requested, nor was one held.

On April 4, 1995, the Coast Guard published an interim rule entitled ''Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases'' (60 FR 17134). On March 26, 1996, the Coast Guard reopened the comment period (61 FR 13098). No public meeting was requested, nor was one held.

Background and Purpose

Background information on qualifications for tankermen, and for persons in charge of transfers of dangerous liquids and liquefied gases, appears in the preamble to the interim rule published on April 4, 1995.

Discussion of Comments

The Coast Guard received a total of 56 letters in response to the reopened comment period; these presented more than 200 comments. All of these letters are available for inspection in CGD 79–116 at the address listed under **ADDRESSES.**

1. General Comments

One comment asked what impact this rulemaking would have on fishing vessels. Tankerman rules for fishing vessels may be found in 46 CFR part 105, which discusses commercial fishing vessels dispensing petroleum products, and in particular under § 105.45–1, which details the tankerman requirements for these vessels.

Another comment supported the Coast Guard in its efforts to align this rulemaking with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW).

One comment noted that the definition of ''tankship'' varies from section to section in this rulemaking. The Coast Guard agrees and has defined ''tankship,'' ''self-propelled tank vessel,'' ''tank vessel,'' and ''tank barge,'' as appropriate, in the definition sections of 33 CFR part 154 and 46 CFR parts 13 and 30.

A separate comment asked the Coast Guard to define ''in bulk.'' The Coast Guard defines ''in bulk'' as ''liquid cargo in bulk,'' found in 46 CFR 13.103.

Several comments noted that the course in dangerous liquids (DL) for tankerman will meet the vapor-recovery regulations in 46 CFR 39.10–11 but not, as stated in the preamble to the interim rule, the facility-training regulations in 33 CFR 154.840. The Coast Guard agrees and has made it clear in the final rule that this course will meet only the vapor-recovery regulations.

A separate comment noted that a discussion of endorsements as restricted Tankerman person in charge (PIC) and Tankerman-PIC (Barge) referred to benefits for only oil and chemical companies. In fact, these endorsements are intended for the benefit of all companies, not just oil and chemical—and many mariners—engaged in the carriage of DL or liquefied gases (LG).

Two comments indicated that the language and organization of the interim rule were unusually confusing and difficult to follow. The Coast Guard agrees and has made every effort to make the final rule easier to understand.

Another comment indicated that 33 CFR parts 154 and 156 should not apply to a mobile transfer facility with a capacity of less than 250 barrels. Yet, as written, it will be applicable to any facility or vessel if there is a transfer of oil or hazardous material to, from, or within any vessel with a capacity of 250 barrels or more. The Coast Guard disagrees with the comment. The Oil Pollution Act of 1990 (OPA 90), enacted by Congress, established the criteria for these regulations. To change the types of vessel required to comply with these regulations would necessitate a change in the law by Congress.

Two comments supported allowing mariners interested in returning to sea after serving in a marine-related capacity ashore to substitute related experience for sea service. The Coast Guard disagrees because few marine-related jobs ashore relate directly to a tankerman's duties. It is important that a tankerman retain his expertise, and this cannot be done working in other shoreside capacities. It should also be borne in mind that if the mariner does not comply with 46 CFR 13.113 by the first renewal of his or her U.S. Merchant Mariner's Document (MMD) after March 31, 1997, he or she will have to comply with § 13.201 for an original Tankerman-PIC endorsement.

2. Training Courses

One comment supported the Coast Guard's proposal to defer the requirement of the DL and LG courses for a limited time, because of the limited availability of courses. This would give mariners a reasonable time to satisfactorily complete the courses. This deferral was outlined in a policy letter to the Regional Examination Centers (RECs) dated April 9, 1996. It is also available in the docket.

Several comments stated that firefighting training should not be required when the tankerman certification is restricted to cargoes that are not flammable or combustible. The Coast Guard agrees in part. Use of shoreside pumping equipment seldom presents danger of fire; and for this use, the firefighting course may be less important. In contrast, use of a barge's own pumping equipment presents danger of fire; methods of extinguishing such fire are the subject of the course in tank-barge firefighting. So an applicant obtaining a restricted Tankerman-PIC endorsement without having taken a course in firefighting will be authorized only to handle non-flammable or non-combustible cargoes on those vessels that do not use their equipment to load or discharge a cargo.

Another comment stated that firefighting training should not be required for any tankerman endorsement. The Coast Guard disagrees. An alert and trained tankerman will, in all probability, be the first person to notice a barge fire during a transfer. The 2-day course in tank-barge firefighting teaches the student not only the hazards involved with a fire on board a tank barge but also how to determine whether he or she can prevent a confinable fire from becoming an unmanageable one. Students in the course will have to participate in realistic fire-extinguishment exercises involving responses to fires in the early stages using equipment found on tank barges—portable fire extinguishers.

Two comments indicated that requiring applicants for original endorsements to have completed their DL or LG courses within 2 years of application was too restrictive. The comments indicated that the Coast Guard should allow applicants to have completed the required course up to 5 years before the date of application. The Coast Guard agrees and has increased the time limit from 2 to 5 years. 46 CFR 13.209, 13.309, and 13.409 have been changed accordingly.

One comment wanted to require that all DL or LG courses be Coast Guard approved. The Coast Guard agrees. All these courses must be approved by the Coast Guard or found to be acceptable by the Officer in Charge, Marine Inspection (OCMI), who will review them against appropriate curricula in 46 CFR 13.121.

One comment recommended that the Coast Guard amend 46 CFR 10.303(d) to require that trainers keep students' records; however, this change is beyond the scope of this rulemaking.

Another comment stated that, by not requiring a minimum number of hours to cover the DL or LG course, the Coast Guard would allow oil or chemical companies to set their own standards. To clarify, the companies would not offer the course, in most cases (educational facilities would), and the Coast Guard would both approve and monitor it.

One comment recommended that the DL and LG courses contain training in proper radio communications. The Coast Guard disagrees. Since a check of radio communications is part of the pre-transfer inspection procedure, if one of the PICs is having difficulty in radio communications, it will be evident to the other PIC before th3e transfer commences.

Several comments did not want Crude-Oil Washing (COW) systems and inert-gas systems included in the syllabus for DL and LG courses for Tankerman-PIC (Barge). The Coast Guard agrees and has deleted these and other inapplicable subjects from the syllabus.

3. 33 CFR 155.700 (Designation of PIC)

The Coast Guard received one comment requesting that the wording from § 155.710, concerning the appointment of the PIC of a transfer, be incorporated into this section. Specifically, the comment stated that it is routine for shippers or facility operators to designate the Tankerman-PIC without consulting with the owner or operator of the vessel and that, in those situations, the Tankerman-PIC is an employee of the facility, of an independent tankering service, or of the cargo interest. The Coast Guard agrees and has incorporated this wording.

Another comment asked whether § 155.700 applied to bunkering. To clarify, if the transfer of bunkers meets the criteria of § 155.700, this section applies.

4. 33 CFR 155.710 (Qualifications of PIC)

The Coast Guard received one comment asking whether a Chief Engineer or First Assistant Engineer could act as the Tankerman-PIC of a fuel-oil transfer by virtue of his or her Tankerman-Engineer endorsement. Section 155.710(e) states that, on a vessel required to have a licensed person aboard, a master, mate, pilot, engineer, or operator of that vessel, or the holder of an MMD with the appropriate Tankerman-PIC endorsement, may act as the Tankerman-PIC of a transfer of fuel oil as appropriate. Therefore, a Chief Engineer or First Assistant Engineer may, by virtue of his or her license or MMD endorsed as Tankerman-PIC or Tankerman-Engineer, act as the Tankerman-PIC of a fuel-oil transfer.

Several comments indicated that § 155.710(e) was confusing about a fuel-oil transfer between an uninspected towing vessel and an inspected tank barge. There was also concern that the PIC of bunkering aboard an uninspected vessel would be unlicensed and have no basic knowledge of a tankerman's duties, while the person on the other end of the hose in the same bunkering would be required to hold a Tankerman-PIC endorsement. The Coast Guard agrees and has amended this section so that the PIC of bunkering aboard an uninspected vessel which is required to have a licensed person aboard either be that person (or another licensed person) or hold an MMD endorsed as Tankerman-PIC. Note that, since most

applicants for the Tankerman-PIC endorsement who work on towing vessels will not be able to meet the experience requirements, they can apply for restricted endorsements using service on towing vessels instead of service on tankships or self-propelled tank vessels.

Another comment noted that § 155.710(b)(1)(ii), which discusses transfers of liquid cargo in bulk aboard barges, conflicts with 46 CFR 13.113(c), which discusses grandfathering provisions, in that the former requires the PIC of a transfer to hold a Tankerman-PIC or Tankerman-PIC (Barge) endorsement but that the latter, until March 31, 2001, does not. The Coast Guard agrees and has amended this section, § 155.710(b)(2) in the final rule, accordingly.

Several comments disagreed with the interim rule as it allowed a National Fire Protection Association (NFPA) Certificated Marine Chemist to act as Tankerman-PIC for tank-cleaning and gas-freeing. They felt that no marine chemist is qualified for those activities. The Coast Guard disagrees. A marine chemist must go through an extensive training program before receiving a Marine Chemist's Certificate issued by the NFPA. In addition, the marine chemist must still comply with §§ 155.710(a)(1) for tankships and 155.710(b)(1) for tank barges. These sections require that the person designated as a Tankerman-PIC have sufficient training and experience with the relevant characteristics of the vessel on which he or she is engaged—including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents, and, if installed, the COW, inert-gas, and vapor-control systems—to safely conduct a transfer.

Two comments did not want §§ 155.710(a) (1)(i) and (2) to require that a person achieve vessel-specific training before he or she may conduct a transfer. The Coast Guard disagrees. A potential Tankerman-PIC of a transfer must be experienced with the relevant characteristics of the vessel on which he or she is engaged—including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents and, if installed, the COW, inert-gas, and vapor-control systems.

As written in the interim rule, § 155.710(f) may be misleading. It discusses the documents that must be held by the person in charge of a transfer of oil or hazardous material in bulk on any vessel other than a tank vessel. Yet a ''tank vessel'' was according to the interim rule, at § 154.105, ''any vessel that carries oil or hazardous material in bulk as cargo or in residue.'' In essence, this section exempted those vessels it was meant to target. While §§ 155.710 (a), (b), (c), and (d) refer to U.S.-flag tankships, U.S.-flag tank barges, foreign-flag tankships, and foreign-flag tank barges, respectively, the Coast Guard's intent was for section (f) to apply to all other tank vessels, as presently defined in the final rule at § 154.105, not already discussed—specifically, to self-propelled tank vessels, other than tankships (defined in the final rule at § 154.105), that carry oil in hazardous material in bulk as cargo or in residue. 33 CFR 155.710(f) has been rewritten to reflect this intent.

One comment questioned why transfers described in § 155.710(f) required different levels of expertise depending on the grade of the cargo. The Coast Guard agrees and has amended this section to require a valid license and a Tankerman-PIC endorsement on the MMD regardless of the cargo carried.

Another comment questioned why § 155.710(a)(1) doesn't specify the minimum training for the PIC of a transfer. Section 155.710(a)(3) requires that the PIC hold a Tankerman-PIC endorsement issued under 46 CFR part 13. 46 CFR part 13 requires that every applicant complete an approved course in DL or LG.

Two comments asked why the PIC of a transfer or a tank-cleaning on a foreign-flag tankship must hold a license, while the PIC of a transfer or a tank-cleaning on a U.S.-flag tankship may be either a NFPA Certificated Marine Chemist or a Tankerman-PIC. The Coast Guard agrees and has amended § 155.710(c)(2) to correct the inequity.

One comment questioned why a Tankerman-PIC of a foreign-flag tankship or tank barge must read, speak, and understand English, or a language mutually agreed upon with the shoreside PIC, while a Tankerman-PIC of a U.S.-flag tankship or tank barge does not. 46 CFR 13.201(g) requires that each applicant for a Tankerman-PIC endorsement be capable of speaking and understanding, in English, all instructions needed to commence, conduct, and complete a transfer of cargo, and be capable of reading the English found in the Declaration of Inspection, vessel-response plans, and Cargo Information cards. 46 CFR 13.301(g) requires the same of each applicant for a Tankerman-PIC (Barge) endorsement.

Another comment asked why a foreign Tankerman-PIC and Tankerman-PIC (Barge) must be able to effectively communicate with all crew members involved in the transfer, while a U.S. Tankerman-PIC and Tankerman-PIC (Barge) does not. The Coast Guard disagrees. 46 CFR part 156 applies to the transfer of oil or hazardous material on the navigable waters or in the contiguous zone of the United States, to, from, or within a vessel with a capacity of 250 barrels or more. Section 156.120(v) requires that at least one person at the site of the transfer fluently speak the language or languages spoken by both Tankermen-PICs.

A separate comment did not like the requirement for an interpreter, found in § 155.710(d)(4), because, when complying with rest hour requirements, he or she would not be ''immediately available to the Tankerman-PIC at all times during the transfer.'' The Coast Guard disagrees. On foreign-flag vessels, STCW imposes rest-hour requirements only on watchstanders. Further, it is the responsibility of the PIC of the transfer on the vessel to ensure that an interpreter is always immediately available to him or her, even if that means the vessel's carrying two interpreters.

An additional comment recommended that any interpreter used during a transfer must have basic knowledge of the duties and responsibilities of a Tankerman-PIC. The Coast Guard disagrees. An interpreter's role is to translate in case of a language barrier.

One comment asked the Coast Guard to require that all communications on oil transfers be in English. The Coast Guard feels that safeguards, such as those found in §§ 155.710(c) (4) and (5), and 155.710(d) (3) and (4), provide sufficient protection to prevent a language barrier from causing a spill.

A separate comment did not like the phrase ''shall verify to his or her satisfaction'' (§§ 155.710 (a) and (b)) because it is too open-ended (the same phrase appears in paragraphs (c) and (d) for foreign-flag tankships and barges). The Coast Guard disagrees. On a tankship the chief mate, in charge of cargo for the master and, ultimately, the owner of the vessel, will assure himself or herself that a new crewmember has the abilities and skills necessary to safely conduct the transfer before he or she will be allowed to do so. Likewise, the ''person who arranges and hires

(someone) to be in charge of a transfer of liquid cargo in bulk,'' whether that person owns the cargo or the vessel, must be assured of either the Tankerman-PIC's abilities or, at least, the reputation of the company that hires him or her. In practice, some official of the cargo owner or vessel owner usually takes sufficient steps to minimize the chances of a spill during a transfer of fuel oil, cargo oil, or hazardous material.

Another comment stated that the word ''or'' separating § 155.710(e) (1), (2), (3), and (4), had vanished, causing much confusion. It cited as an example an uninspected towing vessel in excess of 100 gross tons taking fuel from an inspected tank barge. The Coast Guard recognizes the confusion. To answer the example posed, § 155.710(e)(1) states that, if the towing vessel must have a licensed person aboard, the PIC of the fueling must be licensed. Section 155.710(e)(2) states that, if that vessel does not require a licensed person onboard, the PIC must have been instructed both in his or her duties and in the Federal statutes and regulations on water pollution that apply to the vessel. Personnel on the towing vessel in this example must comply with (e)(1). The unintentional removal of the word ''or'' from between the sections occurred in the SNPRM published on October 17, 1989, and persisted through the rulemaking from then until now. To emphasize that the four requirements of paragraph (e) apply separately, the Coast Guard has repunctuated the whole paragraph.

Another comment asked if, after a tank barge has been emptied, a specially-equipped shoreside company may be hired to clean out the cargo tanks of the barge, and if the employees of this company need to hold Tankerman-PIC endorsements. The shoreside PIC of tank-cleaning does not have to hold a Tankerman-PIC (Barge) endorsement, but the PIC on the barge does, whether he or she is from the barge company or shoreside company. This final rule makes no changes in this regard. Section 155.700 still states that each vessel with a capacity of 250 or more barrels of fuel oil, cargo oil, or hazardous materials must designate the PIC of each transfer to or from the vessel and of each tank-cleaning. Section 155.710(b)(2) still requires that the PIC of a tank-cleaning on a tank barge that must be inspected under 46 U.S.C. 3703 hold a Tankerman-PIC or Tankerman-PIC (Barge) endorsement or, if at a tank-cleaning facility or shipyard, be a NFPA Certificated Marine Chemist.

Another comment indicated that the term ''liquefied gas'' should be deleted from §§ 155.710 (c)(3), (d)(2), and (f)(2) as they stood in the interim rule. The Coast Guard agrees. Liquefied gases are specifically excluded from the definition of ''hazardous material'' as defined in § 154.105. (Requirements for vessels carrying and facilities handling liquefied gas may be found in 46 CFR part 154.) The Coast Guard has amended all three sections to delete the reference.

5. 33 CFR 156.120 (Requirements for Transfer)

One comment requested that 46 CFR subpart 35.35 require the Tankerman-PIC to be on duty throughout the cargo transfer. Sections 156.120 (s), (t)(1), and (u)(1) already require that the Tankerman-PIC be on duty throughout the transfer.

Another comment requested that § 156.120 require agreement on a pre-determined radio frequency by both parties at the pre-transfer meeting. The Coast Guard agrees and has amended § 156.120.

6. 46 CFR 13.103 (Definitions)

One comment expressed concern that the definition of ''liquid cargo in bulk'' included even liquid cargo in portable tanks. The Coast Guard agrees and has amended the definition in § 13.103.

7. 46 CFR 13.107 (Tankerman Endorsement: General)

Several comments stated that inclusion of ''bunkering'' in § 13.107(d) incorrectly implies that a Tankerman-Engineer endorsement is required for bunkering. The Coast Guard agrees and has deleted that term from this section.

Another comment supported the Coast Guard's interpretation of ''direct supervision'' to include the use of hand-held radios. The Coast Guard defines being ''directly supervised'' in § 13.103 to mean ''being in the direct line of sight of the person in charge or maintaining direct, two-way communications by a convenient, reliable means, such as a predetermined working frequency over a hand-held radio.''

A separate comment encouraged permission to use video cameras as a means of providing a clear line of sight. The Coast Guard agrees. Because this would meet the intent of the definition, this method would be acceptable.

Another comment questioned why an applicant for Tankerman-Engineer does not have to read or write English. In order to pass the Coast-Guard-approved course on DL or LG for tankships, including the final examination, the applicant must be able to read and write English.

The Coast Guard received one comment noting that § 13.107(a) empowered only OCMIs at Coast Guard RECs to endorse MMDs as Tankerman-PIC, while § 13.107(b) empowered all OCMIs to endorse MMDs as Tankerman-PIC (Barge). The Coast Guard agrees and has conformed paragraph (b) to paragraph (a).

Another comment noted that, as written, § 13.509 requires that all Tankerman-Engineer applicants successfully complete the course in DL or LG. In contrast, STCW requires that, in the engine department, only the chief engineer officer, the second engineer officer, and any person with immediate responsibility for loading, discharging, and care in transit or in handling of the cargo complete that course. Because second and third engineers on U.S. vessels, although not necessarily meeting the definition of cargo engineers, regularly work on elements of the cargo system, the Coast Guard has determined that engineering officers, regardless of primary duties, should be able to assist in any of the principal duties of the engineering department, and must, therefore, complete the DL or LG course.

Another comment suggested that, to avoid confusion, a statement should categorically exclude personnel involved in fueling from this section. The Coast Guard agrees and a new paragraph (g) has been added.

One comment stated that § 13.107(c) violates OPA 90 on hours of work. The Coast Guard disagrees. The number of tankermen listed in Table 15.860(a)(1) is the minimum number required. The proper number required will depend upon the vessel's operation.

8. 46 CFR 13.109 (Tankerman Endorsement: Authorized Cargoes)

One comment asked that the Coast Guard change the proposed endorsement for dangerous liquids into two separate endorsements: For petroleum liquids and chemical liquids. The Coast Guard disagrees. While there are different dangers associated with the carriage of chemical products as opposed to petroleum products, mandatory attendance by all applicants for tankerman endorsements, except restricted endorsements, will make them aware of the dangers and characteristics of products or chemicals with which they have not had contact. The Coast Guard is also depending on every employer to ensure a mariner's competency before allowing him or her to act as Tankerman-PIC in a transfer.

Several comments objected to the rule's exclusion of the liquid cargoes in bulk listed in Table 2 of part 153 when they are carried on barges not certified for ocean service. The Coast Guard disagrees. The legislation that enables

rules preventing pollution is the International Convention for the Prevention of Pollution from Ships, 1973, known as MARPOL. This convention has been implemented domestically by the Act to Prevent Pollution from Ships, 33 U.S.C. 1901 *et seq.*, 33 U.S.C. 1903(a) states that products listed in Annexes I and II of MARPOL, which are also found in Table 2 of part 153, apply only to seagoing ships. No tankerman endorsement is necessary to transfer the liquid cargoes in bulk listed in Table 2 when those cargoes are carried on barges certificated for inland service.

9. 46 CFR 13.111 (Restricted Endorsement)

Many comments requested that the restricted Tankerman-PIC endorsement be eliminated, denied to those seeking an original Tankerman-PIC endorsement, or issued only in accordance with strict guidelines given to OCMIs. The Coast Guard disagrees with the first two recommendations, and agrees with the third. The use of this endorsement in strictly limited cases is a significant benefit, particularly for companies engaged in the transportation of one cargo or a few cargoes of DL or LG and for their employees. Mandating that these employees attend courses in DL or LG would be of little benefit to the employees, the company, or the public. Likewise, precluding an original restricted Tankerman-PIC endorsement provides little benefit to the public, since the tankerman will be handling only one or a few cargoes. However, to acquire this restrictive endorsement, an applicant will have to produce proof on company letterhead of adequate training in the safe handling, loading or unloading, and characteristics of the cargo he or she will be handling. These requirements are found in new §§ 13.111 (b) and (c).

Two comments strongly supported the original, free issuance of the restricted endorsement, and strongly opposed the restrictive interpretation discussed in the notice that reopened the comment period. The Coast Guard disagrees. The Coast Guard always intended that this endorsement would be available to only a very small percentage of the industry. A tankerman who works for a company, large or small, and who performs the same tasks routinely, such as hooking up for an unloading of one or a few specific cargoes at the same dock, is the tankerman for whom the Coast Guard intended this endorsement. Making him or her attend a course unnecessarily in DL or LG would not be practical. That course teaches hazardous characteristics of many different cargoes, most of which he or she will never handle. On the other hand, a mariner who routinely handles different cargoes with different hazardous characteristics would definitely benefit from attending that course.

One comment requested that the Coast Guard not consider the size of an oil or chemical company when deciding whether or not its employees should be allowed to use the restricted endorsement. The Coast Guard agrees. The activities of its employees, not the size of the company, should be the determining factor.

Another comment stated that, because many oil or chemical companies maintain their own on-site, dedicated fire personnel, personnel with restricted endorsements should not have to complete a firefighting course. The Coast Guard disagrees. This course, required in some form for any of the Tankerman-PIC endorsements, involves both classroom exercises and field fire-extinguishment. The field fire-extinguishment exercises entail initial response to fires that may be manageable with portable extinguishers. This course was never intended to take the place of professional firefighters. It was intended to make the tankerman aware of the fire hazards on the barge and maybe prevent a small fire from becoming a major catastrophe.

One comment suggested waiver of the requirement of the firefighting course for the restricted endorsement if the applicant handles only non-flammable cargoes. The Coast Guard agrees in part. Use of shoreside pumping equipment seldom presents danger of fire; and for this use, the firefighting course may be less important. In contrast, use of a barge's own pumping equipment presents danger of fire; methods of extinguishing such fire are the subject of the course in tank-barge firefighting. Therefore, if the barge company's equipment is used in the transfer of oil or hazardous material, the firefighting course must be taken. Also, an applicant obtaining a restricted Tankerman-PIC endorsement without having taken a course in firefighting will be authorized only to handle non-flammable or non-combustible cargoes on those vessels that do not use their equipment to load or discharge a cargo.

One comment suggested allowing the restricted Tankerman-PIC endorsement for the tankermen of a vessel that plies its trade outside the boundary line. Again, STCW does not recognize restricted endorsements. As a signatory to STCW, the U.S. cannot recognize them outside of the boundary line, where STCW becomes effective. must follow all provisions of the treaty. New §§ 13.111(f) and 15.860(h) have been added to make this clear.

One comment suggested that 30 days' unlicensed sea service, instead of the current 60 days', be required for the endorsement as restricted Tankerman-PIC or Tankerman-PIC (Barge). The Coast Guard has determined that 30 days of observation are insufficient to qualify an applicant as the Tankerman-PIC of a transfer of DL or LG.

An additional comment agreed with the Coast Guard's intended use of the restricted endorsement. It stated that a tankerman with a restricted endorsement for a specific cargo was preferable to a tankerman with an unrestricted endorsement and no experience handling the cargo being transferred.

Two comments sought special consideration for crews of oil-spill-response vessels (OSRVs) when they are operating in response areas designated by Federal On-Scene Coordinators. The Coast Guard agrees. When operating under these conditions, crews of OSRVs will be candidates for restricted Tankerman-PIC endorsements. Section 13.111 now expressly covers OSRVs. However, when bunkering, an OSRV is like any other vessel and may be subject to §§ 155.700 and 155.710.

10. 46 CFR 13.113 (Tankermen Certified Under Prior Regulations)

Several comments asked the Coast Guard not to make mariners with many years of experience as Tankerman-PICs take the course in DL or LG. Because the U.S. is signatory to STCW, the Coast Guard must require appropriate training for all Tankerman-PICs. However, the Coast Guard will lessen the requirements for applicants obtaining their Tankerman-PIC endorsements under § 13.113 by letting them attend less-detailed approved courses offered by their employers rather than the full approved courses in DL or LG. The Coast Guard has added to § 13.103 a definition for ''approved training.'' It has also listed in §§ 13.121 (i) and (j) topics that the shortened course must cover.

One comment questioned whether a seasoned master with 20 years of experience on tankships or self-propelled tank vessels should have to obtain an original endorsement under § 13.201, 13.401, or 13.501. A licensed officer with prior experience on tankships or self-propelled tank vessels will follow § 13.113—that is, he or she may continue to act as Tankerman-PIC until the first renewal of his or her MMD after March 31, 1997, provided he

or she can supply proof of service on company letterhead, from the owner, operator, master, or chief engineer of the vessel, that details his or her qualifying service as required by § 13.113(d)(1)(iii). At the first renewal of the MMD after March 31, 1997, the officer as applicant will follow § 13.113(d) to obtain his or her Tankerman-PIC endorsement.

Several comments did not like the requirements of § 13.113(c), which allows a person who served as PIC for the transfer of liquid cargoes governed by Subchapter O—but who, because the cargoes were non-flammable or non-combustible, did not need a tankerman endorsement—to continue serving as a Tankerman-PIC (Barge) until March 31, 2001. The comments wanted these persons to be compelled to comply with the regulations by the effective date of the interim rule, like all other applicants. The Coast Guard agrees in part with these comments. Requiring these applicants to obtain their original MMDs with endorsements as Tankerman-PIC (Barge) by the effective date of the interim rule would have placed undue hardship on them for several reasons: The RECs would have had an unacceptable work backlog and would not have been able to provide satisfactory service; and there were barely enough courses in DL and LG approved by the Coast Guard available for the oceangoing applicants, let alone for all of the inland applicants as well. Delaying the effective date for this substantial portion of the inland applicants should ease these problems. However, it should be noted that nothing in this rule prevents a company from requiring that its employees obtain their endorsements sooner than March 31, 2001.

One comment suggested that the Coast Guard grandfather those merchant mariners currently serving on their licenses as Tankermen-PICs by invoking documented sea service on tankships or self-propelled tank vessels, Certificates of Discharge, or letters from their employers. The comment stated that this would be consistent with STCW Chapter V/1, Paragraph 3. The Coast Guard disagrees. STCW allows substitution but only 2 years or less after it enters into force for the U.S. Because it entered into force for the U.S. on October 1, 1991, substitution is no longer allowed.

A separate comment did not like the practice of permitting non-tankerman to serve as PICs of any transfers of hazardous material. The Coast Guard is convinced that the comment has misinterpreted the rule. Section 13.113 allows certain non-tankermen who have already been acting as Tankerman-PICs to continue so acting until the first renewal of their MMDs after March 31, 1997. (It aims at preventing a huge work backlog at the RECs.) By March 30, 2002, all personnel covered by this section will have Tankerman-PIC endorsements on their MMDs.

Another comment suggested that having mariners obtain the Tankerman endorsement at the first renewal after March 31, 1997, conflicts with the renewal of existing MMDs, which began on January 1, 1995. The Coast Guard disagrees. For example, mariners required to renew their MMDs in 1997 (mariners whose MMDs were issued in years ending in 2 or 7) will be required to obtain their Tankerman endorsements at the same time.

One comment stated that Tankermen-PICs, to be parallel with foreign mariners held to STCW Regulation VI/3, will each have to take a firefighting course every 5 years. The Coast Guard disagrees. The U.S. has decided that on-board fire and boat drills conducted with training will satisfy Regulation VI/3. Therefore, no Tankerman-PIC will have to take either a basic or a combined basic and advanced course in firefighting more than once.

Another comment advised the Coast Guard that there are currently operators of uninspected towing vessels (OUTVs) who will be grandfathered under § 13.113(a) by virtue of their licenses and service. However, as their vessels are under 100 gross tons, they do not yet hold MMDs; and the interim rule does not provide for those who find themselves in this predicament. The Coast Guard agrees and has amended § 13.113(a) for OUTVs.

A separate comment noted that Table 13.113 does not recognize credit for service between March 31, 1996, and March 31, 1997. The Coast Guard acknowledges that the table may have been confusing and has amended §§ 13.113(d)(1)(ii) (A) and (B) to make them clearer.

A last comment on § 13.113 asked the Coast Guard to provide for mariners who previously worked as tankermen but who now work ashore in the marine industry and cannot satisfy the requirement to prove the recency of their sea service. The Coast Guard is sympathetic to this issue. Yet the recency clause is extremely important, to ensure that they have retained their proficiency in the physical aspects of the transfer. A mariner working ashore may retain the theory, but become rusty in actually performing a transfer of oil or hazardous material. In order to ease the plight of more applicants, yet still require that applicants retain the practical knowledge they gained while at sea, the Coast Guard has increased the maximum period of time served since date of application from 5 years to 10 years for § 13.113(d) and has added a new § 13.113(d)(3) for mariners holding licenses issued under part 10 of this chapter who want to obtain endorsements as Tankermen-PIC (Barge) on their MMDs.

11. 46 CFR 13.115 (Licensed Engineer: Endorsement as Tankerman-Engineer Based on Service on Tankships or Self-Propelled Tank Vessels Before March 31, 1996)

The interim rule stated that an applicant who can prove 30 days of service as chief engineer, first assistant engineer, or cargo engineer on tankships or self-propelled tank vessels before March 31, 1996, may apply for a Tankerman-Engineer endorsement on his or her MMD until the first renewal of the MMD that occurs after March 31, 1997. However, as discussed in the notice that reopened of the comment period published March 26, 1996, STCW requires 90 days of sea service to obtain a Tankerman-Engineer endorsement. Since the U.S. is signatory to STCW, the Coast Guard considers itself bound to require 90 days of service on tankships or self-propelled tank vessels so the applicant can obtain the STCW form that will allow him or her to sail on tank vessels in ocean service. Any applicant proving only 30 days of service will be limited to service on vessels certificated for other than ocean service.

To comply with STCW, and as discussed in the notice that reopened the comment period, the Coast Guard has renumbered § 13.115(b) as it stood and added a new § 13.115(b). This requires each applicant for an endorsement as Tankerman-Engineer to have completed an appropriate course in DL or LG 10 years or less before March 31, 1996.

One comment stated that the Coast Guard should allow a candidate to substitute a year of sea service on relevant ships for completion of the course in DL or LG, as allowed by STCW Regulation V/1 Paragraph 3. The Coast Guard disagrees. The STCW Regulation requires that such substitution occur within 2 years after the entry into force of the Convention for the U.S. Because the Convention entered into force for the U.S. on October 1, 1991, substitution can no longer occur.

Another comment stated that—because STCW Regulation V/1 Paragraph 2.1 does not apply to Chief or First Assistant Engineers, since they do not have the particular responsibilities

for loading, discharging, or caring for the transit or handling of cargo—these Engineers should not have to complete the course in DL or LG. Section 13.115 requires the completion of the DL or LG course by of all masters, chief engineer officers, chief mates, and second engineer officers, and possibly of others, because of their general responsibilities, irrespective of STCW. Therefore, applicants for Tankerman-Engineer endorsements must complete the course.

12. 46 CFR 13.117 (Any Person: Endorsement as Tankerman-Assistant Based on Unlicensed Deck Service Before March 31, 1996)

The interim rule stated in effect that an applicant who can prove 30 days of deck service or 30 days of service as a pumpman on tankships or self-propelled tank vessels before March 31, 1996, may apply for a Tankerman-Assistant endorsement on his or her MMD until the first renewal of the MMD that occurs after March 31, 1997. However, as discussed in the notice that reopened the comment period published March 26, 1996, STCW requires 90 days of sea service to obtain a Tankerman-Assistant endorsement. Since the U.S. is signatory to STCW, the Coast Guard considers itself bound to require 90 days of service on tankships or self-propelled tank vessels so the applicant can obtain the STCW form that will allow him or her to sail on tank vessels in ocean service. Any applicant proving only 30 days of service will be limited to service on vessels certificated for other than ocean service.

One comment stated that the Coast Guard should allow a candidate to substitute completion of a tanker-familiarization course for the required sea service, as allowed by STCW Chapter V/1 Paragraph 1.2. The Coast Guard agrees. To comply with STCW, and as discussed in the notice that reopened the comment period, a new § 13.117(c) allows applicants to substitute completion of a tanker-familiarization course for the required sea service.

One comment suggested in effect requiring that any applicant for the Tankerman-Assistant endorsement unable to prove 90 days of sea service on tankships or self-propelled tank vessels must provide a certificate of completion from a tanker-familiarization course. The Coast Guard agrees—see new § 13.117(c).

Another comment requested that the Coast Guard require refresher training, in the form of a course in tanker-familiarization, upon each renewal of MMD for all those holding Tankerman-Assistant endorsements. The Coast Guard disagrees. There is no refresher training required for any of the other Tankerman endorsements and STCW does not require it. The Coast Guard makes every attempt to not unnecessarily require more stringent training of its mariners than other nations require of theirs.

13. 46 CFR 13.120 (Renewal of Endorsement)

One comment felt that § 12.02–27(c) did not let shore-based tankermen prove that they meet the professional requirements for renewal of their MMDs. Shore-based tankermen are, in fact, covered. If a shore-based tankerman provides a letter on company letterhead showing assignment to barges for a full year of service during the past 5 years, he or she will be in compliance with § 12.02–27(c)(1).

A separate comment requested a definition of the term ''approved course.'' The Coast Guard has amended this section to be more definite.

Another comment stated that the number of transfers required for renewal of endorsement in this section conflicts with the number in § 13.113(e)(1)(iii), which the comment understood to govern the first renewal. To clarify, § 13.113(e)(1)(iii) governs the initial endorsement, which will take place during the first renewal of MMD occurring after March 31, 1997. Until that time, the mariner who qualifies under § 13.113 may act as a Tankerman-PIC or Tankerman-PIC (Barge) with no endorsement on his or her MMD.

A separate comment did not like the fact that this rulemaking did not grandfather those already holding tankermen's endorsements nor those having closely-related service. The primary purpose of this rulemaking is to ensure that mariners with tankermen's endorsements are competent to perform their duties, even during emergencies. This will eliminate a significant number of spills. (The secondary purpose is compliance with STCW. As an ''administration'' responsible to STCW, the Coast Guard must publish regulations concerning tankermen.) To exempt existing tankermen from this rulemaking would exempt the majority of tankermen from having to comply. Since the main purpose of this rulemaking is to ensure competence in the performance of duties, the Coast Guard feels this cannot be accomplished without requiring that all applicants meet some minimum standard—completion of a training course for original endorsement and actual transfers for renewal. If the Coast Guard were to allow closely-related service instead of actual transfers when renewing, there could be mariners holding tankermen endorsements who have not conducted actual transfers since those completed for their original endorsements. Therefore, the Coast Guard has left § 13.120 unchanged.

14. 46 CFR 13.121 (Courses for Training Tankermen)

One comment suggested that the Coast Guard enlist the assistance of maritime educators or companies handling DL or LG to reformulate Table 13.121(f). This table comes from the guidelines promulgated under STCW for a Model Course, and the Coast Guard is satisfied with its contents.

Another comment suggested that a review of the requirements of 33 CFR 156.120 should be included as a topic in Table 13.121(f). The Coast Guard believes that completion of a course covering the required curricula in Table 13.121(f) will satisfy all of the requirements found in 33 CFR 156.120.

One comment suggested including a reference with each listing in case the course-approval guidelines are insufficiently clear. The National Maritime Center (NMC) makes such guidelines available to those companies applying for course approval. If any questions arise regarding a course, the applicant may consult the NMC (or an REC) directly for clarification.

Several comments felt that certain topics, such as COW systems, inert-gas systems, and tank-cleaning, were not relevant to the jobs of inland tankermen. The Coast Guard agrees in principle. However the Tankerman-PIC endorsement does not limit the mariner to inland waters only. Therefore, all applicants for the various tankerman endorsements, except those for Tankerman-PIC (Barge) and restricted Tankerman, will have to take the same course.

Two comments asked how many transfers, required by §§ 13.203(b) and 13.303(b), could be replaced with simulated transfers under § 13.121(c). They also asked which parts of the required transfers could be simulated. Section 13.121(c) sets out the necessary combinations of commencements and completions of loadings and discharges.

15. 46 CFR 13.125 (Physical Abilities)

This section requires every applicant for the Tankerman-PIC endorsement to meet the physical requirements of 46 CFR 10.205(d). However, 46 CFR 12.05–5(b) states that the physical examination for an able seaman (AB) is the same as for a deck officer. Therefore, if an AB applicant holds an unexpired deck license or a valid MMD endorsed with

a rating, the OCMI may waive the requirements for a physical examination. This section now reflects the availability of waiver.

16. 46 CFR 13.127 (Service: General)

Two comments were concerned that § 13.127(b), as written, encouraged applicants to violate work-hour rules of OPA 90. Both recommended that off-duty personnel could fulfill requirements for competence in transfer of DL or LG through incremental training, including segments of transfers; this training, including these segments, would, altogether, constitute the service required. The Coast Guard agrees and has added § 13.127(b)(9) to reflect this recommendation.

One comment asked whether the service letter of an applicant involved in more than the minimum number of transfers must document all of the applicant's transfers. The letter must document only the number of transfers required for the particular endorsement.

An additional comment asked who must sign the service letter. The owner, operator, master, or chief engineer of the vessel must. Section 13.127(a) now reflects this requirement.

A separate comment stated that the term ''fully capable,'' used in § 13.127(a), is too subjective. The Coast Guard disagrees. Again, the owner, operator, master, or chief engineer of the vessel must sign the service letter. It is the Coast Guard's opinion that the person who has observed the applicant's performance on board the tank vessel is in the best position to assess his or her ability to supervise transfers of liquid cargo. If the owner is reluctant to sign the letter, then the owner should have the person who observed the applicant's performance sign it.

17. 46 CFR 13.129 (Quick-Reference Table for Tankerman)

One comment stated that Table 13.129 should be amended to require that applicants for the Tankerman-Engineer endorsement prove required service and cargo-course completion. The Coast Guard agrees and has amended the section appropriately.

18. 46 CFR 13.201 (Original Application for ''Tankerman-PIC'' Endorsement) and 13.301 (Original Application for ''Tankerman-PIC (Barge)'' Endorsement)

One comment questioned how illiterate applicants would be handled. Completion of the requisite DL or LG course, including a satisfactory final examination, will ensure that all applicants can adequately read and understand the English language.

19. 46 CFR 13.203 (Eligibility: Experience)

As discussed in the notice that reopened the comment period dated March 26, 1996, STCW requires 90 days of sea service to obtain a Tankerman-PIC endorsement. Since the U.S. is a signatory to STCW, the Coast Guard has amended this section to require 90 days of service on tankships or self-propelled tank vessels. However, STCW does not differentiate between licensed and unlicensed service. Therefore, the Coast Guard has amended paragraphs (a)(1), (2), and (3) of this section to require 90 days of sea service for licensed, unlicensed, or cadet personnel, or a combination of the three.

Many comments suggested that § 13.203 reflect acceptance of seatime earned aboard tankships or self-propelled tank vessels by cadets at State maritime academies or the U.S. Merchant Marine Academy as experience for the Tankerman-PIC endorsement. The Coast Guard agrees and has amended § 13.203(a)(2) accordingly.

One comment asked how mariners can get experience on vessels and in what capacity they can be employed while gaining the required service. Applicants for Tankerman-PIC, Tankerman-Engineer, and Tankerman Assistant, under STCW Regulation V/1, need 90 days of ''seagoing'' service. The Coast Guard interprets this to mean that they must do more than merely participate in transfers while their tankships or self-propelled tank vessels are tied up at the docks. They will have to obtain the 90 days while they are members of tankships or self-propelled tank vessels certified to carry DL or LG appropriate to the endorsements applied for. Applicants for the Tankerman-PIC (Barge) endorsement may gain the required service by either serving 60 days on tank vessels appropriate to the endorsement or serving 60 days while participating in transfers on tank barges appropriate to the endorsement.

20. 46 CFR 13.303 (Eligibility: Experience)

Two comments requested clarification of § 13.303(a)(1) to ensure inclusion of shore-based personnel. The Coast Guard agrees and has amended the section to include those personnel.

Several comments thought that the Coast Guard should define, in § 13.303(a)(2), the term, ''closely related service.'' This term is a common term, already used in the regulations in 46 CFR 10.209(c)(4) and 12.02–27(c)(4). Determinations of ''closely related service'' are in the purview of individual OCMIs, as each is the local authority responsible for a marine-safety zone.

One comment requested a reduction in required service for an applicant already holding an MMD endorsed for DL and seeking an endorsement for LG, or the converse. Section 13.303(c) already covers this.

Several comments stated that many tankermen do not travel with tank barges. In addition, at some facilities, a transfer is often limited to either the loading or the unloading of a single cargo, thus making it difficult for an applicant to comply with § 13.303(b). The Coast Guard agrees, and notes that this type of applicant would probably be eligible for a restricted endorsement, whether Tankerman-PIC or Tankerman-PIC (Barge). (However, this endorsement would be severely restrictive.)

21. 46 CFR 13.305 (Proof of Service for ''Tankerman-PIC (Barge)'' Endorsement)

One comment stated that employers of shore-based tankermen were not included in those who could provide a among possible providers of the service letter. The Coast Guard agrees and has amended the section to include them.

One comment suggested that the Coast Guard reinstate the requirement that applicants for endorsements as Tankerman-PIC (Barge) calculate the loading and discharge rates. In standard practice, a tankerman can monitor such rates on barges without calculating them. Therefore, this section remains unchanged.

22. 46 CFR 13.307 (Eligibility: Firefighting Course)

One comment noted that the word ''or'' was missing between paragraphs (a) and (b). The Coast Guard has corrected the omission.

23. 46 CFR 13.309 (Eligibility: Cargo Course)

One comment asked whether the Coast Guard would require later training in DL or LG for renewal of an MMD. Because completion of a course in DL or LG is not required for renewal by STCW, the Coast Guard does not intend to require completion of the course for U.S. applicants.

Another comment asked whether completion of the Tankerman-PIC course would count as completion of the Tankerman-PIC (Barge) course. The Tankerman-PIC course covers more than the material of the Tankerman-PIC (Barge) course. Therefore, completion of a Tankerman-PIC course will count as completion of the Tankerman-PIC (Barge) course. Section 13.309 reflects this change.

24. 46 CFR 13.401 (Original Application for ''Tankerman Assistant'' Endorsement)

One comment requested that the Coast Guard require applicants for a Tankerman-Assistant endorsement to be able to read and write English. The Coast Guard disagrees. Since the ''Tankerman-Assistant'' is not in charge of the transfer and does not have to sign the Declaration of Inspection, the Coast Guard considers his or her ability in English non-essential to a safe transfer. It already requires that he or she be capable of clearly understanding and speaking all necessary instructions in English, and, therefore, has not revised § 13.401(f).

25. 46 CFR 13.405 (Proof of Service for ''Tankerman-Assistant'' Endorsement)

One comment stated that the term ''in the opinion of the signer,'' used in § 13.405(a)(3), is too subjective. The Coast Guard disagrees. As earlier noted, the service letter may be signed by the owner, operator, master, or chief engineer of the vessel. The person who has observed the subject's performance on board the tankship is in the best position to confirm the subject's ability to carry out the responsibilities of Tankerman-Assistant. If the owner is reluctant to sign the letter, then the owner should have the person who observed the subject's performance sign as well as prepare it.

26. 46 CFR 13.407 (Eligibility: Firefighting Course)

One comment stated that the firefighting course for tank barges is irrelevant to tankermen and suggested that the DL or LG course could teach tankermen all they needed to know about firefighting. The Coast Guard has determined that the 2-day firefighting course for tank barges was designed specifically for tankermen. The course includes classroom training and hands-on fire-extinguishment exercises using portable extinguishers to control or even extinguish fires at an early stage. Attendance will give the applicant an appreciation for the hazards of fires on board tank barges and how to control and extinguish small fires. Attendance will also teach him or her when to evacuate barges rather than attempt to fight fires.

27. 46 CFR 13.409 (Eligibility: Cargo Course)

Two comments stated that, since the interim rule does not provide for Tankerman-Assistant applicants to take the tanker-familiarization course, the final rule should let the course in DL or LG, completed within the past 10 years, satisfy the course-completion requirement in § 13.409. A third comment requested that the final rule let the tanker-familiarization course itself satisfy it. The Coast Guard agrees with all three comments. To comply with STCW, it has amended § 13.409 to let either the tanker-familiarization course or the course in DL or LG satisfy the requirement.

28. 46 CFR 13.501 (Original Application for ''Tankerman-Engineer'' Endorsement)

Two comments requested that the Coast Guard require that applicants for a Tankerman-Engineer endorsement be able to read and write English. The Coast Guard has reconsidered, but has not required this in § 13.501(g) or elsewhere. Since the Tankerman-Engineer is not in charge of the transfer and does not have to sign the Declaration of Inspection, the Coast Guard considers his or her ability in English non-essential to a safe transfer. It already requires that he or she be capable of clearly understanding and speaking all necessary instructions in English.

29. 46 CFR 13.503 (Eligibility: Experience)

One comment disagreed with the discussion in the notice that reopened the comment period, which stated that, to be in compliance with STCW, an applicant for the endorsement as Tankerman-Engineer must both complete the appropriate course in DL or LG and prove 90 days of sea service on tankships or self-propelled tank vessels. The Coast Guard disagrees with the comment and has amended §§ 13.503 and 13.509 to require both the course and the service.

30. 46 CFR 13.509 (Eligibility: Cargo Course)

One comment asked whether completion of a Tankerman-PIC course would satisfy the requirement for a Tankerman-PIC (Engineer) course. Tankerman-Engineer applicants have to take the Tankerman-PIC course: No Tankerman (PIC)-Engineer course exists.

31. 46 CFR 15.860 (Tankerman)

Many comments recommended various changes to the Coast Guard's definition of ''line of sight.'' After considering all such changes, the Coast Guard now defines being ''directly supervised'' in § 15.301(a) as ''being in the direct line of sight of the person in charge or maintaining direct, two-way communications by a convenient, reliable means, such as a predetermined working frequency over a hand-held radio.''

Two comments stated that, because of the work-hour limits in OPA 90, Table 15.860(a)(1) is deficient in requiring only two Tankerman-PICs. The Coast Guard disagrees. The number of tankermen listed in Table 15.860(a)(1) is the minimum number required. The proper number required will depend upon the vessel's operation. It is the vessel's responsibility to ensure that sufficient tankermen are onboard to satisfy OPA 90 on hours of work.

One comment reasoned that, if the Coast Guard required all tankermen to speak and understand English, five persons on every foreign-flag vessel would have to speak and understand English. The Coast Guard disagrees. Part 15 governs manning on U.S.-flag vessels only.

32. 46 CFR 35.35–30 (''Declaration of Inspection'' for Tank Vessels—TB/ALL)

The heading for § 35.35–30, though amended by the interim rule dated April 4, 1995, did not appear amended when codified at 46 CFR parts 1–40 on October 1, 1995. The Coast Guard is recapitulating the amended heading in this final rule.

33. 46 CFR 35.35–35 (Duties of Person in Charge of Transfer—TB/ALL)

Several comments asked the Coast Guard to ensure coverage of transfers of fuel oil and bunkers in this section. They added that a large segment of the industry does not realize that it must comply with 33 CFR 156.120 and 156.150 when conducting such transfers. The Coast Guard agrees and has amended this section to refer to 33 CFR 156.120 and 156.150.

34. 46 CFR 105.45–1 (Loading or Dispensing Petroleum Products)

Several comments asked whether a fishing vessel transferring fuel oil to another fishing vessel would need to have a tankerman on board. If § 105.05–1 applies to the vessel, § 105.45–1(b) requires that each person aboard it, in charge of a transfer of liquid cargo in bulk to or from a cargo tank, hold a valid MMD endorsed as Tankerman-PIC (restricted or not) or a valid license authorizing service as master, mate, pilot, or engineer.

Regulatory Evaluation

This final 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. It has not been reviewed by the Office of Management and Budget 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).

A regulatory assessment, which was completed in August 1989, has been revised to reflect adjustments to data and the discount rate. It is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the assessment follows:

This final rule applies to persons serving as tankermen and to those in charge of, and assisting in, the handling, transfer, and transport of DL or LG on tank vessels, including tank barges. To meet the new standards, a mariner serving in any of these capacities must obtain one of the following endorsements on his or her MMD: ''Tankerman-PIC''; restricted ''Tankerman-PIC''; ''Tankerman-PIC (Barge)''; restricted ''Tankerman-PIC (Barge)''; ''Tankerman-Assistant''; or ''Tankerman-Engineer.''

The population affected by this final rule is the number of shipboard personnel on tank vessels, including barges, whom this rule requires to hold the tankerman endorsement. Shore-based personnel who board unmanned barges to load or unload them will likewise be affected. Last, persons who serve as PICs on tank vessels or tank barges, whether employed onboard or ashore, for the transfer of liquid cargoes in bulk listed in subchapter O, but who did not previously require tankerman endorsements because the cargoes transferred were non-flammable or non-combustible, will likewise be affected. As of November 1996, there were an estimated 205 tankships, on ocean, coastwise, and inland or Great Lakes routes, and 4926 tank barges.[1] Roughly 17,525 personnel will need the endorsements to comply with 33 CFR 155.710. This number includes those OUTVs whom § 155.710 requires to hold the endorsements. About 45 percent of the 17,525 will be applicants currently unlicensed. If statistics for original MMDs issued with tankerman endorsements from 1992 through 1995 are indicative, about 825 new tankermen will receive the endorsements annually. Likewise, about 240 new OUTVs will receive them annually.

Comment on Cost

One comment stated that the cost of a DL or LG course and a firefighting course for the restricted Tankerman-PIC or Tankerman-PIC (Barge) endorsement is excessive for small companies engaged in the transportation of DL or LG. The Coast Guard has concluded that the applicant for a restricted Tankerman-PIC or Tankerman-PIC (Barge) endorsement need not complete a course in DL or LG. The applicant must, indeed, complete an approved course in tank-barge firefighting, designed specifically for tank barges and including exercises in extinguishment of tank-barge fires.

Costs

The costs of this final rule in general result from training tankermen in firefighting and in DL and LG. The costs to any particular applicant depend on the courses taken, the fees for the courses, and (where applicable) the expenses for travel, meals, and lodging. If the courses are offered by the employer, there may be no costs to the applicant. Other costs include fees to applicants to obtain original MMDs and associated endorsements issued by RECs. Since December 1988, firefighting has been a requirement for licensed personnel. Therefore, the costs of this rule due to firefighting will primarily affect unlicensed personnel. The following are general premises: (1) An estimated 15 percent of tankship applicants, 33 percent of tank-barge applicants, 50 percent of subchapter-O applicants, and 50 percent of OUTV applicants will get restricted endorsements, which do not require an approved course in DL or LG; (2) 45 percent of applicants for tankermen's endorsements every year must get training in firefighting; (3) OUTVs operating on routes other than ocean routes must get training in firefighting; (4) 50 percent of tankermen certified under prior regulations but applying for the new endorsement will attend a less-detailed, approved training course through their employers' in-house programs rather than the full approved course in DL or LG offered by independent schools; (5) tankermen usually work on rotational schedules, allowing them to arrange for enrollment in courses without interfering with their normal jobs; and (6) about 30 percent of those attending independent schools will incur miscellaneous expenses involving travel and lodging.

The Coast Guard estimates costs due to the new requirements for tankermen certified under prior regulations will be $4,635,850 for courses in DL and LG and $5,112,325 for courses in firefighting. (As under the interim rule, these tankermen have until their first license renewals after March 31, 1997, to meet the requirements.) It estimates that those costs for the 825 or so tankermen and 240 or so OUTVs entering the industry every year will be $1,082,780 and $183,150, respectively.

Industry Costs

The Coast Guard estimates the cost of this final rule to employers who will offer in-house courses—in DL or LG, only to those tankermen certified under prior regulations but applying for the new endorsement—to be $4,101,562. Because these courses will be less-detailed, their cost should be less than that of an independent school.

Total Costs

The Coast Guard estimates the costs of this final rule to be $8,091,320 to tankermen already in the industry, $4,101,562 to employers who will offer in-house courses in DL or LG, $1,550,185 to OUTVs as required in § 155.710, $477,750 to applicants for fees associated with the issuance of original MMDs and endorsements, and $1,265,930 to new tankermen and OUTVs entering the industry every year. Costs will accrue over the next 5 years, based on the renewal dates of the applicants' licenses or MMDs. Exceptions hold for applicants who serve as PICs for the transfer of liquid cargoes governed by Subchapter O. These applicants must be in compliance with the rule by March 31, 2001. The costs to year 2007 are estimated to be $28,627,497. The present value of these costs to year 2007 is $20,474,844. This reflects a 7-percent discount rate back to year 1997 of the projected stream of costs in accordance with current guidance from the Office of Management and Budget.

Benefits

The measures instituted by this final rule, to establish the qualifications of mariners in charge of, and assisting in, the transfer of DL and LG, should reduce the risks and severity of spills, and mitigate pollution of the environment. The main purpose is to ensure that these mariners are competent to perform their duties. Quantifiable benefits accruing from this rule will be reductions in injuries and deaths, and reductions in spills and the associated clean-up costs. Non-quantifiable benefits will be improved safety and firefighting procedures and a nationwide standard for tankermen's qualifications.

OPA 90 consolidated prior federal pollution laws and established an Oil Spill Liability Trust Fund (OSLTF) of $1 billion, administered by the Coast Guard, to pay for prompt removal of oil and for uncompensated damages. The Coast Guard believes that this final rule will bring a decrease of spills resulting

[1] Based on a query of the database of the Marine Safety Management System (MSMS).

from tankermen's errors. The number and volume of these spills can fall between 10 percent and 30 percent over the next five years. From 1990 to 1995, OSLTF spent, on average, about $32,000,000 a year; the sum increases every year. Decreases in these expenditures alone would result in savings between $16,000,000 and $48,000,000 over the next five years. The estimate of the total cost of this rule, almost $28.6 million over ten years, is less than the average estimate of $32,000,000 in savings over just five years.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their field; (2) governmental jurisdictions with populations of less than 50,000; and (3) ''small business concern[s]'' as defined by section 3 of the Small Business Act (15 U.S.C. 632(a)). (Small businesses are identified under Standard Industrial Classification codes and size standards in the table following 13 CFR 121.201.)

Sufficient flexibility was built into the rulemaking when the interim rule was published on April 4, 1995, to accommodate small entities. The effective date of March 31, 1997, or later provided enough leeway to applicants regarding the new requirements. Any person with a license, who served as a PIC before March 31, 1996, may continue to so serve until the first renewal of his or her MMD or license after March 31, 1997. The person will then follow 46 CFR 13.113(d) to obtain his or her Tankerman-PIC endorsement. Any applicant for an original endorsement now enjoys not 2 but 5 years to complete his or her course in DL or LG under 46 CFR 13.209, 13.309, and 13.409. And the Coast Guard is willing to let applicants obtaining their Tankerman-PIC endorsements under prior regulations, cited in § 13.113, attend less-detailed, approved courses in DL or LG offered by their employers rather than the full approved courses in DL and LG offered by independent schools.

This rule places its burden on individual tankermen, not on their employers, who may, though not required, relieve the tankermen of it. The Coast Guard expects that, of the employers who will assume this responsibility, few, if any, will be small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 601 *et seq.* that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard will provide assistance to small entities to determine how this rule applies to them. If you are a small business and need assistance understanding the provisions of this rule, please contact your local REC.

Collection of Information

This final rule contains collection of information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and the OMB has approved them. The section numbers are 13.107, 13.109, 13.111, 13.113, 13.115, 13.117, 13.123, 13.201, 13.301, 13.401, and 13.501, and the corresponding OMB approval numbers are OMB Control Numbers 2215–0514 and 2115–0111.

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that the rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. The authority to issue merchant mariners' licenses and documents belongs to the Coast Guard by Federal statutes.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraph 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with paragraphs 2.B.2.e(34)(c) and (d), since the rule concerns maritime personnel and the manning and equipping of vessels. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 154

Fire prevention, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 13

Barges, Seamen, Tank vessels.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR Part 105

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum, Seamen.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 154, 155, and 156, and 46 CFR parts 13, 15, 30, 35, 98, and 105 as follows:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

2. Section 154.105 is amended by adding and/or revising the following definitions in alphabetical order to read as follows:

§ 154.105 Definitions.

* * * * *

Boundary Line means any of the lines described in 46 CFR part 7.

* * * * *

Self-propelled tank vessel means a self-propelled tank vessel other than a tankship.

Tank barge means a non-self-propelled tank vessel.

Tankship means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces.

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(a) Is a vessel of the United States;

(b) Operates on the navigable waters of the United States; or

(c) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

* * * * *

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGUATIONS FOR VESSELS

3. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; Sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and sections 155.1110 and 155.1150 also issued under 33 U.S.C. 2735.

4. Section 155.700 is revised to read as follows:

§ 155.700 Designation of person in charge.

Each operator or agent of a vessel with a capacity of 250 or more barrels of fuel oil, cargo oil, hazardous material, or liquefied gas as regulated in Table 4 of 46 CFR part 154, or each person who arranges for and hires a person to be in charge of a transfer of fuel oil, of a transfer of liquid cargo in bulk, or of cargo-tank cleaning, shall designate, either by name or by position in the crew, the person in charge (PIC) of each transfer to or from the vessel and of each tank-cleaning.

5. In § 155.710 paragraph (a)(3) is added and paragraphs (a)(1), (a)(2), (b), (c)(2), (c)(3), (c)(4) introductory text, (c)(4)(ii), (c)(4)(iii), (c)(5), (d)(1), (d)(2), (d)(3) introductory text, (d)(3)(ii), (d)(3)(iii), (d)(4), (e) introductory text, (e)(1), (e)(2), (e)(3), (f), and (g) are revised to read as follows:

§ 155.710 Qualifications of person in charge.

(a) * * *

(1) Has sufficient training and experience with the relevant characteristics of the vessel on which he or she is engaged—including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents, and, if installed, the Crude-Oil Washing (COW), inert-gas, and vapor-control systems—to safely conduct a transfer of fuel oil, a transfer of liquid cargo in bulk, or cargo-tank cleaning;

(2) Except as provided in paragraph (g) of this section, holds a license issued under 46 CFR part 10 authorizing service aboard a vessel certified for voyages beyond any Boundary Line described in 46 CFR part 7, except on tankships or self-propelled tank vessels not certified for voyages beyond the Boundary Line; and

(3) Except as provided in paragraph (g) of this section and 46 CFR 13.113 (a) or (c), holds a Tankerman-PIC endorsement issued under 46 CFR part 13 that authorizes the holder to supervise the transfer of fuel oil, the transfer of liquid cargo in bulk, or cargo-tank cleaning, as appropriate to the product.

(b) On each tank barge required to be inspected under 46 U.S.C. 3703, the operator or agent of the vessel, or the person who arranges and hires a person to be in charge of a transfer of fuel oil, of a transfer of liquid cargo in bulk, or of cargo-tank cleaning, shall verify to his or her satisfaction that each PIC—

(1) Has sufficient training and experience with the relevant characteristics of the vessel on which he or she is engaged—including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents, and, if installed, the COW, inert-gas, and vapor-control systems—to safely conduct either a transfer of liquid cargo in bulk or cargo-tank cleaning; and

(2) Except as provided in paragraph (g) of this section and 46 CFR part 13.113 (a) or (c), holds a Tankerman-PIC or Tankerman-PIC (Barge) endorsement issued under 46 CFR part 13 that authorizes the holder to supervise the transfer of fuel oil, the transfer of liquid cargo in bulk, or cargo-tank cleaning, as appropriate to the product and vessel.

(c) * * *

(2) Except as provided in paragraph (g) of this section, holds a license or other document issued by the flag state or its authorized agent authorizing service as master, mate, pilot, engineer, or operator on that vessel;

(3) Except as provided in paragraph (g) of this section, holds a Dangerous-Cargo Endorsement or Certificate issued by a flag state party to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), or other form of evidence acceptable to the Coast Guard, attesting the PIC's meeting the requirements of Chapter V of STCW as a PIC of the transfer of fuel oil, of the transfer of liquid cargo in bulk, or of cargo-tank cleaning;

(4) Is capable of reading, speaking, and understanding in English, or a language mutually-agreed-upon with the shoreside PIC of the transfer, all instructions needed to commence, conduct, and complete a transfer of fuel oil, a transfer of liquid cargo in bulk, or cargo-tank cleaning, except that the use of an interpreter meets this requirement if the interpreter—

* * * * *

(ii) Is immediately available to the PIC on the tankship at all times during the transfer or cargo-tank cleaning; and

(iii) Is knowledgeable about, and conversant with terminology of, ships, transfers, and cargo-tank cleaning; and

(5) Is capable of effectively communicating with all crewmembers involved in the transfer or cargo-tank cleaning, with or without an interpreter.

(d) * * *

(1) Has sufficient training and experience with the relevant characteristics of the vessel on which he or she is engaged—including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents, and, if installed, the COW, inert-gas, and vapor-control systems—to safely conduct a transfer of fuel oil, a transfer of liquid cargo in bulk, or cargo-tank cleaning;

(2) Except as provided in paragraph (g) of this section, holds a Dangerous-Cargo Endorsement or Certificate issued by a flag state party to STCW, or other form of evidence acceptable to the Coast Guard, attesting the PIC's meeting the requirements of Chapter V of STCW as a PIC of the transfer of fuel oil, of the transfer of liquid cargo in bulk, or of cargo-tank cleaning;

(3) Is capable of reading, speaking, and understanding in English, or a language mutually-agreed-upon with the shoreside PIC of the transfer, all instructions needed to commence, conduct, and complete a transfer of fuel oil, a transfer of liquid cargo in bulk, or cargo-tank cleaning, except that the use of an interpreter meets this requirement if the interpreter—

* * * * *

(ii) Is immediately available to the PIC on the tankship at all times during the transfer or cargo-tank cleaning; and

(iii) Is knowledgeable about, and conversant with terminology of, ships, transfers, and cargo-tank cleaning; and

(4) Is capable of effectively communicating with all crewmembers involved in the transfer or cargo-tank cleaning, with or without an interpreter.

(e) The operator or agent of each vessel to which this subpart applies shall verify to his or her satisfaction that the PIC of any transfer of fuel oil requiring a Declaration of Inspection—

(1) Holds a valid license issued under 46 CFR part 10 authorizing service as master, mate, pilot, engineer, or operator aboard that vessel, or holds a valid MMD issued under 46 CFR part 13 endorsed as Tankerman-PIC or Tankerman-PIC (Barge), appropriate to the fuel oil and the vessel, unless exempted elsewhere in this chapter;

(2) On each uninspected vessel not requiring a licensed person aboard, has been instructed by the operator or agent of the vessel both in his or her duties and in the Federal statutes and regulations on water pollution that apply to the vessel;

(3) On each tank barge, for the vessel's own engine-driven pumps has been instructed both in his or her duties and in the Federal statutes and regulations on water pollution; or

* * * * *

(f) Except as provided in paragraph (g) of this section, the operator or agent of each self-propelled tank vessel carrying oil or hazardous material in bulk shall verify to his or her satisfaction that the PIC of the transfer of oil or hazardous material in bulk to or from a vessel, or of cargo-tank cleaning, holds a Tankerman-PIC endorsement on his or her MMD and either a license or a Certificate issued by a flag state party to STCW authorizing service as a master, mate, pilot, engineer, or operator aboard that vessel.

(g) The PIC of a cargo-tank cleaning on a vessel at a tank-cleaning facility or shipyard need not hold any of the licenses, documents, certificates, or endorsements required in paragraphs (a) through (f) of this section, if he or she is a National Fire Protection Association Certificated Marine Chemist.

6. The introductory text of § 155.720 is revised to read as follows:

§ 155.720 Transfer procedures.

The operator of a vessel with a capacity of 250 or more barrels of oil, hazardous material, or liquefied gas as regulated in Table 4 of 46 CFR part 154 shall provide transfer procedures that meet the requirements of this part and part 156 of this chapter for transferring—

* * * * *

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

7. The authority citation for part 156 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1) (C) and (D); 46 U.S.C. 3703a. Subparts B and C also issued under 46 U.S.C. 3715.

8. In § 156.120 paragraph (w)(13) is added; and paragraphs (w) introductory text, and (w)(12) are revised to read as follows:

§ 156.120 Requirements for transfer.

* * * * *

(w) The person in charge of the transfer on the transferring vessel or facility and the person in charge of it on the receiving vessel or facility have held a conference, to ensure that each person in charge understands—

* * * * *

(12) Transfer shutdown procedures; and,

(13) If the persons use radios, a predetermined frequency for communications during the transfer, agreed upon by both.

* * * * *

TITLE 46—SHIPPING

PART 13—CERTIFICATION OF TANKERMEN

9. The authority citation for part 13 continues to read as follows:

Authority: 46 U.S.C. 3703, 7317, 8703, 9102; 49 CFR 1.46.

10. In § 13.103 the introductory text is republished and the following definitions are added and/or revised in alphabetical order to read as follows:

§ 13.103 Definitions.

As used in this part:

Approved training means training that is approved by the Coast Guard or meets the requirements of § 10.309 of this chapter.

* * * * *

Directly supervised means being in the direct line of sight of the person in charge, or maintaining direct, two-way communications by a convenient, reliable means, such as a predetermined working frequency over a hand-held radio.

* * * * *

Liquid cargo in bulk means a liquid or liquefied gas listed in 46 CFR 153.40 and carried as a liquid cargo or liquid-cargo residue in integral, fixed, or portable tanks, except a liquid cargo carried in a portable tank actually loaded and discharged from a vessel with the contents intact.

* * * * *

Officer in Charge, Marine Inspection (OCMI), means, for this part, the officer or individual so designated at one of the locations of the regional examination centers listed in § 10.105.

* * * * *

Regional examination center (REC) means an office of an OCMI that performs licensing and certification.

Restricted Tankerman endorsement means a valid tankerman endorsement on an MMD restricting its holder as the OCMI deems appropriate—for instance, to one or a combination of the following: A specific cargo or cargoes; a specific vessel or vessels; a specific facility or facilities; a specific employer or employers; a specific activity or activities (such as loading or unloading in a cargo transfer); or a particular area of water.

Self-propelled tank vessel means a self-propelled tank vessel other than a tankship.

* * * * *

Tankship means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces.

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(a) Is a vessel of the United States;

(b) Operates on the navigable waters of the United States; or

(c) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

* * * * *

11. In § 13.107 paragraphs (a), (b), (c), (d), and (e) are revised, and a new paragraph (g) is added, to read as follows:

§ 13.107 Tankerman endorsement: General.

(a) If an applicant meets the requirements of subpart B of this part, the OCMI at an REC may endorse his or her MMD as ''Tankerman-PIC'' with the appropriate cargo classification or classifications. A person holding this endorsement and meeting the other requirements of 33 CFR 155.710(a) may act as a PIC of a transfer of fuel oil, of a transfer of liquid cargo in bulk, or of cargo-tank cleaning on any tank vessel. That person may also act as a Tankerman-Engineer, provided that he or she also holds an engineer's license.

(b) If an applicant meets the requirements of subpart C of this part, the OCMI at an REC may endorse his or

her MMD as ''Tankerman-PIC (Barge)'' with the appropriate cargo classification or classifications. A person holding this endorsement and meeting the other requirements of 33 CFR 155.710(b) may act as a PIC of a transfer of liquid cargo in bulk only on a tank barge.

(c) If an applicant meets the requirements of subpart D of this part, the OCMI at an REC may endorse his or her MMD as ''Tankerman-Assistant'' with the appropriate cargo classification or classifications. No person holding this endorsement may act as a PIC of any transfer of fuel oil, of any transfer of liquid cargo in bulk, or of cargo-tank cleaning unless he or she also holds an endorsement authorizing service as PIC. He or she may, however, without being directly supervised by the PIC, perform duties relative to cargo and cargo-handling equipment assigned by the PIC of transfers of fuel oil, of transfers of liquid cargo in bulk, or of cargo-tank cleaning. When performing these duties, he or she shall maintain continuous two-way voice communications with the PIC.

(d) If an applicant meets the requirements of subpart E of this part, the OCMI at an REC may endorse his or her MMD as Tankerman-Engineer. No person holding this endorsement may act as a PIC or ''Tankerman-Assistant'' of any transfer of fuel oil, of any transfer of liquid cargo in bulk, or of cargo-tank cleaning unless he or she also holds an endorsement authorizing such service. A person holding this endorsement and acting in this capacity has the primary responsibility, on his or her self-propelled tank vessel carrying DL or LG, for maintaining both the cargo systems and equipment for transfer of liquids in bulk and the bunkering systems and equipment. No person licensed under part 10 of this chapter may serve as a chief engineer, first assistant engineer, or cargo engineer aboard an inspected self-propelled tank vessel when liquid cargo in bulk or cargo residue is carried unless he or she holds this endorsement or equivalent.

(e) If an applicant meets the requirements of § 13.111, the OCMI at an REC may place on his or her MMD an endorsement as a ''Tankerman-PIC'' restricted according to the definitions of ''restricted Tankerman endorsement'' in § 13.103.

* * * * *

(g) This section does not apply to any person solely by reason of his or her involvement in bunkering or fueling.

12. In § 13.111 paragraphs (a), (b), and (c) are revised and paragraph (f) is added to read as follows:

§ 13.111 Restricted endorsement.

(a) An applicant may apply at an REC listed in 46 CFR 10.105 for a tankerman endorsement restricted to specific cargoes, specific vessels or groups of vessels (such as uninspected towing vessels and Oil Spill Response Vessels), specific facilities, specific employers, or otherwise as the OCMI deems appropriate. The OCMI will evaluate each application and may modify the applicable requirements for the endorsement, allowing for special circumstances and for whichever restrictions the endorsement will state.

(b) To qualify for a restricted ''Tankerman-PIC'' endorsement, an applicant shall meet §§ 13.201, excluding paragraph (f); 13.203; and 13.205.

(1) Twenty-five percent of the service described in § 13.203(a) must have occurred within the past five years.

(2) Two of the transfers described in § 13.203(b) must have occurred within the past five years.

(c) To qualify for a restricted ''Tankerman-PIC (Barge)'' endorsement, an applicant shall meet §§ 13.301, excluding paragraph (f); and 13.305.

(1) Twenty-five percent of the service described in § 13.303(a) must have occurred within the past five years.

(2) Two of the transfers described in § 13.303(b) must have occurred within the past five years.

* * * * *

(f) Because the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), does not recognize restricted Tankerman-PIC endorsements, persons may act under these only aboard vessels conducting business inside the Boundary Line.

13. In § 13.113, the heading and paragraphs (a), introductory text (c), (d), introductory text (d)(1)(i), (d)(1)(ii), (d)(1)(iii), (d)(2), (e)(1)(ii), (e)(1)(iii), and (f) are revised, and new paragraph (d)(3) is added to read as follows:

§ 13.113 Tankermen certified under prior regulations.

(a) A person who holds a license issued under part 10 of this chapter, and who as a PIC transferred liquid cargoes in bulk before March 31, 1996, may continue to serve as a ''Tankerman-PIC'' under the license until the first renewal of his or her MMD under § 12.02–27 of this chapter that occurs after March 31, 1997, or, if he or she holds no MMD, until the first renewal of his or her license that occurs after March 31, 1997, as follows:

* * * * *

(c) A person who served as PIC for the transfer of liquid cargoes in bulk listed in subchapter O of this chapter but who did not require a tankerman endorsement, because the cargoes were non-flammable or non-combustible, may act as a ''Tankerman-PIC (Barge)'' for those liquid cargoes until March 31, 2001, if he or she produces a letter—on company letterhead, from the owner or operator of a terminal or of a tank barge or from the owner, operator, or master of a self-propelled tank vessel—that proves his or her qualifying service as required by paragraph (e)(1)(iii) of this section.

(d) A person who qualifies under paragraph (a) of this section by holding a current license may apply for a ''Tankerman-PIC'' or a ''Tankerman-PIC (Barge)'' endorsement under this subpart.

(1) * * *

(i) A certificate of completion from a course in shipboard firefighting approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437(XI), ''Training of Crews in Fire Fighting,'' or a certificate of completion from a firefighting course before March 31, 1996, that the OCMI finds in substantial compliance with that section;

(ii) Either—

(A) A certificate of completion from a liquid-cargo course in DL or LG approved by the Commandant, appropriate to the endorsement applied for, or a certificate of completion from a liquid-cargo course in DL or LG up to ten years before March 31, 1996, that the OCMI finds acceptable under § 13.121(d) and Table 13.121(f), appropriate to the endorsement applied for; or

(B) A letter on company letterhead from the applicant's employer stating that the applicant has successfully completed the approved training discussed in § 13.121 (i) or (j); and

(iii) Evidence of service as follows:

(A) A letter on company letterhead from the owner, operator, master, or chief engineer of the vessel attesting that the applicant—

(*1*) Acted as the PIC of the transfer of DL or LG, appropriate to the endorsement applied for, on self-propelled tank vessels before March 31, 1996; acted as the PIC of the transfer of DL or LG, appropriate to the endorsement applied for within the last 5 years; and accumulated two transfers on self-propelled tank vessels within the last 10 years; and

(*2*) Served at least 90 days as a master or mate on self-propelled tank vessels certified to carry DL or LG, appropriate to the endorsement applied for, before March 31, 1996; and acted as a master or mate on self-propelled tank vessels

certified to carry DL or LG within the last 10 years.

(B) Certificates of discharge proving at least 90 days of service as master or mate on self-propelled tank vessels certified to carry DL or LG, appropriate to the endorsement applied for, before March 31, 1996, with at least one discharge date within the last 5 years.

(2) To qualify for a ''Tankerman-PIC (Barge)'' endorsement, a licensed officer shall present—

(i) Either—

(A) A certificate of completion from a course in shipboard firefighting described in paragraph (d)(1)(i) of this section, or from a course in tank-barge firefighting approved by the Commandant; or

(B) A letter on company letterhead from the owner, operator, master, or chief engineer of a tank vessel attesting that before March 31, 1996, the applicant received training in awareness of hazards due to flammability and in firefighting through a program, lecture, or seminar that included hands-on firefighting that the OCMI finds in substantial compliance with § 13.121(g);

(ii) Either—

(A) A certificate of completion from a liquid-cargo course in DL or LG for tankships or tank barges approved by the Commandant, appropriate to the endorsement applied for;

(B) A certificate of completion from a liquid-cargo course in DL or LG for tankships or tank barges up to 10 years before March 31, 1996, that the OCMI determines substantially covers the material required by Table 13.121(f); or

(C) A letter on company letterhead from the applicant's employer stating that the applicant has successfully completed the approved training discussed in § 13.121(i) or (j); and

(iii) Evidence either—

(A) Of service that satisfies paragraph (d)(1)(iii) of this section, except that for paragraphs (d)(1)(iii) (A)(2) and (B) 60 days of service on any tank vessel are enough; or

(B) On company letterhead, from the owner or operator of a terminal, or of a tank barge, of service attesting that the applicant both acted as the PIC of the transfer of DL or LG, appropriate to the endorsement applied for, on tank barges, before March 31, 1996, and accumulated two transfers on tank barges within the last 10 years.

(3) To qualify for a restricted endorsement based on grades of cargo handled, a mariner shall—

(i) For a restricted ''Tankerman-PIC'' endorsement, meet paragraphs (d)(1) (i) and (iii) of this section; or

(ii) For a restricted ''Tankerman-PIC (Barge)'' endorsement, meet paragraphs (e)(1) (i) and (iii) of this section.

(e) * * *

(1) * * *

(ii) Either—

(A) A certificate of completion from a liquid-cargo course in DL or LG approved by the Commandant up to 10 years before March 31, 1996, appropriate to the endorsement applied for;

(B) A certificate of completion from a liquid-cargo course in DL or LG up to 10 years before March 31, 1996, that the OCMI determines substantially covers the material required by Table 13.121(f); or

(C) A letter on company letterhead from the applicant's employer stating that the applicant has successfully completed the approved training discussed in § 13.121 (i) or (j); and

(iii) Evidence on company letterhead from the owner, operator, master, or chief engineer of the vessel, or from the owner or operator of a terminal or of a tank barge, of service attesting that the applicant both acted as the PIC of the transfer of DL or LG, appropriate to the endorsement applied for on self-propelled tank vessels or on tank barges, before March 31, 1996, and accumulated two transfers on self-propelled tank vessels or on tank barges within the last 10 years.

* * * * *

(f) Each person qualifying under this section shall obtain a tankerman endorsement at the first renewal of his or her MMD under § 12.02–27 of this chapter that occurs after March 31, 1997, except that each person qualifying under paragraph (c) of this section shall obtain the endorsement by March 31, 2001.

* * * * *

14. Table 13.113 is revised to read as follows:

TABLE 13.113.—TANKERMEN CERTIFIED UNDER PRIOR REGULATIONS

Before effective date served as:	Service after effective date but before permanent endorsement:	Requirements for permanent endorsement to an MMD:	Requirements for RESTRICTED endorsement to an MMD:
Licensed Officer	May serve as Tankerman-PIC in accordance with 13.113(a), until first renewal of MMD or license after March 31, 1997.	Section 13.113(d) (1), (2) ...	Section 13.113(d)(3).
Tankerman with endorsement on MMD	May serve as Tankerman-PIC (Barge) in accordance with 13.113(B), until first renewal of MMD after March 31, 1997.	Section 13.113(e)(1)	Section 13.113(e)(2).
PIC of non-flammable or non-combustible cargoes listed in Subchapter O.	May serve as Tankerman-PIC (Barge) in accordance with 13.113(c) until March 31, 2001.	Section 13.113(e)(1)	Section 13.113(e)(2).

15. Section 13.115 is revised to read as follows:

§ 13.115 Licensed engineer: Endorsement as Tankerman-Engineer based on service on tankships or self-propelled tank vessels before March 31, 1996.

A licensed person with at least 30 days of service as chief engineer, first assistant engineer, or cargo engineer on one or more tankships or self-propelled tank vessels before March 31, 1996, may, at any time until the first renewal of his or her MMD under § 12.02–27 of this chapter that occurs after March 31, 1997, apply for a ''Tankerman-Engineer'' endorsement under this subpart if he or she presents—

(a) Either—

(1) A letter on company letterhead from the owner, operator, master, or chief engineer of the vessel attesting that the applicant served at least 30 days as chief engineer, first assistant engineer, or cargo engineer on tankships or self-propelled tank vessels certified to carry DL or LG, appropriate to the endorsement applied for, before March 31, 1996, and has so served within the last 5 years; or

(2) Certificates of Discharge proving at least 30 days of service as chief engineer, first assistant engineer, or cargo engineer on tankships or self-propelled tank vessels certified to carry DL or LG, appropriate to the endorsement applied for before March

31, 1996, with a discharge date within the last 5 years; and

(b) Either—

(1) A certificate of completion from a liquid-cargo course in DL or LG for tankships approved by the Commandant, appropriate to the endorsement applied for;

(2) A certificate of completion from a liquid-cargo course in DL or LG for tankships up to 10 years before March 31, 1996, that the OCMI determines substantially covers the material covered by Table 13.121(f); or

(3) A letter on company letterhead from the applicant's employer stating that the applicant has successfully completed the approved training discussed in § 13.121 (i) or (j).

16. Section 13.117 is revised to read as follows:

§ 13.117 Any person: Endorsement as Tankerman-Assistant based on unlicensed deck service before March 31, 1996.

An applicant with unlicensed deck service on tankships or self-propelled tank vessels before March 31, 1996, may, at any time until the first renewal of his or her MMD under § 12.02–27 of this chapter that occurs after March 31, 1997, apply for a ''Tankerman-Assistant'' endorsement under this subpart if he or she presents either—

(a) A letter on company letterhead from the owner, operator, or master of the vessel attesting that the applicant performed at least 30 days of deck service or service as a pumpman of tankships or self-propelled tank vessels certified to carry DL or LG appropriate to the endorsement applied for before March 31, 1996, and has so performed within the last 5 years;

(b) Certificates of Discharge proving at least 30 days of deck service or of service as a pumpman on tankships or self-propelled tank vessels certified to carry DL or LG, appropriate to the endorsement applied for, before March 31, 1996, with a discharge date within the last 5 years; or

(c) A certificate of completion from a tanker-familiarization course approved by the Commandant.

17. Section 13.120 is revised to read as follows:

§ 13.120 Renewal of endorsement.

An applicant wishing to renew a tankerman's endorsement shall meet the requirements of § 12.02–27 of this chapter for renewing an MMD and prove either participation in at least two transfers within the last 5 years in accordance with § 13.127(b) or completion of an approved course as described in § 10.304.

18. In § 13.121 paragraphs (c), (d)(3), (d)(4), (f), and (g) are revised; and new paragraphs (d)(5), (d)(6), (h), (i), and (j) are added to read as follows:

§ 13.121 Courses for training tankermen.

* * * * *

(c) A course that uses simulated transfers to train students in loading and discharging tank vessels may replace up to 2 loadings and 2 discharges, 1 commencement and 1 completion of loading, and 1 commencement and 1 completion of discharge required for a Tankerman-PIC or Tankerman-PIC (Barge) endorsement. The request for approval of the course must specify those segments of a transfer that the course will simulate. The letter from the Coast Guard approving the course will state the number and kind of segments that the course will replace.

(d) * * *

(3) ''Tankerman-PIC LG'' is Tankship: Liquefied Gases;

(4) ''Tankerman-PIC (Barge) LG'' is Tank Barge: Liquefied Gases;

(5) ''Tankerman-Assistant DL'' is Familiarization with DL Tankship; and

(6) ''Tankerman-Assistant LG'' is Familiarization with LG Tankship.

* * * * *

(f) No school may issue a certificate unless the student has successfully completed an approved course with the appropriate curriculum outlined in Table 13.121(f) or § 13.121(h).

(g) An organization with a course in DL or LG or a course in tank-barge firefighting taught before March 31, 1996, that substantially covered the material required by Table 13.121(f) for liquid cargoes, Table 13.121(g) for firefighting, or § 13.121(h) for familiarization with tankships, may seek approval under § 10.302 of this chapter from the Coast Guard for any course taught up to ten years before March 31, 1996.

(h) The Coast Guard will evaluate the curricula of courses for Familiarization with DL and LG Tankships to ensure adequate coverage of the required subjects. Training may employ classroom instruction, demonstrations, or simulated or actual operations.

(1) The curricula of courses for Familiarization with DL Tankships must consist of the following:

(i) General characteristics, compatibility, reaction, firefighting, and safety precautions for bulk liquid cargoes defined as DL in this part.

(ii) Terminology of tankships carrying oil and other chemicals.

(iii) General arrangement and construction of cargo tanks, vapor control, and venting.

(iv) Cargo-piping systems and valves.

(v) General operation of cargo pumps.

(vi) General discussion of the following operations connected with the loading and discharging of cargo:

(A) Pre-transfer inspection and conference and Declaration of Inspection.

(B) Lining up of the cargo and vapor-control systems and starting of liquid flow.

(C) Connecting and disconnecting of cargo hoses and loading arms.

(D) Loading.

(E) Ballasting and de-ballasting.

(F) Discharging.

(G) Tank-gauging (open and closed).

(vii) Rules of the Coast Guard governing operations in general and prevention of pollution in particular.

(viii) Prevention and control of pollution.

(ix) Emergency procedures.

(x) Safety precautions relative to:

(A) Entering cargo tanks and pump room.

(B) Dangers of contact with skin.

(C) Inhalation of vapors.

(D) Protective clothing and equipment.

(E) Hot work.

(F) Precautions respecting electrical hazards, including hazards of static electricity.

(xi) General principles and procedures of Crude-Oil Washing (COW) Systems and inert-gas systems.

(xii) Tank-cleaning procedures and precautions.

(xiii) Principles and procedures of vapor-control systems.

(xiv) Cargo-hazard-information systems.

(2) To ensure adequate coverage of the required subjects, training may employ classroom instruction, demonstrations, or simulated or actual operations. The curricula of courses for Familiarization with LG Tankships must consist of the following:

(i) General characteristics, compatibility, reaction, firefighting, and safety precautions for cargoes defined as LG in this part.

(ii) Terminology of tankships carrying LG.

(iii) Physical properties of LG.

(iv) Potential hazards and safety precautions of LG:

(A) Combustion characteristics.

(B) Hot work.

(C) Results of release of LG to the atmosphere.

(D) Health hazards (skin contact, inhalation, and ingestion).

(E) Protective clothing and equipment.

(F) Tank-entry procedures and precautions.

(G) Thermal stresses.

(H) Precautions respecting electrical hazards, including hazards of static electricity.

(v) Cargo-containment systems.
(vi) General arrangement and construction of cargo tanks.
(vii) Cargo-piping systems and valves.
(viii) Instrumentation:
(A) Cargo-level indicators.
(B) Gas-detecting systems.
(C) Systems for monitoring temperatures of hulls and cargoes.
(D) Automatic shut-down systems.
(ix) Heating systems for cofferdams and ballast tanks.
(x) General discussion of the following operations connected with the loading and discharging of cargo:
(A) Pre-transfer inspection and conference and Declaration of Inspection.
(B) Lining up of the cargo and vapor-control systems and starting of liquid flow.
(C) Connecting and disconnecting of cargo hoses and loading arms.
(D) Loading.
(E) Ballasting and de-ballasting.
(F) Discharging.
(xi) Disposal of boil-off.
(xii) Emergency procedures.
(xiii) Rules of the Coast Guard governing operations in general and prevention of pollution in particular.
(xiv) Principles and procedures of IGSs.
(xv) Tank-cleaning procedures and precautions.
(xvi) Principles and procedures of vapor-control systems.
(xvii) Cargo-hazard-information systems.
(i) A company that offers approved DL training for its employees shall ensure discussion of the following topics (further discussed in STCW Regulation V, Section A–V/1, paragraphs 9 through 21):
(1) Treaties and rules.
(2) Design and equipment.
(3) Cargo characteristics.
(4) Ship operations.
(5) Repair and maintenance.
(6) Emergency procedures.
(j) A company that offers approved LG training for its employees shall ensure discussion of the following topics (further discussed in STCW Regulation V, Section A–V/1, paragraphs 22 through 34):
(1) Treaties and rules.
(2) Chemistry and physics.
(3) Health hazards.
(4) Cargo containment.
(5) Pollution.
(6) Cargo-handling systems.
(7) Ship operations.
(8) Safety practices and equipment.
(9) Emergency procedures.
(10) General principles of cargo operations.

19. Table 13.121(F) is redesignated Table 13.121(f) and revised to read as follows:

TABLE 13.121(f)

Course topics	1	2	3	4
General characteristics, compatibility, reaction, firefighting procedures, and safety precautions for the cargoes of:				
Bulk liquids defined as Dangerous Liquids in 46 CFR Part 13	x	x		
Bulk liquefied gases & their vapors defined as Liquefied Gases in 46 CFR Part 13			x	x
Physical phenomena of liquefied gas, including:				
Basic concept			x	x
Compression and expansion			x	x
Mechanism of heat transfer			x	x
Potential hazards of liquefied gas, including:				
Chemical and physical properties			x	x
Combustion characteristics			x	x
Results of gas release to the atmosphere			x	x
Health hazards (skin contact, inhalation, and ingestion)			x	x
Control of flammability range with inert gas			x	x
Thermal stress in structure and piping of vessel			x	x
Cargo systems, including:				
Principles of containment systems	x	x	x	x
Construction, materials, coating, & insulation of cargo tanks			x	x
General arrangement of cargo tanks	x	x	x	x
Venting and vapor-control systems	x	x	x	x
Cargo-handling systems, including:				
Piping systems, valves, pumps, and expansion systems	x	x	x	x
Operating characteristics	x	x	x	x
Instrumentation systems, including:				
Cargo-level indicators	x	x	x	x
Gas-detecting systems	x		x	x
Temperature-monitoring systems, cargo	x		x	x
Temperature-monitoring systems, hull			x	x
Automatic-shutdown systems	x		x	x
Auxiliary systems, including:				
Ventilation, inerting	x	x	x	x
Valves, including:				
Quick-closing	x	x	x	x
Remote-control	x	x	x	x
Pneumatic	x	x	x	x
Excess-flow	x	x	x	x
Safety-relief	x	x	x	x
Pressure-vacuum	x	x	x	x
Heating-systems: cofferdams & ballast tanks			x	x
Operations connected with the loading and discharging of cargo, including:				
Lining up the cargo and vapor-control systems	x	x	x	x
Pre-transfer inspections and completion of the Declaration of Inspection	x	x	x	x
Hooking up of cargo hose, loading arms, and grounding-strap	x	x	x	x
Starting of liquid flow	x	x	x	x
Calculation of loading rates	x		x	

TABLE 13.121(f)—Continued

Course topics	1	2	3	4
Discussion of loading	x	x	x	x
Ballasting and deballasting	x	x	x	x
Topping off of the cargo tanks	x	x	x	x
Discussion of discharging	x	x	x	x
Stripping of the cargo tanks	x	x		
Monitoring of transfers	x	x	x	x
Gauging of cargo tanks	x	x	x	x
Disconnecting of cargo hoses or loading arms	x	x	x	x
Cargo-tank-cleaning procedures and precautions	x	x		
Operating procedures and sequence for:				
Inerting of cargo tanks and void spaces	x	x	x	x
Cooldown and warmup of cargo tanks			x	x
Gas-freeing	x	x	x	x
Loaded or ballasted voyages	x		x	
Testing of cargo-tank atmospheres for oxygen & cargo vapor	x	x	x	x
Stability and stress considerations connected with loading and discharging of cargo	x	x	x	x
Loadline, draft, and trim	x	x	x	x
Disposal of boil-off, including:				
System design			x	x
Safety features			x	x
Stability-letter requirements	x		x	
Emergency procedures, including notice to appropriate authorities, for:				
Fire	x	x	x	x
Collision	x	x	x	x
Grounding	x	x	x	x
Equipment failure	x	x	x	x
Leaks and spills	x	x	x	
Structural failure	x	x	x	x
Emergency discharge of cargo	x	x	x	x
Entering cargo tanks	x	x	x	x
Emergency shutdown of cargo-handling	x	x	x	x
Emergency systems for closing cargo tanks	x	x		
Rules & regulations (international and Federal, for all tank vessels) on conducting operations and preventing pollution	x	x	x	x
Pollution prevention, including:				
Procedures to prevent air and water pollution	x	x	x	x
Measures to take in event of spillage	x	x	x	x
Danger from drift of vapor cloud	x	x	x	x
Terminology for tankships carrying oil and chemicals	x			
Terminology for tank barges carrying oil and chemicals		x		
Terminology for tankships carrying liquefied gases			x	
Terminology for tank barges carrying liquefied gases				x
Principles & procedures of crude-oil-washing (COW) systems, including:				
Purpose	x			
Equipment and design	x			
Operations	x			
Safety precautions	x			
Maintenance of plant and equipment	x			
Principles & procedures of the inert-gas systems (IGSs), including:				
Purpose	x		x	
Equipment and design	x		x	
Operations	x		x	
Safety precautions	x		x	
Maintenance of plant and equipment	x		x	
Principles & procedures of vapor-control systems, including:				
Purpose	x	x	x	x
Principles	x	x	x	x
Coast Guard regulations	x	x	x	x
Hazards	x	x	x	x
Active system components	x	x	x	x
Passive system components	x	x	x	x
Operating procedures, including:				
Testing and inspection requirements	x	x	x	x
Pre-transfer procedures	x	x	x	x
Connecting sequence	x	x	x	x
Start-up sequence	x	x	x	x
Normal operations	x	x	x	x
Emergency procedures	x	x	x	x
Cargo-hazard-information systems	x	x	x	x
Safe entry into confined spaces, including:				
Testing tank atmospheres for oxygen & hydrocarbon vapors	x	x		
Definition and hazards of confined spaces	x	x	x	x

TABLE 13.121(f)—Continued

Course topics	1	2	3	4
Cargo tanks and pumprooms	x	x	x	x
Evaluation and assessment of risks and hazards	x	x	x	x
Safety precautions and procedures	x	x	x	x
Personnel protective equipment (PPE) and clothing	x	x	x	x
Maintenance of PPE	x	x	x	x
Dangers of skin contact	x	x	x	x
Inhalation of vapors	x	x		
Electricity and static electricity—hazards and precautions	x	x	x	x
Emergency procedures	x	x	x	x
Federal regulations, national standards & industry guidelines	x	x	x	x
Inspections by marine chemists & competent persons, including hot-work permits & procedures	x	x	x	x
Vessel response plans:				
Purpose, content, and location of information	x	x	x	x
Procedures for notice and mitigation of spills	x	x	x	x
Geographic-specific appendices	x	x	x	x
Vessel-specific appendices	x	x	x	x
Emergency-action checklist	x	x	x	x

Column 1—Tankerman-PIC DL.
Column 2—Tankerman-PIC (Barge) DL.
Column 3—Tankerman-PIC LG.
Column 4—Tankerman-PIC (Barge) LG.

Table 13.121(g) [Amended]

20. Amend Table 13.121(g) to read as follows:

a. After the course topic ''Definitions of flammability and combustibility: Flammability'' insert an ''x'' in column one.

b. After the course topic ''Definitions of flammability and combustibility: Inerting'' remove the ''x'' in column one.

c. After the course topic ''Fire Prevention: Fire hazards of DL and LG'' insert an ''x'' in column two.

d. After the course topic ''Firefighting equipment: Limitations of portable and semiportable extinguishers'' insert an ''x'' in column two.

e. After the course topic ''Basic firefighting techniques: Stopping leakage of cargo'' insert an ''x'' in column two.

f. After the course topic ''Basic firefighting techniques: Extinguishing'' insert an ''x'' in column one.

g. After the course topic ''Basic firefighting techniques: Extinguishing with portable units'' insert an ''x'' into column two.

h. After the course topic ''Basic firefighting techniques: Using additional personnel'' insert an ''x'' into column two.

i. After the course topic ''Use of extinguisher on: Flammable and combustible liquids'' insert an ''x'' in column two.

j. After the course topic ''Use of extinguisher on: Manifold-flange fire'' insert an ''x'' in column two.

k. After the course topic ''Use of extinguisher on: Drip-pan fire'' insert an ''x'' in column two.

l. After the course topic ''Use of extinguisher on: Pump fire'' insert an ''x'' in column two.

21. In § 13.127, the heading and paragraphs (a) introductory text, and (b)(6) are revised; and paragraph (b)(9) is added to read as follows:

§ 13.127 Service: general.

(a) A service letter must be signed by the owner, operator, master, or chief engineer of the vessel and must specify—

* * * * *

(b) * * *

(6) Credit for a commencement of loading accrues only if the applicant participates in the pre-transfer inspection, the pre-transfer conference including execution of the Declaration of Inspection, the connection of cargo hoses or loading-arms, the line-up of the cargo system for the loading, the start of liquid flow, and the calculation of loading-rates, where applicable.

* * * * *

(9) Personnel desiring credit for transfers during off-duty hours may satisfy requirements of competence through incremental training periods that include segments of transfers. The cumulative number of transfers must equal the minimum specified in § 13.203(b) or 13.303(b).

22. Table 13.129 is revised to read as follows:

TABLE 13.129

Category	Minimum age	Physical required	Service	Recency of service	Proof of of service	Certificate from firefighting course 13.207	Cargo course	English language
Tankerman-PIC Subpart B	18; 13.201(a)	Yes; 13.125	13.203	13.123	13.205	13.207	13.209	13.201(g)
Tankerman-PIC (Barge) Subpart C.	18; 13.301(a)	Yes; 13.125	13.303	13.123	13.305	13.307	13.309	13.301(g)
Tankerman-Assistant Subpart D.	18; 13.401(a)	Yes; 13.125	13.403	13.123	13.405	13.407	13.409	13.401(f)
Tankerman-Engineer Subpart E.	18; 13.501(a)	Yes; 13.125	13.503	13.123	13.505	13.507	13.509	13.501(g)
Restricted Tankerman-PIC	18; 13.111(b)	Yes; 13.111(b)	13.111(b)	13.111(b)	13.111(b)	13.111(b)	No	13.111(b)
Restricted Tankerman-PIC (Barge).	18; 13.111(c)	Yes; 13.111(c)	13.111(c)	13.111(c)	13.111(c)	13.111(c)	No	13.111(c)
Restricted Tankerman-PIC (Barge), Facility.	18; 13.111(d)(1)	Yes; 13.111(d)(3)	13.111(d)(4)	No	13.111(d)(4)	No	No	13.111(d)(5)

23. In § 13.203 the heading and paragraphs (a)(1), (2), and (3) and (b) introductory text, are revised to read as follows:

§ 13.203 Eligibility: Experience.

* * * * *

(a) * * *

(1) At least 90 days of service as a licensed deck officer or a licensed engineering officer on one or more tankships or self-propelled tank vessels certified to carry DL or LG appropriate to the endorsement applied for;

(2) At least 90 days of unlicensed or cadet service on deck or in the engine department on one or more tankships or self-propelled tank vessels certified to carry DL or LG appropriate to the endorsement applied for; or

(3) A combination of the service in paragraphs (a) (1) and (2) of this section.

(b) Each applicant shall present evidence of participation, under the supervision of a ''Tankerman-PIC,'' in at least 10 transfers of liquid cargo in bulk of the classification desired on tankships or self-propelled tank vessels, including at least—

* * * * *

24. In § 13.207, the heading is revised to read as follows:

§ 13.207 Eligibility: Firefighting course.

* * * * *

25. Section 13.209, is revised to read as follows:

§ 13.209 Eligibility: Cargo course.

Each applicant for an original ''Tankerman-PIC'' endorsement shall present a certificate of completion from a course in DL or LG appropriate for tankships and for the endorsement applied for, and approved by the Commandant. The date of the certificate may not be more than 5 years earlier than the date of application.

26. In § 13.303 the heading, paragraphs (a) (1) and (b), introductory text are revised to read as follows:

§ 13.303 Eligibility: Experience.

* * * * *

(a) * * *

(1) At least 60 days of service, whether by shore-based or by vessel-based personnel, on one or more tank vessels certified to carry DL or LG appropriate to the endorsement applied for; or

* * * * *

(b) Participation, under the supervision of a ''Tankerman-PIC'' or ''Tankerman-PIC (Barge),'' in at least 10 transfers of liquid cargo in bulk of the classification desired on any tank vessel, including at least—

* * * * *

27. Section 13.305 is revised to read as follows:

§ 13.305 Proof of service for ''Tankerman-PIC (Barge)'' endorsement.

Service must be proved by a letter on company letterhead from the owner or operator of a terminal; the owner or operator of a tank barge; the owner, operator, or master of a tank vessel; or the employer of shore-based tankermen. The letter must contain the information required by § 13.127(a), excluding paragraph (a)(3)(vii).

28. In § 13.307, the heading and paragraph (a) are revised to read as follows:

§ 13.307 Eligibility: Firefighting course.

* * * * *

(a) A course in shipboard firefighting, approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), ''Training of Crews in Fire Fighting,'' completed 5 years or less before the date of application for the endorsement, unless he or she has previously submitted such a certificate for a license or a tankerman endorsement; or

* * * * *

29. Section 13.309, is revised to read as follows:

§ 13.309 Eligibility: Cargo course.

Each applicant for an original ''Tankerman-PIC (Barge)'' endorsement shall present a certificate of completion from a course in DL or LG appropriate for tank barges and for Tankerman-PIC or Tankerman-PIC (Barge), and approved by the Commandant. The date of the certificate may not be more than 5 years earlier than the date of application.

§ 13.401 [Amended]

30. In § 13.401, paragraph (e)(2) is revised to read as follows:

* * * * *

(e)(1) * * *

(2) Present evidence of service on tankships or self-propelled tank vessels in accordance with § 13.403; and

* * * * *

31. In § 13.403, the heading and paragraph (a)(1) are revised to read as follows:

§ 13.403 Eligibility: Experience.

(a) * * *

(1) Evidence of at least 90 days of deck service on tankships or self-propelled tank vessels certified to carry DL or LG appropriate to the endorsement applied for; or

* * * * *

32. In § 13.405, paragraphs (a) introductory text, (a)(2), and (b)(2), introductory text are revised to read as follows:

§ 13.405 Proof of Service for ''Tankerman-Assistant'' endorsement.

(a) Service must be proved by a letter on company letterhead from the owner, operator, or master of a tankship or self-propelled tank vessel. The letter must specify—

* * * * *

(2) The number of days of deck service the applicant accumulated on the tankship or self-propelled tank vessel; and

* * * * *

(b) * * *

(2) A letter on company letterhead from the owner, operator, or master of one of the tankships or self-propelled tank vessel stating that he or she has demonstrated—

* * * * *

33. In § 13.407, the heading is revised to read as follows:

§ 13.407 Eligibility: Firefighting course.

* * * * *

34. Section 13.409, is revised to read as follows:

§ 13.409 Eligibility: Cargo course.

Each applicant for an original ''Tankerman-Assistant'' endorsement who has not presented the required service on tankships or self-propelled tank vessels shall present a certificate of completion from a course for Familiarization with DL or LG Tankships or from a tanker-familiarization course appropriate to the endorsement applied for, and approved by the Commandant. The date of the certificate may not be more than 5 years earlier than the date of application.

35. In § 13.501, paragraph (d) is revised to read as follows:

* * * * *

(d) Present evidence of service on tankships and self-propelled tank vessels in accordance with § 13.503;

* * * * *

36. In § 13.503, the heading, paragraphs (a) (1), (2), and (3) and (b) are revised to read as follows:

§ 13.503 Eligibility: Experience.

(a) * * *

(1) 90 days of service as a licensed engineering officer of tankships or self-propelled tank vessels certified to carry DL or LG appropriate to the endorsement applied for;

(2) 90 days of unlicensed or cadet service in the engine department on tankships or self-propelled tank vessels certified to carry DL or LG appropriate to the endorsement applied for; or

(3) A combination of the service in paragraphs (a) (1) and (2) of this section.

(b) Each applicant already holding an MMD endorsed as Tankerman-Engineer for DL and seeking one for LG, or the converse, shall prove at least half the service required by paragraph (a) of this section.

37. In § 13.505, paragraphs (a) introductory text, (a)(2), and (b) are revised to read as follows:

§ 13.505 Proof of service for ''Tankerman-Engineer'' endorsement.

(a) Service must be proved by a letter on company letterhead from the owner, operator, master, or chief engineer of a tankship or self-propelled tank vessel. The letter must specify—

* * * * *

(2) The number of days of licensed and unlicensed service in the engine department on tankships or self-propelled tank vessels; or

(b) Service must be proved by certificates of discharge from tankships or self-propelled tank vessels with the appropriate classification of cargo (DL, LG, or both).

38. In § 13.507, the heading is revised to read as follows:

§ 13.507 Eligibility: Firefighting course.

* * * * *

39. Section 13.509, is revised to read as follows:

§ 13.509 Eligibility: Cargo course.

Each applicant for an original ''Tankerman-Engineer'' endorsement shall present a certificate of completion from a course in DL or LG, appropriate for tankships and the endorsement applied for, approved by the Commandant. The date of the certificate may not be more than 5 years earlier than the date of application.

PART 15—MANNING REQUIREMENTS

40. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 3703, 8105; 49 CFR 1.46.

41. In § 15.301 the following definition is added in alphabetical order to paragraph (a) to read as follows:

§ 15.301 Definitions of terms used in this part.

(a) * * *

* * * * * *

Directly supervised means being in the direct line of sight of the person in charge or maintaining direct, two-way communications by a convenient, reliable means, such as a predetermined working frequency over a hand-held radio.

* * * * *

42. In § 15.860 a new paragraph (h) is added to read as follows:

§ 15.860 Tankerman.

* * * * *

(h) Because STCW does not recognize restricted Tankerman-PIC endorsements, persons may act under these only aboard vessels conducting business inside the Boundary Line.

Table 15.860(a)(1) [Amended]

43. In Table 15.860(a)(1) under ''Tank vessels'' remove the phrase ''Tank Barge Certified for Voyages Beyond Boundary Line'' and add, in its place, the phrase ''Tank Barge.''

PART 30—GENERAL PROVISIONS

44. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46. Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

45. Section 30.10–62 is added to read as follows:

§ 30.10–62 Self-propelled tank vessel—TB/ALL

Self-propelled tank vessel means a self-propelled tank vessel other than a tankship.

46. Section 30.10–65 is revised to read as follows:

§ 30.10–65 Tank barge—B/ALL.

The term *tank barge* means a non-self-propelled tank vessel.

47. Section 30.10–67 is revised to read as follows:

§ 30.10–67 Tankship—T/ALL.

The term *tankship* means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces.

48. Section 30.10–69 is revised to read as follows:

§ 30.10–69 Tank vessel—TB/ALL.

The term *tank vessel* means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(a) Is a vessel of the United States;

(b) Operates on the navigable waters of the United States; or

(c) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

PART 35—OPERATIONS

49. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; 49 CFR 1.46.

50. In § 35.35–30 the heading and paragraphs (a) and (b) are revised to read as follows:

§ 35.35–30 ''Declaration of Inspection'' for tank vessels—TB/ALL.

(a) After an inspection under § 35.35–20, but before a transfer of cargo, fuel oil, or bunkers may commence as described in this section and 33 CFR 156.120 and 156.150, the person in charge of the transfer shall prepare, in duplicate, a Declaration of Inspection. The original must be kept aboard the vessel, and the duplicate provided to the terminal supervisor or that person's representative. The supervisor or the representative may, upon demand, inspect the vessel to determine whether its condition is as stated on the Declaration of Inspection.

(b) The Declaration of Inspection may be in any form, but must contain at least:

* * * * *

51. In § 35.35–35 the introductory text is revised; and a new paragraph (f) is added to read as follows:

§ 35.35–35 Duties of person in charge of transfer—TB/ALL.

The person in charge of the transfer of liquid cargo in bulk, fuel oil in bulk, or bunkers in bulk shall control the transfer as follows:

* * * * *

(f) Comply with 33 CFR 156.120 and 156.150.

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

52. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

53. In § 98.30–17 paragraph (b)(3) is removed; and paragraph (b)(2) is revised to read as follows:

§ 98.30–17 Qualifications of person in charge

* * * * *

(b) * * *

(2) On a self-propelled tank vessel, or on a tankship, carrying oil or hazardous material in bulk, hold a valid license or certificate authorizing service as a master, mate, pilot, engineer, or operator aboard that vessel, and a Tankerman-

PIC or a restricted Tankerman (PIC) endorsement on his or her MMD.

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

54. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 4502; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

55. In § 105.90–1 paragraph (b)(3) is revised to read as follows:

§ 105.90–1 Existing commercial fishing vessels dispensing petroleum products.

* * * * *

(b) * * *

(3) All commercial fishing vessels must comply with the applicable requirements in subparts 105.15 (Inspection Required), 105.35 (Fire Extinguishing Equipment), and 105.45 (Special Operating Requirements).

Dated: April 25, 1997.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–11779 Filed 5–7–97; 8:45 am]

BILLING CODE 4910–14–P

POSTAL SERVICE

39 CFR Part 20

Amendment to Interim Rule for Global Package Link to Japan

AGENCY: Postal Service.

ACTION: Amendment to interim rule with request for comments.

SUMMARY: The Postal Service is amending the interim rule on Global Package Link to Japan to change the offering of three levels of service to two levels of service. The discount rate structure currently offered to Japan will be adjusted and the name for Express Service will be changed to Premium service. Additionally, insurance for the Standard service will no longer be available.

DATES: The interim regulations take effect as of 12:01 a.m. on June 8, 1997. Comments must be received on or before June 8, 1997.

ADDRESSES: Written comments should be mailed or delivered to International Business Unit, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Michelson at the above address. Telephone (202) 268–5731.

SUPPLEMENTARY INFORMATION: In late 1994, International Package Consignment Service, later renamed Global Package Link (GPL), was introduced to Japan (59 FR 65961, December 22, 1994). Rates have remained constant since the inception of GPL and now must be adjusted slightly to reflect changes in cost and market conditions. Additionally, volume discounts will be changed from a progressive discount after 100,000 packages mailed annually to a straight 3% discount for all packages over 100,000 mailed annually. This makes it consistent with the volume discount structure available to most other GPL destination countries.

The GPL service offerings to Japan: Express, Standard, and Economy will be reduced to two options. Express service will remain as is, except it will now be called Premium service, and the Standard and Economy services will be merged into a new Standard level of service. We believe this change will more accurately reflect the service levels the customers actually receive. In addition, there will no longer be an insurance option for the new Standard service. Customers desiring insurance may choose Premium service, which includes insurance at no additional charge.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

The Postal Service adopts the following interim amendment to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Effective June 8, 1997, subchapter 620 of the International Mail Manual Issue 17 is amended as follows:

6 Special Programs

* * * * *

620 Global Package Link

* * * * *

623.3 Size and Weight Limits

The weight limits for Global Package Link service are 70 pounds for Chile and Germany; 66 pounds for Brazil, Canada, and the United Kingdom; and 44 pounds for Japan.

The maximum length of GPL packages is 60 inches and the maximum length and girth combined is 108 inches with exceptions: maximum size for Germany is length 47 inches, height 23 inches, width 23 inches. Japan standard packages less than one pound, maximum length is 24 inches; height, depth, and length combined maximum is 36 inches. All packages must be large enough to accommodate the necessary labels and customs forms on the address side.

623.4 Postage

* * * * *

623.44 Base Rates

The Postal Service will charge the base rates, in 1-pound increments, for the first 100,000 packages mailed by the customer during a 12-month period.

RATE REDUCTIONS

Number of packages	Percent discount
Up to 100,000	Base Rate.
Over 100,000	3% off base rates (except Germany and U.K.: Germany, no discount; U.K., 2%).

* * * * *

626 Services Available

* * * * *

626.1 Delivery Options

Delivery options vary according to destination country as set forth below.

* * * * *

626.13 Economy Service

Economy service is available to the United Kingdom. Packages sent through Economy service are transported to the destination country by air for delivery. Tracking is available through the hand-over to the global partner in the United Kingdom.

* * * * *

626.3 Insurance and Indemnity

* * * * *

626.32 Standard Service

626.321 Canada

Packages sent through Standard service and Ground Gateway Service to Canada are insured for the declared value, up to $100 Canadian. Standard service packages are not insured against delay in delivery. Neither indemnity

payments nor postage refunds will be made in the event of delay.

* * * * *

626.33 Economy Service

[Delete 626.331, Japan, and renumber 626.332, UK, as 626.331.]

626.331 United Kingdom

Packages sent through Economy service to the United Kingdom may be insured at an additional cost (see 320). Economy service packages are not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in the event of delay.

* * * * *

Japan Country Page

[Add the following information about GPL:]

GLOBAL PACKAGE LINK TO JAPAN RATES CHART

Weight not over (pounds)	Premium (dollars)	Standard (dollars)	Returns (dollars)
1	14.50	5.50	7.20
2	16.50	8.50	9.80
3	19.00	13.00	12.40
4	21.50	16.50	15.00
5	24.00	22.00	17.60
6	27.00	25.00	20.20
7	29.50	.....	22.80
8	32.00	.....	25.40
9	34.50	.....	28.00
10	37.00	.....	30.60
11	39.50	.....	33.20
12	42.00	.....	35.80
13	44.50	.....	38.40
14	47.00	.....	41.00
15	49.50	.....	43.70
16	52.00	.....	48.00
17	54.50	.....	50.70
18	57.00	.....	53.50
19	59.50	.....	56.20
20	62.00	.....	58.90
21	64.50	.....	63.90
22	67.00	.....	66.70
23	69.50	.....	69.50
24	72.00	.....	72.30
25	74.50	.....	75.10
26	77.00	.....	77.90
27	79.50	.....	80.70
28	82.00	.....	83.50
29	84.50	.....	86.30
30	87.00	.....	89.10
31	89.50	.....	91.90
32	92.00	.....	94.70
33	94.50	.....	97.50
34	97.00	.....	100.40
35	99.50	.....	103.20
36	102.00	.....	106.00
37	104.50	.....	108.80
38	107.00	.....	111.60
39	109.50	.....	114.40
40	112.00	.....	117.20
41	114.50	.....	120.00
42	117.00	.....	122.80
43	119.50	.....	125.60
44	122.00	.....	128.40

Discounts for GPL service to Japan are 3% off the base rates for those packages sent over 100,000 during a 12-month period.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–12018 Filed 5–7–97; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 960805216–7098–05; I.D. 041097D]

RIN 0648–AH06

Fisheries of the Northeastern United States; Technical Amendment for the Black Sea Bass Fishery

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues this final rule to correct and clarify a section of the regulations implementing gear restrictions in the black sea bass fishery, which were implemented as a result of Amendment 9 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP).

EFFECTIVE DATE: May 7, 1997.

FOR FURTHER INFORMATION CONTACT: Dana Hartley, Fishery Management Specialist, 508–281–9226.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 9 to the FMP was published on November 15, 1996 (61 FR 58461). Among other management measures implemented for the black sea bass fishery, the final rule implemented gear restrictions for industry members who fish with pot and trap gear. After publication of the final rule, Mid-Atlantic Fishery Management Council (Council) staff and industry members contacted NMFS to state that several provisions in the regulations implementing the pot and trap restrictions did not accurately reflect the measures specified in Amendment 9 and, as written, were unworkable.

The amendment includes a provision that pots and traps used in the black sea bass fishery must contain a minimum escape vent of one of the following dimensions: 1.125 inches (2.86 cm) by 5.75 inches (14.61 cm); or a circular vent 2 inches (5.08 cm) in diameter; or a square vent with sides of 1.5 inches (3.81 cm), inside measure. Amendment 9 allows that pots and traps constructed of wooden laths may comply with this requirement by having one set of laths spaced at least 1.125 inches (2.86 cm) apart in the parlor portion of the trap. The regulatory language in the final rule did not stipulate that the lath spacing is an option that would satisfy the escape vent requirement in wooden traps.

Amendment 9 also contains a requirement that black sea bass pots or traps must have a rectangular opening that measures at least 3.0 inches (7.62 cm) by 6.0 inches (15.24 cm) covered by a panel affixed with degradable fasteners (a ghost panel). The regulatory text describing this requirement is confusing and has been reorganized.

These modifications will make the trap and pot gear requirements for the black sea bass fishery consistent with the Council's intent as stated in Amendment 9.

Classification

Because this rule only corrects and clarifies an existing set of regulations for which full prior notice and opportunity for comment were provided under 5 U.S.C. 553(b)(B), it is unnecessary to provide such procedures for this rule. Because this rule imposes no new requirements on anyone subject to these regulations and relieves a restriction, it is not subject to the 30-day delay in effective date provisions of 5 U.S.C. 553(d).

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 1, 1997.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.144, paragraph (b) is revised to read as follows:

§ 648.144 Gear restrictions.

* * * * *

(b) *Pot and trap gear restrictions*--(1) *Gear marking.* The owner of a vessel issued a black sea bass moratorium permit must mark all black sea bass pots or traps with the vessel's USCG documentation number or state registration number.

(2) *Escape vents.* All black sea bass traps or pots must have an escape vent placed in a lower corner of the parlor portion of the pot or trap which complies with one of the following minimum sizes: 1.125 inches (2.86 cm) by 5.75 inches (14.61 cm); or a circular vent 2 inches (5.08 cm) in diameter; or a square vent with sides of 1.5 inches (3.81 cm), inside measure; however, black sea bass traps or pots constructed of wooden laths may instead have an escape vent constructed by leaving a space of at least 1.125 inches (2.86 cm) between one set of laths in the parlor portion of the trap. The dimensions for escape vents and lath spacing may be adjusted pursuant to the procedures in § 648.140.

(3) *Ghost panel.* Black sea bass traps or pots must contain a ghost panel affixed to the trap or pot with degradable fasteners and hinges. The opening to be covered by the ghost panel must measure at least 3.0 inches (7.62 cm) by 6.0 inches (15.24 cm). The ghost panel must be affixed to the pot or trap with hinges and fasteners made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller; or

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

[FR Doc. 97–11837 Filed 5–7–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02, I.D. 050597A]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska

(GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the second seasonal bycatch allowance of Pacific halibut apportioned to the shallow-water species fishery in the GOA has been caught.

EFFECTIVE DATES: 1200 hrs, Alaska local time (A.l.t.), May 6, 1997, until 1200 hrs, A.l.t., July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The prohibited species bycatch mortality allowance of Pacific halibut for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997). For the second season, the period April 1, 1997 through June 30, 1997, the bycatch mortality allowance is 100 mt.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 1997 Pacific halibut bycatch mortality allowance specified for the trawl shallow-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: Pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species''.

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

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the second seasonal bycatch allowance of Pacific halibut apportioned to the shallow-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the second seasonal bycatch allowance of Pacific halibut. Further delay would only result in overharvest, which would disrupt the FMP's objective of apportioning Pacific halibut bycatch allowances throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: May 5, 1997.

Gary Matlock,

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

[FR Doc. 97–12007 Filed 5–5–97; 1:50 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 89
Thursday, May 8, 1997

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.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Chapter XIII

Compact Over Order Price Regulation; Correction

AGENCY: Northeast Dairy Compact Commission.

ACTION: Correction to proposed rule.

SUMMARY: This document contains corrections to the proposed rule and required findings of fact published by the Northeast Dairy Compact on April 28, 1997, 62 FR 23032. The rule proposed a Compact over-order price for Class I milk in the six New England States for a six month period.

DATES: Comments must be received by May 12, 1997.

ADDRESSES: Comments should be submitted to the Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, VT 05601.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, at the above address or by telephone at (802) 229–1941 or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION: As published the proposed rule and statement of required findings of fact published on April 28, 1997, 62 FR 23032 contain errors which may prove to be misleading and are in need of clarification. Accordingly the proposed rule and statement of required findings of fact are corrected as follows:

1. Footnote 2 on page 23033 in the second column is corrected to read ''61 FR 65604 (December 13, 1996).''

2. Footnote 16 on page 23034, in the second column, the sentence beginning, ''As described at footnote 3'' is corrected to read, ''As described in text accompanying footnote 3, the Commission has noted the difficulties and diversity of available cost of production analysis and has concluded that it should initiate a regional cost of production study by the close of the regulation adopted under this rule.''

3. Subsection (3) on page 23035 in the second column, first paragraph, line 10, the word ''insufficiency'' is corrected to read ''instability''.

4. Subsection (3) on page 23035 in the second column, second paragraph, line 10, the sentence which begins ''The base scenario is premised upon * * *'' is corrected to read ''The base scenario is premised upon a Class I price trajectory beginning at $16.17 per hundredweight at Zone 21 and a blend price of $14.70 per hundredweight.''

5. Footnote 42 on page 23036, second column is corrected to read, ''Submission by William Zweigbaum, U-NH Extension, 3/31/97 AC.''

6. Subsection (5) on page 23036, third column, the last paragraph, line 3, the figure ''$7.17'' is corrected to read ''$17.17.''

7. Subsection (5) on page 23037, first column, fourth paragraph, the comments of Wayne Bissonette should be cited to W/C 192 (Bissonette).

8. Footnote 66 on page 23041, column 2 is corrected to read 62 FR 12252 (March 14, 1997). Section II Finding, on page 23042, Column 2, the list of subjects and issues numbered (1) through (10) is corrected as follows: Subjects (3) and (4) are transposed and should be inverted. After item (5) insert a new item (6) as follows: (6) The price needed to yield a reasonable rate of return to processors of fluid milk products. The remaining items should be renumbered (7) through (14) in their original order.

9. Footnote 70 on page 23042, column 3 is corrected to read, See 61 FR 65604 (December 13, 1996) and 62 FR 12252 (March 14, 1997).

10. Footnote 77 on page 23044 the name ''De Guess'' is corrected to read ''De Geus.''

11. Footnote 83 on page 23045, column 2, is corrected to read, ''See 61 FR 65604 (December 13, 1996); 62 FR 12252 (March 14, 1997).

12. Footnote 84 on page 23045, column 3 is corrected to read, ''61 FR. 65604 (December 13, 1996); 62 FR 12252 (March 14, 1997).

13. Subsection L. 1 on page 23049, first column, second full paragraph at lIne 5, the sentence which begins ''This order found * * *'' is corrected to read, ''This order found that a 50 mile shift in the epi-center of the milk supply causes a three cent increase in milk prices.''

14. Footnote 109 on page 23053, second column, line 7, the sentence that begins, ''The Commission has determined'' is corrected to read, ''The Commission has determined that a useful empirical record can still be developed in six months * * *''

15. Footnote 110 on page 23053, third column, is corrected to read, ''62 FR 12252 (March 14, 1997).''

16. Footnote 116 on page 23045, first column is corrected to read 62 FR 12252 (March 14, 1997).

Daniel Smith,

Executive Director.

[FR Doc. 97–11963 Filed 5–7–97; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 405 and 457

Apple Crop Insurance Regulations; and Common Crop Insurance Regulations, Apple Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of apples. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current apple crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current apple crop insurance regulation to 1997 and prior crop years.

DATES: Written comments on this proposed rule will be accepted until close of business June 9, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0003 through September 30, 1998.

Section 7 of the 1998 Apple Crop Provisions adds interplanting as an insurable farming practice for apples interplanted with another perennial crop as long as the crop would not be adversely affected. This practice was not insurable under the previous Apple Crop Insurance Policy. Consequently, interplanting information will need to be collected using the FCI–12–P Pre-Acceptance Perennial Crop Inspection Report form for approximately 1 percent of the 32 insureds who interplant their apple crop. Standard interplanting language has been added to most perennial crops. Offering insurance for this practice will benefit agriculture because now more perennial crop producers will be covered by insurance and less acreage will need to be placed into the noninsured crop disaster assistance program (NAP). Section 13 of the 1998 Apple Crop Provisions adds optional quality adjustment for fresh fruit and processing apples, thus eliminating the Apple Fresh Fruit Option Form and the Apple Sunburn Option Form. The incorporation of these options reduces paperwork more than the slight increase which will result from the interplanting language for those few insureds who interplant their apple crop.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Apple Crop Insurance Provisions.'' The information to be collected includes a crop insurance application and acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of apples that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. 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. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.158, Apple Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring apples found at 7 CFR part 405 (Apple Crop Insurance Regulations). FCIC also proposes to amend 7 CFR part 405 to limit its effect to the 1997 and prior crop years.

This rule makes minor editorial and format changes to improve the Apple Crop Insurance Regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring apples as follows:

1. Section 1—Add definitions for the terms ''adapted,'' ''culls,'' ''days,'' ''direct marketing,'' ''excessive sun,'' ''FSA,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''non-contiguous,'' ''pound,'' ''production guarantee (per acre),'' ''russeting,'' ''sunburn,'' ''ton,'' ''USDA,'' and ''written agreement'' for clarification. Remove the definitions for: ''contiguous land'' for consistency with other crop policies; ''freeze,'' ''frost,'' and ''fruit set failure'' because these causes of loss will be referred to as ''adverse weather;'' and ''loose field box'' because it has been changed to ''box.'' Amend the definition of ''bushel'' for clarification.

2. Section 2—Add a provision to permit optional unit division when acreage is located in non-contiguous parcels rather than by contiguous land as provided in the current policy. Also, add a provision to allow producers from all areas to select optional units by section, section equivalent or FSA Farm Serial Number. These changes were made to be consistent with other perennial crops.

3. Section 3(a)—Specify that an insured may select only one price election for all the apples in the county insured under the policy, unless the Special Provisions provide different price elections by type, in which case the insured may select one price election for each apple type designated in the Special Provisions.

4. Section 3(b)—Specify that the insured must report damage, removal of trees, and change in practices that may reduce the expected yield. The insured must also report, for the first year of insurance for acreage interplanted with another perennial crop and anytime the planting pattern of such acreage is changed, the age and type, if applicable, of any interplanted crop, its planting pattern, and any other information that the insurer requests in order to establish the yield upon which the production guarantee is based. If the insured fails to notify the insurer of factors that may reduce yields from previous levels, the insurer will reduce the production guarantee at any time the insurer becomes aware of damage, removal of trees, or change in practices. This change will standardize these provisions with those in other perennial crop policies.

5. Section 7—Add a provision making apples interplanted with another perennial crop insurable unless, after an inspection, the insurer determines it does not meet the requirements contained in the policy.

6. Section 8(a)(1)—Change the date that insurance begins for the year of application. If the application is received after November 11 but prior to November 21, insurance will attach on the 10th day after the insured's properly completed application is received in the insurer's local office unless the insurer inspects the acreage during the 10 day period and determines that the requirements of the insurance contract are not met. These provisions were modified to avoid interpretation that late-filed applications are allowed and a thirty day period in this situation is not reasonable. Ten days is sufficient for the insurance provider to inspect the condition of the orchard with limited exposure for the producer.

7. Section 8(b)(1)—Clarify the date coverage begins if the producer acquires an insurable interest in any insurable acreage of apples on or before the acreage reporting date of any crop year. Clarify that there is no coverage for an insurable interest acquired after the acreage reporting date.

8. Section 8(b)(2)—Clarify that insurance will be deemed to not have attached if the producer relinquishes an insurable interest in any insurable acreage of apples on or before the acreage reporting date of any crop year unless a transfer of coverage and right to an indemnity is completed and the insurance provider is notified in writing on or before the acreage reporting date. The transferee must be eligible for crop insurance.

9. Section 9(a)(1)—Add adverse weather conditions as a cause of loss. Delete frost, freeze, hail, drought, wind and fruit-set failure because these are included by the term adverse weather.

10. Section 9(a) (3) and (4)—Clarify that disease and insect infestation are included causes of loss, but not damage due to insufficient or improper application of disease or pest control measures.

11. Section 9(a)(9) and (b) (2) and (3)—Add wildlife as a cause of loss unless appropriate control measures have not been taken. Also specifically exclude from coverage inability to market apples for any reason other than actual physical damage from an insurable cause of loss, and mechanical damage. These changes were made to be consistent with other perennial crop provisions.

12. Section 10—Require the producer to give notice: (1) Within 3 days of the date harvest should have started if the crop will not be harvested; (2) at least 15 days before any production from any unit will be sold by direct marketing so an inspection can be made; and (3) if the crop has been previously damaged and notice provided, at least 15 days prior to harvest as a result of that previous damage so a preharvest inspection can be made if the insured intends to claim an indemnity. These changes will incorporate and standardize the notice of loss requirements used for other perennial crops.

13. Section 12—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contracts by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for, and duration of, written agreements.

14. Section 13—Add optional quality adjustment provisions for fresh fruit and processing apples to the Apple Crop Provisions, thereby eliminating insured's paperwork burden of completing the Apple Fresh Fruit Option and the Apple Sunburn Option forms. Also, add provision that specifies these options are not available to insureds who elect the Catastrophic Risk Protection (CAT) Endorsement. Also, increase the percentage of cull production that will be considered as production to count from 15 to 30 percent. This change provides for a reduced long term loss ratio by increasing the percentage of the cull production as production to count.

List of Subjects in 7 CFR Parts 405 and 457

Apple Crop insurance, Apple crop insurance regulations.

Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 405 and 457, as follows:

PART 405—APPLE CROP INSURANCE REGULATIONS FOR THE 1986 THROUGH THE 1997 CROP YEARS

1. The authority citation for 7 CFR part 405 is amended as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The part heading is revised to read as set forth above.

3. Subpart Heading ''Subpart—Regulations for the 1986 through the 1997 Crop Years'' is removed.

§ 405.7 [Amended]

4. Section 405.7 is amended by revising the introductory text of paragraph (d) to read as follows:

* * * * *

(d) The application for the 1986 and subsequent crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Apple Insurance Policy for the 1986 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

5. Section 457.158 is added to read as follows:

§ 457.158 Apple crop insurance provisions.

The Apple Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

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Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Apple Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Adapted. (For the purpose of determining varieties adapted to the area), varieties that are recognized by Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Area A. A geographic area that includes Montana, Wyoming, Utah, New Mexico and all states west thereof.

Area B. A geographic area that includes all states not included in Area A, except for Colorado.

Area C. Colorado.

Bin. A container that contains a minimum of 875 pounds of apples or some other quantity designated in the Special Provisions.

Box. A container that contains 35 pounds of apples or some other quantity designated in the Special Provisions.

Bushel. 42 pounds of apples in all states except Colorado. In Colorado, a bushel equals 40 pounds of apples.

Culls. Apples that fail to meet the requirements of U.S. Cider Grade.

Days. Calendar days.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, or a farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Excessive sun. Exposure of unharvested apples to direct or indirect sunlight that causes apples to grade less than U.S. Fancy due to sunburn.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The picking of mature marketable apples from the trees or removing such apples from the ground.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Marketable. Apple production that grades U.S. No. 1, 2, or Cider in accordance with the United States Standards for Grades of Apples.

Non-contiguous. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Pound. Sixteen (16) ounces avoirdupois.

Production guarantee (per acre). The quantity of apples (boxes or bushels) determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Russeting. A brownish roughened area on the surface of the apple.

Sunburn. As defined in the United States Standards for Grades of Apples.

Ton. Two thousand (2,000) pounds avoirdupois.

USDA. United States Department of Agriculture.

Written agreement. A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) For each crop year, records of marketed production or measurement of stored production from each optional unit must be maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must meet one or more of the following criteria unless otherwise specified by written agreement, as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage and non-irrigated acreage (in those counties where ''non-irrigated'' practice is allowed in the actuarial table) if both are located in the same section, section equivalent, or FSA Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, and you may not continue into non-irrigated acreage in the same rows or planting pattern.

(iii) *Optional Units on Acreage Located on Non-Contiguous Land:* In addition to, or instead of, establishing optional units by section, section equivalent, FSA Farm Serial Number, or irrigated and non-irrigated practices, optional units may be established if each optional unit is located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the apples in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each apple type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by type if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern;

(4) The separate acreage of apples intended for fresh-market or processing as shown on the actuarial table; and

(5) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage has changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield. We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the apples in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Are adapted to the area;

(2) Are in area A and have produced at least an average of 10 bins per acre;

(3) Are in area B and have produced at least an average of 150 bushels per acre;

(4) Are in Area C and have produced at least an average of 200 bushels per acre; and

(c) That are grown in an orchard that, if inspected, is considered acceptable by us.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, apples interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the insurability requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on November 21 of each crop year, notwithstanding the previous sentence for the year of application, if your application is received after November 11 but prior to November 21 insurance will attach on the 10th day after your properly completed application is received in our local office unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is November 5.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. There will no coverage of any insurable interest acquired after the acreage reporting date.

(2) If you relinquish your insurable share on any insurable acreage of apples on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Earthquake;

(6) Volcanic eruption;

(7) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period;

(8) Excess sun, only if you have elected the Fresh Fruit Option B and the Sunburn Option as described in section 13.

(9) Wildlife, unless appropriate control measures have not been taken.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Failure of the fruit to size, shape, or color properly; or

(2) Inability to market the apples for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

(3) Mechanical damage including, but not limited to, limb rubs, scars, and punctures; or

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) You must notify us within three 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If the crop has been damaged during the growing season and you previously gave notice in accordance with section 14 of the Basic Provisions (§ 457.8), you must also provide notice at least 15 days prior to the beginning of harvest if you intend to claim an indemnity as a result of the damage previously reported. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to count of each type, if applicable, (see section 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the total in section 11(b)(5) from the total in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

(c) The total production to count (boxes or bushels) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 10;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All marketable harvested production from the insurable acreage.

(3) Mature marketable apple production may be reduced as a result of loss in quality due to hail, wind, freeze, or sunburn in accordance with section 13 of these provisions, if you elect one or more of these coverages.

12. Written Agreements

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

13. Optional Coverage for Quality Adjustment

(a) These quality adjustment options apply only if the following conditions are met:

(1) You have not elected to insure your apples under the Catastrophic Risk Protection (CAT) Endorsement.

(2) You elected the Fresh Fruit Option A or the Fresh Fruit Option B; or you elected both the Fresh Fruit Option B and the Sunburn Option on your application or other form approved by us, and did so on or before the sales closing date for the initial crop year for which you wish it to be effective. By doing so, you agreed to pay the additional premium designated in the actuarial table for this optional coverage; and

(3) You or we did not cancel the option in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered as notice of cancellation by you.

(b) If you select Fresh Fruit Option A only, Fresh Fruit Option A will apply to all of your apples intended for processing and fresh market.

(c) If you select Fresh Fruit Option B, those provisions will apply to all of your apples intended for fresh-market and the provisions of Fresh Fruit Option A will apply to all of your apples intended for processing.

(d) If you select the Sunburn Option as designated in the Special Provisions, you must also select the Fresh Fruit Option B.

(e) In addition to the requirements of section 10 of these provisions, you must permit us to inspect and grade the fruit prior to harvest or no quality adjustment will be made.

(f) Fresh Fruit Option A and Fresh Fruit Option B are subject to the following conditions:

(1) Fresh Fruit Option A—In addition to section 11(c) of these provisions and notwithstanding the definition of ''marketable'' in section 1 of these provisions, your production to count for any acreage designated for processing or fresh-market will be adjusted when your apples are damaged by hail to the extent that such apples will not grade U.S. No. 1 (processing). The adjustment factor (not to exceed 1.00) will be the ratio of the average market price (received by you or determined by us, whichever is larger) for the damaged production to the average market price for U.S. No 1 (processing) apples. There will be no adjustment for quality if the apples do not grade U.S. No. 1 due to size, color, or russeting.

(2) Fresh Fruit Option B—Notwithstanding section 11(c) and the definitions of ''harvest'' and ''marketable'' in section 1 of these provisions, the total production to count for a unit must include all harvested and appraised production. Harvested apple production which is damaged by hail to the extent that it does not grade 80 percent U.S. Fancy or better, in accordance with

applicable USDA Standards for Grades of Apples, will be adjusted as follows:

(i) Production with 21 through 40 percent not grading U.S. Fancy or better will be reduced 2 percent for each percent in excess of 20 percent.

(ii) Production with 41 through 50 percent not grading U.S. Fancy or better will be reduced 40 percent plus an additional 3 percent for each percent in excess of 40 percent.

(iii) Production with 51 through 64 percent not grading U.S. Fancy or better will be reduced 70 percent plus an additional 2 percent for each percent in excess of 50 percent.

(iv) Production with 65 percent or more not grading U.S. Fancy or better be considered 100 percent cull production.

(v) The difference between the reduced production and the total production will be considered cull production.

(3) Apples that are knocked to the ground by wind or frozen to the extent that they can be harvested but not packed or marketed as fresh apples will be considered 100 percent cull production.

(4) Thirty (30) percent of all cull production will be considered production to count.

(5) No reduction in grade will be applied to any apple grading less than U.S. Fancy due solely to shape, russeting, or color.

(6) Any appraisal we make on the insured acreage will be considered production to count unless such appraised production is knocked to the ground by wind or hail or frozen on the tree to the extent that harvest is not practical.

(g) Sunburn Option

(1) In addition to the causes of loss specified in section 9 of these provisions, excess sun is an insurable cause of loss.

(2) Notwithstanding the definitions of ''harvest'' and ''marketable'' in section 1 and 11(c)(1) and (2) of these provisions, the total production to be counted for a unit must include all harvested and appraised production. Harvested apple production which, due to excessive sun or in conjunction with hail damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards, will be adjusted as follows:

(i) Production with 21 through 40 percent not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be reduced 2 percent for each percent in excess of 20 percent.

(ii) Production with 41 through 50 percent not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be reduced 40 percent plus an additional 3 percent for each percent in excess of 40 percent.

(iii) Production with 51 through 64 percent not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be reduced 70 percent plus an additional 2 percent for each percent in excess of 50 percent.

(iv) Production with 65 percent or more not grading U.S. Fancy or better due solely to excessive sun or along with hail damage, will be considered 100 percent cull production.

(v) The difference between the reduced production and the total production to count will be considered cull production.

(vi) Thirty (30) percent of all cull production will be considered as production to count.

Signed in Washington, D.C., on May 2, 1997.

Suzette M. Dittrich,

Deputy Manager, Federal Crop Insurance Corporation.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

RIN 3150–AF59

Requirements for Shipping Packages Used To Transport Vitrified High-Level Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to remove canisters containing vitrified high-level waste (HLW) containing plutonium from the packaging requirement for double containment. This amendment is being proposed in response to a petition for rulemaking (PRM–71–11) submitted by the Department of Energy (DOE). This proposed rule would also make a minor correction to the usage of metric and English units to be consistent with existing NRC policy.

DATE: The comment period expires July 22, 1997. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

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

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the **SUPPLEMENTARY INFORMATION** Section.

Certain documents related to this rulemaking, including comments received and the environmental assessment and finding of no significant impact, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as discussed under Electronic Access in the **SUPPLEMENTARY INFORMATION** Section.

FOR FURTHER INFORMATION CONTACT: Earl Easton, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8520, e-mail EXE@nrc.gov or Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196, e-mail MFH@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In 10 CFR 71.63, the NRC imposed special requirements on licensees who ship plutonium in excess of 0.74 terabecquerels (20 curies). These requirements specify that plutonium must be in solid form and that packages used to ship plutonium must provide a separate inner containment (the ''double containment'' requirement). In adopting these requirements, the NRC specifically excluded plutonium in the form of reactor fuel elements, metal or metal alloys, and, on a case-by-case basis, other plutonium-bearing solids that the NRC determines do not require double containment.

On November 30, 1993, the DOE petitioned the NRC to amend § 71.63 to add a provision that would specifically remove canisters containing plutonium-bearing vitrified waste from the packaging requirement for double containment. The NRC published a notice of receipt for the petition, docketed as PRM–71–11, in the **Federal Register** on February 18, 1994 (59 FR 8143), requesting public comment by May 4, 1994. On May 23, 1994 (59 FR 26608), the public comment period was extended to June 3, 1994, at the request of the Idaho National Engineering Laboratory (INEL) Oversight Program of the State of Idaho.

Pursuant to the Nuclear Waste Policy Act of 1982, as amended, the DOE is the Federal agency responsible for developing and administering a geologic repository for the deep disposal of HLW and spent nuclear fuel. In the petition, the DOE proposes to ship the HLW from each of its three storage locations at Aiken, South Carolina; Hanford, Washington; and West Valley, New York; directly to the geologic repository in casks certified by the NRC. Currently, this HLW exists mostly in the form of

liquid and sludge resulting from the reprocessing of defense reactor fuels. The DOE proposes to solidify this material into a borosilicate glass form in which the HLW is dispersed and immobilized. The glass would then be placed into stainless steel canisters for storage and eventual transport to the geologic repository. DOE's purpose in requesting an amendment to the rule is to allow the transportation and disposal of HLW in a more cost-effective and efficient manner without adversely affecting public health and safety.

The containers used to transport canisters of vitrified HLW will be Type B packages certified by the NRC. These packages are required to meet accident resistant standards. The HLW will also be subject to the special transport controls for a ''Highway Route Controlled Quantity'' pursuant to U.S. Department of Transportation regulations. In addition, the Nuclear Waste Policy Act of 1982, as amended, requires the DOE to provide technical assistance and funds to train emergency responders along the planned route.

The DOE asserts that shipment of vitrified HLW without double containment will not adversely affect safety. This is because the canistered, vitrified HLW provides a comparable level of protection to the packaging of reactor fuel elements, which does not require double containment. The DOE also noted that the plutonium concentrations in the vitrified HLW will be considerably lower than the concentration in spent nuclear fuel and that vitrified HLW is in an essentially nonrespirable form.

Comments on the petition were received from three parties: the U.S. Environmental Protection Agency (EPA); Nye County, Nevada (the site for the proposed spent fuel and HLW repository at Yucca Mountain); and the INEL Oversight Program of the State of Idaho. EPA reviewed the petition in accordance with its responsibilities under Section 309 of the Clean Air Act and had no specific comments. Nye County agreed with the rationale and arguments advanced by the DOE, and had no objection to DOE's petition. The State of Idaho commented that the petition was premature because it did not specify the parameters or performance standards that HLW must meet.

On June 1, 1995, the NRC staff met with the DOE in a public meeting to discuss the petitioner's request and the possible alternative of requesting an NRC determination under § 71.63(b)(3) to exempt vitrified HLW from the double containment requirement. The DOE informed the NRC in a letter dated January 25, 1996, of its intent to seek this exemption and the NRC received DOE's request on July 16, 1996. The DOE requested that the original petition for rulemaking be held in abeyance until a decision was reached on the exemption request.

In response to DOE's request, the NRC staff prepared a Commission paper (SECY–96–215, dated October 8, 1996) outlining and requesting Commission approval of the NRC staff's proposed approach for making a determination under § 71.63(b)(3). The determination would have been the first made after the promulgation of the original rule, ''Packaging of Radioactive Material for Transport and Transportation of Radioactive Materials Under Certain Conditions,'' published on June 17, 1974 (39 FR 20960). In a staff requirements memorandum dated October 31, 1996, the Commission disapproved the NRC staff's plan and directed that this policy issue be addressed by rulemaking. In response, the NRC staff has developed this proposed rule in response to the DOE petition.

Discussion

In the final 1974 rule, the NRC anticipated that a large number of shipments of plutonium nitrate liquids could result from spent nuclear fuel reprocessing and revised its regulations to require that plutonium in excess of 0.74 terabequerels (20 curies) be shipped in solid form. The NRC did so because shipment of plutonium liquids is susceptible to leakage, particularly if a shipping package is improperly or not tightly sealed. The value of 0.74 terabequerels (20 curies) was chosen because it was equal to a large quantity of plutonium as defined in 10 CFR Part 71 in effect in 1974. Although this definition no longer appears in 10 CFR Part 71, the value as applied to double containment of plutonium has been retained. The concern about leakage of liquids arose because of the potential for a large number of packages (probably of more complex design) to be shipped due to reprocessing and the increased possibility of human error resulting from handling this expanded shipping load.

The NRC treats dispersible plutonium oxide powder in the same way because it also is susceptible to leakage if packages are improperly sealed. Plutonium oxide powder was of particular concern because it was the most likely alternative form (as opposed to plutonium nitrate liquids) for shipment in a fuel reprocessing economy. To address the concern with dispersible powder, the NRC required that plutonium not only must be in solid form, but also that solid plutonium be shipped in packages requiring double containment.

In the accompanying statement of considerations to the final 1974 rule, the NRC stated that the additional inner containment requirements are intended to take into account that the plutonium may be in a respirable form and that solid forms that are essentially nonrespirable, such as reactor fuel elements, are suitable for exemption from the double containment requirement. The Commission further stated that:

> Since the double containment provision compensates for the fact that the plutonium may not be in a ''nonrespirable'' form, solid forms of plutonium that are essentially nonrespirable should be exempted from the double containment requirement. Therefore, it appears appropriate to exempt from the double containment requirements reactor fuel elements, metal or metal alloy, and other plutonium bearing solids that the Commission determines suitable for such exemption. The latter category provides a means for the Commission to evaluate, on a case-by-case basis, requests for exemption of other solid material where the quantity and form of the material permits a determination that double containment is unnecessary.

DOE's petition to amend § 71.63, by adding a provision that exempts canisters containing vitrified HLW from the packaging requirement for a separate inner containment is partly based on the rationale that the vitrified HLW meets the intent of the rule because the plutonium will be in an essentially nonrespirable form. The DOE petition contends that the vitrified HLW contained in stainless steel canisters provides a comparable level of safety protection to that provided by spent fuel elements.

Specifically, in the technical information supporting the petition [1], the DOE sought to demonstrate that the waste acceptance specifications and process controls in the vitrification process and the waste and canister characteristics compare favorably to spent nuclear fuel in terms of the dispersability and respirability of the contents during normal conditions of transport and after an accident. The DOE maintained that impact and leak tests on the canisters, chemical analysis of spent fuel and simulated HLW borosilicate glass, design of the HLW canister, and other studies of the levels of plutonium and other radioactive elements present in the borosilicate glass demonstrate that vitrified HLW

[1] Technical Justification to Support the PRM by the DOE to Exempt HLW Canisters from 10 CFR 71.63(b), dated September 30, 1993.

canisters are more robust and contain less plutonium than spent reactor fuel elements. During actual transport conditions, the HLW canister will be enclosed within an NRC-certified shipping cask, further reducing the potential for canister damage and for release of respirable particles of HLW glass.

The DOE petition refers to plutonium in the form of borosilicate glass as being essentially nonrespirable. This is because a minute quantity of respirable particles could result if the glass fractures such as during cooldown processes after being poured into the HLW canisters, normal handling and transport conditions, and accident conditions.

In the technical information supporting the petition, the DOE compared the physical and chemical characteristics of the vitrified HLW glass mixture to spent nuclear fuel pellets. Because impact studies of simulated waste glass from the DOE Savannah River site (Aiken, South Carolina) have shown comparable levels of fracture resistance and similar fractions of respirable particles when compared to unirradiated uranium fuel pellets and other potential waste form materials, the fracture resistance of HLW glass is expected to be comparable to that of uranium fuel pellets.

The DOE also compared the concentration of plutonium present in a HLW canister from the Savannah River site to that contained in a typical spent reactor fuel element and concluded that the spent reactor fuel element contains at least 100 times the concentration of plutonium expected in a HLW canister. The DOE stated that the maximum concentration of plutonium projected for the Hanford and West Valley HLW canisters is much less than that of the Savannah River canisters.

The DOE also compared the integrity of the HLW canister to the cladding of a reactor fuel element. The wall thickness of proposed HLW canisters designs are substantially thicker than the cladding thickness of a reactor fuel element. Additionally, the DOE noted that reactor fuel elements have been exposed to high levels of radiation which effects the cladding's material properties. Consequently, the DOE concluded that the protection provided by the HLW canister would be at least comparable to that provided by spent reactor fuel cladding.

Based on DOE documents, it is estimated that there will be 3,500 shipments of vitrified HLW by 2030. These shipments would not start until a HLW repository or an interim storage facility becomes available. However, the DOE's statement of 3,500 shipments is based on loading two HLW canisters in each reusable shipping cask. If a separate inner containment is required, the weight of the canister would be increased. This would cause a corresponding decrease in the vitrified glass payload to remain within allowable conveyance weight and/or size limitations, potentially to the point that only one canister could be transported per shipping cask. Consequently, the number of shipments required to transport the existing quantity of waste would increase. Therefore, the proposed rule would have the following benefits: (1) Reducing the occupational dose associated with loading, unloading, decontaminating, and handling the shipping casks; (2) reducing the dose to the public during normal transport by decreasing the total number of shipments; (3) decreasing total loading and unloading time (and resultant expense); and (4) reducing the cost of the containment system.

Proposed Regulatory Action

The NRC is proposing to amend 10 CFR 71.63 based on our evaluation of the petition submitted by the DOE, its attachment, ''Technical Justification to Support the PRM by the DOE to Exempt HLW Canisters from 10 CFR 71.63(b),'' and the three public comments received on the petition after its publication in the **Federal Register**. 10 CFR 71.63 specifies special provisions when shipping plutonium in excess of 0.74 TBq (20 curies) per package, including a separate inner containment system, except when plutonium is in solid form in reactor fuel elements, metal, or metal alloys. In proposing to amend § 71.63, the NRC is accepting, with modifications, the petition submitted by DOE, for the reasons set forth in the following paragraphs.

In an accompanying statement of considerations to the 1974 rule on shipping plutonium, the Commission stated that the additional inner containment requirements are intended to take into account the fact that the plutonium may be in a respirable form. The safety goal achieved in § 71.63 is the prevention of releases of respirable forms of plutonium (when shipping over 0.74 TBq) during both normal conditions of transportation and during accidents. The 1974 rule considered both increased numbers of shipments of potentially respirable forms of plutonium, as a result of commercial reprocessing of spent nuclear fuel, and an increased potential for a human packaging error associated with the larger shipping load. However, these large numbers of plutonium shipments have not occurred, due in part to policy, technical, and economic decisions to abandon commercial reprocessing in the late 1970s.

Because of the material properties of the vitrified HLW, the sealed canisters, and the approved quality assurance programs as described in the petition, canisters of vitrified HLW packaged in accordance with 10 CFR Part 71 are highly unlikely to result in releases of dispersible or respirable forms of plutonium under normal transportation conditions, as identified under 10 CFR Part 71. Therefore, for normal transportation, the vitrified HLW canisters meet the intent of the § 71.63(b) requirement without the need for double containment.

As for accident conditions, transportation packages for vitrified HLW will be required to be certified by the NRC pursuant to Section 180 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10175), and 10 CFR Part 71. Every package for vitrified HLW will be required to meet the standards for accident resistant (i.e., Type B) packages as set forth in 10 CFR Part 71. The shipping casks for vitrified HLW are anticipated to be similar in design and robustness, and provide a comparable level of protection to shipping casks for spent nuclear fuel. Because spent nuclear fuel is excluded from the double containment requirement, a favorable comparison of the canisters of vitrified HLW to spent nuclear fuel would support removal of the vitrified HLW forms from double containment.

The tests described in the technical justification demonstrate that the canisters containing the vitrified HLW compare favorably to the cladding surrounding spent fuel pellets in reactor assemblies. The comparison is in terms of physical integrity and containment, based upon the material properties, dimensions, and the effects of radiation damage to materials.

The DOE analysis demonstrates much lower concentrations of plutonium in the HLW canisters than in spent reactor fuel elements. However, the DOE has not established an upper limit on plutonium concentration for these vitrified HLW canisters, and the NRC is not basing its decision to remove these canisters from the double containment requirement based on the plutonium's concentration.

In the technical justification, the DOE described the physical characteristics and acceptance standards of the canisters of vitrified HLW, including that the canistered waste form be capable of withstanding a 7-meter drop

onto a flat, essentially unyielding surface, without breaching or dispersing radionuclides. This requirement is imposed by the DOE's ''Waste Acceptance System Requirements Document (WASRD),'' Rev. 0, which is referenced in the technical justification supporting the petition. This test should not be confused with the 9-meter drop test onto an essentially unyielding surface, as required by the hypothetical accident conditions in 10 CFR 71.73. The 9-meter drop test is performed on the entire package under 10 CFR Part 71 certification review by the NRC. The 7-meter drop applies to the canistered HLW, which is the content of the NRC-certified Type B package.

The NRC agrees that the 7-meter drop test requirement is relevant to the demonstration that the canistered HLW represents an essentially nonrespirable form for shipping plutonium. It is reasonable to expect that the 7-meter drop test on the canister would be a more severe test than the 9-meter drop test on an NRC-approved Type B package, due to the energy absorption by the packaging and impact limiters. The WASRD acceptance criterion of no ''breaching or dispersing radionuclides'' could be used to demonstrate that the waste is essentially nonrespirable under accident conditions.

In some of these tests, the HLW canisters were dropped from 9 meters, 2 meters above the DOE 7-meter design standard, and portions of the testing included deliberately introducing flaws (0.95 cm holes) in the canisters' walls. In these drop tests, all the HLW canisters remained intact. For those HLW canisters tested with the 0.95 cm holes, the quantity of respirable plutonium released through these holes was less than 20 curies. This review has provided the NRC staff confidence that DOE's petition is supportable and that vitrified HLW is essentially non-respirable in the forms likely to be shipped.

However, the NRC does not control the requirements in, or changes to, the DOE's WASRD. Many requirements in the WASRD are apparently derived from, or are DOE's interpretations of, the NRC or other applicable regulations. There are no NRC regulations or other requirements specifying a 7-meter drop test onto an essentially unyielding surface for canistered HLW. Accordingly, the NRC does not have assurance that this test will be retained in future revisions to the WASRD. Therefore, this test itself does not represent a sufficient basis for removing the regulatory requirement in 10 CFR 71.63 for a separate inner containment.

To address this concern, the proposed rulemaking provides additional requirements beyond those presented in the petition for rulemaking that requested exemption of ''Canisters containing vitrified high-level waste.'' The NRC is proposing to amend 10 CFR 71.63(b) by excluding sealed canisters containing vitrified HLW from the double containment requirement if these canisters meet the specific waste package design criteria in 10 CFR Part 60. The additional requirement to meet 10 CFR Part 60 is responsive to the public comment received on the DOE petition from the State of Idaho by establishing criteria relevant to the intent of the double containment rule.

The design criteria for HLW forms in 10 CFR 60.135 (b) and (c) require that the waste be in solid form, in sealed containers, and that particulate waste forms be consolidated to limit the availability and generation of particulate. The basis for these technical requirements under 10 CFR Part 60 is to limit particulates for reduced leaching versus limiting particulate for respirability. Nevertheless, the bases are generally consistent. The DOE WASRD, and its associated quality assurance programs, are primarily based upon compliance with 10 CFR Part 60 requirements.

In addition, the NRC is proposing to make a minor formatting change in the language of the regulation and a minor correction to the usage of units in this section to be consistent with existing NRC policy. Metric units are reported first with English units in parenthesis.

Compatibility of Agreement State Regulations

The proposed compatibility level for this rulemaking is Division 4 because the change only affects the DOE plutonium shipments. Division 4 rules pertain to those regulatory functions that are reserved solely to the authority of the NRC pursuant to the Atomic Energy Act of 1954, as amended, and 10 CFR Part 150.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld also can be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321–3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

You may also access the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the

same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if your web browser supports that function.

For more information on the NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555–0001, telephone (301) 415–5780; e-mail AXD3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–6215; e-mail CAG@nrc.gov.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The proposed rule change removes shipments of sealed canisters containing vitrified HLW that meet the design criteria in 10 CFR 60.135 (b) and (c) from the double containment packaging requirement. The additional design requirement supports consistency with the intent of the original 1974 rule. The primary purpose for double containment is to ensure that any respirable plutonium will not leak into the atmosphere. Vitrified HLW is essentially nonrespirable, and therefore, the packaging requirement for double containment is unnecessary.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0008.

Public Protection Notification

The NRC 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.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The rulemaking only affects the DOE shipments of vitrified HLW. No other entities are involved.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 71.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

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

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

2. Section 71.63 is revised to read as follows:

§ 71.63 Special requirements for plutonium shipments.

(a) Plutonium in excess of 0.74 TBq (20 Ci) per package must be shipped as a solid.

(b) Plutonium in excess of 0.74 TBq (20 Ci) per package must be packaged in a separate inner container placed within outer packaging that meets the requirements of subparts E and F of this part for packaging of material in normal form. If the entire package is subjected to the tests specified in § 71.71 (''Normal conditions of transport''), the separate inner container must not release plutonium as demonstrated to a sensitivity of 10^{-6} A_2/h. If the entire package is subjected to the tests specified in § 71.73 (''Hypothetical accident conditions''), the separate inner container must restrict the loss of plutonium to not more than A_2 in 1 week. The requirements of this paragraph do not apply to solid plutonium in the following forms:

(1) Reactor fuel elements;

(2) Metal or metal alloy;

(3) Sealed canisters containing vitrified high-level waste that meet the design criteria in 10 CFR 60.135 (b) and (c); and

(4) Other plutonium bearing solids that the Commission determines should be exempt from the requirements of this section.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 1st day of May, 1997.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–11834 Filed 5–7–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–229–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require replacement of the ignition exciter in the auxiliary power unit with a part that is designed to operate better in cold weather. This proposal is prompted by two occurrences of the auxiliary power unit (APU) failing to start after flight in cold soak conditions. The actions specified by the proposed AD are intended to prevent such APU failure, which could result in the inability of the APU to restart the engines in the event both engines quit operating during flight.

DATES: Comments must be received by June 19, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96-NM–229-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.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal 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 96-NM–229-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96-NM–229-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that the auxiliary power unit (APU), part number 4500090 (serial numbers SP–E941224, and SP–E941228 through SP–E951259 inclusive), could fail to start in temperatures below −4 degrees F (−20 degrees C) after flight of two hours or more in cold soak conditions. At these temperatures, the electrical current to the ignition exciter in the auxiliary power unit is too high. This causes the over-current protection circuit in the Electronic Sequence Unit (ESU) to release, thus causing failure of the APU to start (ESU BITE-EXTERNAL SHORT). This condition, if not corrected in a timely manner, could result in the inability of the APU to restart the engines in the event both engines quit operating during flight.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–49–005, dated December 19, 1995, which describes procedures for replacing the ignition exciter, part number 4950787, with an ignition exciter having part number 179420–2, which is designed to operate better in cold weather. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) No 1–082, dated December 20, 1995, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden 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. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed 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, the proposed AD would require replacement of the ignition exciter in the auxiliary power unit with a part that is designed to operate better in cold weather. The proposed action would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $180, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished the modification proposed by this AD

action, and that no operator would accomplish this modification in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory 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, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

SAAB Aircraft AB: Docket 96–NM–229–AD.

Applicability: Model SAAB 2000 series airplanes, equipped with an auxiliary power unit (APU) having part number 4500090, serial numbers SP–E941224, and SP–E941228 through SP–E951259 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 otherwise 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 (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 prevent auxiliary power unit (APU) failure, which could result in the inability of the APU to restart the engines in the event both engines quit operating during flight, accomplish the following:

(a) Within 60 days after the effective date of this AD: Replace the ignition exciter, part number 4950787, with an ignition exciter having part number 179420–2, in accordance with Saab Service Bulletin 2000–49–005, dated December 19, 1995.

(b) As of the effective date of this AD, no person shall install an ignition exciter having part number 4950787 on any airplane.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(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.

Issued in Renton, Washington, on May 2, 1997.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–12040 Filed 5–7–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 511 and 514

[Docket No. 96N–0411]

New Animal Drugs for Investigational Use and New Animal Drug Applications; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to June 9, 1997 the comment period for the advance notice of proposed rulemaking (ANPRM) for investigational use new animal drug (INAD) regulations and the new animal drug applications (NADA) regulations that published in the **Federal Register** of November 21, 1996. The comment period is being reopened for the sole purpose of inviting interested persons to submit comments that will give FDA guidance in developing proposed regulations defining ''good study practices.'' Elsewhere in this issue of the **Federal Register**, FDA is publishing a related document, a proposed rule further defining adequate and well-controlled studies. The definition of adequate and well-controlled studies requires that such a study, when conducted in the target animal, be conducted in compliance with good study practices.

DATES: Written comments by June 9, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Herman M. Schoenemann, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 21, 1996 (61 FR 59209), FDA published an advance notice of proposed rulemaking announcing the agency's intention to propose revisions to the INAD regulations and the NADA regulations. The purpose of these revisions is to: (1) Implement the Animal Drug Availability Act of 1996 (ADAA) (Pub. L. 104–250) and (2) fulfill FDA's commitment as announced in the President's National

Performance Report, ''Reinventing the Regulation of Animal Drugs,'' May 1996. FDA solicited comments on all aspects of its proposed rulemaking relating to INAD and NADA regulations and requested comments on specific issues including defining ''adequate and well-controlled.''

Section 2(e) of the ADAA, enacted on October 9, 1996, directed FDA to issue, within 6 months of its enactment, proposed regulations to further define the term ''adequate and well-controlled'' to require that field investigations be designed and conducted in a scientifically sound manner, taking into account practical conditions in the field and differences between field conditions and laboratory conditions. Elsewhere in this issue of the **Federal Register**, FDA has issued a proposed rule further defining adequate and well-controlled studies. As proposed, one characteristic of an adequate and well-controlled study is that such a study, when conducted in the target animal, be conducted in compliance with good study practices. As explained in the preamble to the proposed regulation defining adequate and well-controlled studies, FDA intends to define good study practices when the agency publishes the revised INAD regulations.

FDA is reopening the comment period on the ANPRM for the sole purpose of inviting interested persons to submit comments which will give FDA guidance in developing proposed regulations defining good study practices. The agency is particularly interested in specific comments explaining which study practices, including practices such as those specified in good laboratory practices or specific practices recommended by the Center for Veterinary Medicine during the conduct studies or in guidance, could not be followed, in whole or in part, when studies are conducted under actual use conditions in field studies. These comments should include specific examples whenever possible.

Interested persons may, on or before June 9, 1997 submit to the Dockets Management Branch (address above) written comments regarding good study practices. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–11845 Filed 5–7–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. 97N–0141]

Adequate and Well-Controlled Studies for Investigational Use and Approval of New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA), as directed by the Animal Drug Availability Act of 1996 (ADAA), is publishing a proposed regulation to further define the term ''adequate and well-controlled'' to require that field investigations be designed and conducted in a scientifically sound manner. Elsewhere in this issue of the **Federal Register**, FDA is reopening docket number 96N–0411 to receive comments regarding a concept, ''good study practices,'' that is related to the definition of adequate and well-controlled studies.

DATES: Written comments by July 22, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Herman M. Schoenemann, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the ADAA (Pub. L. 104–250) on October 9, 1996. Section 2(e) of the ADAA directs FDA to issue, within 6 months of its enactment, proposed regulations to further define the term ''adequate and well-controlled'' to require that field investigations be designed and conducted in a scientifically sound manner, taking into account practical conditions in the field and differences between field conditions and laboratory conditions. Although FDA believes that the definition of adequate and well-controlled is meaningful only when considered within the context of the entire set of regulations that govern the investigational use and approval of new animal drugs, FDA is publishing this proposed definition of adequate and well-controlled studies separately because of the statutory timeframe set forth in the ADAA. FDA intends to issue proposed revised investigational use new animal drug (INAD) regulations followed by proposed revised regulations governing new animal drug applications. These proposals, intended to further implement the ADAA and the Center for Veterinary Medicine's (CVM) commitment to reinvent the animal drug approval process and facilitate the approval of new animal drugs, will give context to the definition of adequate and well-controlled studies.

II. Adequate and Well-Controlled Studies

FDA has long considered that the characteristics embodied in 21 CFR 314.126 and § 514.111(a)(5)(ii) (21 CFR 514.111(a)(5)(ii)) are the essentials of an adequate and well-controlled study. Discussions held between FDA and members of the Coalition for Animal Health (Coalition) prior to enactment of the ADAA and comments from the Animal Health Institute in response to the advance notice of proposed rulemaking published November 21, 1996 (61 FR 59209), made it clear that some members of the regulated industry are concerned that certain scientific principles and practices may be difficult to apply in testing new animal drugs under field conditions. In response, FDA evaluated the extent to which the characteristics in § 514.111(a)(5)(ii) represent sound scientific principles essential for adequate and well-controlled studies. After careful consideration of the characteristics in light of the concerns expressed, FDA believes that the characteristics set forth in § 514.111(a)(5)(ii), with minor modifications, remain sound scientific principles essential for all adequate and well-controlled studies whether conducted under laboratory or field conditions. (See definition of substantial evidence, section 512(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(d)(3))). The agency is proposing to replace current § 514.111(a)(5)(ii) with new proposed § 514.117, which contains minor revisions to the current regulation on adequate and well-controlled studies.

The primary purpose of conducting adequate and well-controlled studies is, and has always been, to distinguish the effect of the drug from other influences, such as spontaneous change in the

course of disease and biased observation, so that a determination can be made whether the drug is effective. Thus, FDA's objectives in defining adequate and well-controlled studies remain unchanged. In the **Federal Register** of February 22, 1985 (50 FR 7452), FDA stated that the regulation defining adequate and well-controlled studies has two primary objectives: ''(1) to allow the agency to assess methods for minimizing bias; and (2) to assure a sufficiently detailed description of the study to allow scientific assessment and interpretation of it.'' These principles continue to apply whether a study is conducted on a drug intended for use in animals or humans or whether the study is conducted under laboratory or field conditions.

To satisfy the objective of minimizing bias, the use of appropriate controls in a study design is of critical importance. Therefore, proposed § 514.117(b)(4) lists the acceptable types of controls that may be used when conducting adequate and well-controlled studies. FDA has listed the types of controls in descending order—roughly in accordance with the ease of interpretation of associated studies. FDA believes that there may be good reasons for using different types of controls in study designs for particular situations and that the regulation is sufficiently flexible to accommodate the needs of sponsors in this respect. As a matter of past practice, FDA has approved products whose effectiveness was established on the basis of studies utilizing each of the controls listed in the proposed definition of adequate and well-controlled studies.

The sponsor's choice of the type of control used in a study should be based on the scientific, ethical, and practical circumstances associated with that particular study. This decision should integrate, among other considerations, information such as the claim being made for the drug, the nature of the new animal drug, the animal population for which the animal drug is intended, and the number of animals necessary to demonstrate effectiveness. As long as the sponsor's choice is scientifically justifiable and the studies are properly designed and conducted, the approvability of the application will not be affected by the choice of control. Nothing in the proposed regulation prohibits an animal from serving as its own control under such circumstances. Sponsors are encouraged to discuss the choice of control and other aspects of study design with CVM during the development of the protocol.

In proposed § 514.117(b)(4)(iii), FDA has modified the description of the active treatment concurrent control in the current § 514.111(a)(5)(i)(*a*)(*4*)(*iii*) to make it consistent with such descriptions used elsewhere in the regulations. A demonstration of effectiveness by means of showing similarity of the new animal drug to an active control drug is an indirect demonstration of effectiveness because the active control treatment serves as an intermediary in the comparison between the new animal drug and the placebo. That is, it is presumed, without actually measuring it, that the active control would have been superior to the placebo if there had been a comparison between the active control and placebo. Under this study design, similarity of the new animal drug and active control drug can mean either that both were effective or that neither was effective. Therefore, FDA has specified that the analysis of the study must explain why the active control drug should be considered to have been effective in the completed study, for example, by reference to previous placebo-controlled studies of the active control drug. Although the active treatment concurrent control may be useful in studies where humane considerations are presumed paramount, a sponsor needs to carefully consider, based on the particular circumstances associated with a study, whether the use of an active treatment concurrent control (due to the greater number of animals often necessary to demonstrate effectiveness in an active control study) may be less humane than other controls. For example, use of an active control may require inducing a disease or condition in a greater number of animals than would be necessary with other types of controls and animals in the test (or control) group may suffer if the new animal drug (or control article) proves to be unsafe or ineffective.

Consistent with the objective of the regulation on adequate and well-controlled studies to assure that there is a sufficiently detailed description of studies to allow proper scientific assessment and interpretation, the proposed definition of adequate and well-controlled studies states in § 514.117(b)(2) that good study practices are to be followed in conducting such studies in the target animal species. An application for a new animal drug approval will, with respect to each study conducted in the target animal species, need to include a statement that the study was conducted in compliance with good study practices. Minor, inconsequential deviations from good study practices would not lead to the conclusion that the study did not comply with good study practices; rather, substantial compliance with good study practices would be considered compliance. FDA intends to establish this set of study standards when the agency proposes revisions to its INAD regulations; until regulations defining good study practices are finalized, the study report for an adequate and well-controlled study need not contain a statement describing adherence to good study practices. FDA intends to publish, as soon as possible, the revised INAD regulations, including the requirements of good study practices. The agency published in the **Federal Register** an advance notice of proposed rulemaking soliciting comments regarding proposed revisions to the INAD regulations and specifically requesting comments on defining ''adequate and well-controlled'' (61 FR 59209). FDA is reopening elsewhere in this issue of the **Federal Register** docket number 96N–0411 to receive comments specifically related to defining good study practices. The agency encourages interested parties to submit comments regarding good study practices to that docket and is considering additional forums in which interested parties can provide comments and discuss with FDA the general concepts of these regulations. In the interim, the clear reference in the proposed definition of adequate and well-controlled studies to a standard of conduct specifically designed for target animal studies, good study practices, should clear up any confusion that sponsors may have regarding the need to apply good laboratory practices to the conduct of field studies. It is the agency's intent that the referenced standard of conduct should be applied with sound scientific judgment. A study that is designed and conducted in a manner that is consistent with sound scientific principles and practices would generally not be rejected because of minor, inconsequential deviations from good study practices.

Proposed § 514.117 continues to anticipate that there may be limited circumstances in which a scientifically sound evaluation of a particular study is not precluded by certain flaws in the protocol for, or execution of, the study and provides for a procedure to seek a waiver from particular characteristics enumerated in the definition. However, because FDA believes that the agency's description of adequate and well-controlled studies has served satisfactorily as a basis for approval over time and contains the essential characteristics of such studies, FDA

concludes that any request for a waiver must be well-justified.

All studies intended by the sponsor to be used to support an approval, including adequate and well-controlled studies to demonstrate effectiveness, must be designed, conducted, and reported in a manner which provides assurance that the study report and the underlying data are reliable and can be appropriately reviewed. Without such reliable data and information the agency cannot make the safety, effectiveness, and labeling determinations required for approval under the statue (See 21 U.S.C. 360b(d).) FDA believes that generation of reliable data and information can best be accomplished by conducting adequate and well-controlled studies under a documented program of quality assurance.

The primary purpose of adequate and well-controlled studies is to determine whether the animal drug is effective. Therefore, adequate and well-controlled field studies must balance the need to control environmental and other factors with the need to observe the effects of the animal drug under closely approximated use conditions so that the true effect of the animal drug can be measured and an appropriate inference can be drawn regarding the effect of the animal drug in actual use. In general, as long as a study reflects a considered judgment regarding the study's appropriateness relative to particular scientific, ethical, and practical circumstances and the study is properly designed and conducted (e.g., it uses an appropriate control group, minimizes bias, and assures a sufficiently detailed description of the study to allow the application of a documented quality assurance process and subsequent scientific assessment and interpretation), the study will be considered by FDA in support of approval of an application.

III. Environmental Impact

FDA has carefully considered the potential environmental impacts of this proposed rule. The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and under the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

Section 2(e) of the ADAA requires FDA to further define the term ''adequate and well-controlled'' to require that field investigations be designed and conducted in a scientifically sound manner, taking into account practical conditions in the field and differences between field conditions and laboratory conditions. Discussions between FDA and regulated industry during the development of the ADAA made it clear that the regulated industry is concerned that certain scientific principles and practices may be difficult to apply in testing new animal drugs under actual field conditions. FDA reviewed the essentials of adequate and well-controlled studies currently identified in § 514.111(a)(5)(ii) and determined that these essentials continue to represent scientifically sound principles governing the conduct of adequate and well-controlled studies, whether conducted under laboratory or field conditions. However, FDA does agree that the practices followed in the conduct of adequate and well-controlled studies in the target animal under field conditions may need to be more flexible in some regards than the practices followed under laboratory conditions. Thus, the primary change in FDA's proposed definition of adequate and well-controlled studies is the definitions requirement that an adequate and well-control study conducted in the target animal be conducted in compliance with good study practices.

The definition of adequate and well-controlled studies in proposed § 514.117 has significance only within the context of the regulations governing investigational use and approval of new animal drugs. Because FDA has not issued revised INAD regulations to fully define good study practices and has not issued revised new animal drug application regulations, there will be little or no effect from this proposed rule on the level of effort currently expended by industry in testing the effectiveness of new animal drugs as part of the drug approval process. A thorough economic analysis will be conducted on the impact of proposed changes to the regulations governing INAD's, including provisions defining good study practices, and on the impact of proposed changes to the new animal drug application regulations in future proposals.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities unless the rule is not expected to have a significant economic impact on a substantial number of small entities. As this proposed regulation will not impose significant new costs on any firms, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of Food and Drugs certifies that the final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (2 U.S.C. 1532) requires that agencies prepare an assessment of the anticipated costs and benefits before proposing any rule that may result in annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). This proposed rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $100,000,000 or more.

Lists of Subjects in 21 CFR part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 514 is amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

1. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: Secs. 501, 502, 512, 701, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 379e, 381).

2. Section 514.111 is amended by revising paragraph (a)(5) to read as follows:

§ 514.111 Refusal to approve an application.

(a) * * *

(5) Evaluated on the basis of information submitted as part of the application and any other information before the Food and Drug Administration with respect to such drug, there is lack of substantial evidence consisting of one or more adequate and well-controlled studies by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and reasonably be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof.

* * * * *

3. New § 514.117 is added to subpart B to read as follows:

§ 514.117 Adequate and well-controlled studies.

(a) *Purpose*. The primary purpose of conducting adequate and well-controlled studies of a new animal drug is to distinguish the effect of the new animal drug from other influences, such as spontaneous change in the course of the disease, normal animal production performance, or biased observation. One or more adequate and well-controlled studies are required to establish, by substantial evidence, that a new animal drug is effective. The characteristics described in paragraph (b) of this section have been developed over a period of years and are generally recognized as the essentials of an adequate and well-controlled study. Well-controlled, as used in the phrase adequate and well-controlled, emphasizes an important aspect of adequacy. FDA considers these characteristics in determining whether a study is adequate and well-controlled for purposes of section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b). Reports of adequate and well-controlled studies, in addition to providing a basis for determining whether a new animal drug is effective, may also be needed to support claims of target animal safety. The report of an adequate and well-controlled study should provide sufficient details of study design, conduct, and analysis to allow critical evaluation and a determination of whether the characteristics of an adequate and well-controlled study are present.

(b) *Characteristics*. An adequate and well-controlled study has the following characteristics:

(1) The protocol for the study (protocol) and the report of the study results (study report) must include a clear statement of the study objective(s).

(2) Any study conducted in the target animal shall be conducted in compliance with the good study practices. The protocol contains a statement acknowledging the applicability of, and intention to follow, the good study practices for the conduct of the study. The study report contains a statement describing adherence to the good study practices.

(3) The study is conducted with a new animal drug that is produced in accordance with appropriate manufacturing practices, which include, but are not necessarily limited to, the manufacture, processing, packaging, holding, and labeling of the new animal drug such that the critical characteristics of identity, strength, quality, purity, and physical form of the new animal drug are known, recorded, and reproducible, to permit meaningful evaluations of and comparisons with other studies conducted with the new animal drug. The physical form of a new animal drug includes the formulation and physical characterization (including delivery systems thereof, if any) of the new animal drug as presented to the animal. The protocol and study report must include an identification number which can be correlated with the specific formulation and production process used to manufacture the new animal drug used in the study.

(4) The study uses a design that permits a valid comparison with one or more controls to provide a quantitative evaluation of drug effects. The protocol and the study report must describe the precise nature of the study design, e.g., duration of treatment periods, whether treatments are parallel, sequential, or crossover, and the determination of sample size. Within the broad range of studies conducted to support a determination of the effectiveness of a new animal drug, certain of the controls listed below would be appropriate and preferred depending on the study conducted:

(i) *Placebo concurrent control*. The new animal drug is compared with an inactive preparation designed to resemble the new animal drug as far as possible.

(ii) *Untreated concurrent control*. The new animal drug is compared with the absence of any treatment. The use of this control may be appropriate when objective measurements of effectiveness, not subject to observer bias, are available.

(iii) *Active treatment concurrent control*. The new animal drug is compared with known effective therapy. The use of this control is appropriate when the use of a placebo control or of an untreated concurrent control would unreasonably compromise the welfare of the animals. Similarity of the new animal drug and the active control drug can mean either that both drugs were effective or that neither was effective. The study report should assess the ability of the study to have detected a difference between treatments. The evaluation of the study should explain why the new animal drugs should be considered effective in the study, for example, by reference to results in previous placebo-controlled studies of the active control.

(iv) *Historical control*. The results of treatment with the new animal drug are quantitatively compared with experience historically derived from the adequately documented natural history of the disease or condition, or with a regimen (therapeutic, diagnostic, prophylactic) whose effectiveness is established, in comparable animals. Because historical control populations usually cannot be as well assessed with respect to pertinent variables as can concurrent control populations, historical control designs are usually reserved for special circumstances. Examples include studies in which the effect of the new animal drug is self-evident or studies of diseases with high and predictable mortality, or signs and symptoms of predictable duration or severity, or, in the case of prophylaxis, predictable morbidity.

(5) The study uses a method of selecting animals that provides adequate assurances that the animals are suitable for the purposes of the study. For example, the animals can reasonably be expected to have animal production characteristics typical of the class(es) of animals for which the new animal drug is intended, there is adequate assurance that the animals have the disease or condition being studied, or, in the case of prophylactic agents, evidence of susceptibility and exposure to the condition against which prophylaxis is desired has been provided. The protocol and the study report describe the method of selecting animals for the study.

(6) The study uses a method to assign a treatment or a control to each experimental unit of animals that is random and minimizes bias. Experimental units of animals are groups of animals that are comparable with respect to pertinent variables such as age, sex, class of animal, severity of disease, duration of disease, dietary regimen, level of animal production, and use of drugs or therapy other than the new animal drug. The protocol and the study report describe the method of

assignment of animals to an experimental unit to account for pertinent variables and method of assignment of a treatment or a control to the experimental units. When the effect of such variables is accounted for by an appropriate design, and when, within the same animal, effects due to the test drug can be obtained free of the effects of such variables, the same animal may be used for both the test drug and the control using the controls set forth in paragraph (b)(4) of this section.

(7) The study uses methods to minimize bias on the part of observers and analysts of the data that are adequate to prevent undue influences on the results and interpretation of the study data. The protocol and study report explain the methods of observation and recording of the animal response variables and document the methods, such as ''blinding'' or ''masking,'' used in the study for excluding or minimizing bias in the observations.

(8) The study uses methods to assess animal response that are well-defined and reliable. The protocol and study report describe the methods for conducting the study, including any appropriate analytical and statistical methods, used to collect and analyze the data resulting from the conduct of the study, describe the criteria used to assess response, and, when appropriate, justify the selection of the methods to assess animal response.

(9) There is an analysis and evaluation of the results of the study in accord with the protocol adequate to assess the effects of the new animal drug. The study report evaluates the methods used to conduct, and presents and evaluates the results of, the study as to their adequacy to assess the effects of the new animal drug. This evaluation of the results of the study assesses, among other items, the comparability of treatment and control groups with respect to pertinent variables and the effects of any interim analyses performed.

(c) *Waiver.* The Director of the Center for Veterinary Medicine (the Director) may, on the Director's own initiative or on the petition of an interested person, waive in whole or in part any of the criteria in paragraph (b) of this section with respect to a specific study. A petition for a waiver is required to set forth clearly and concisely the specific criteria from which waiver is sought, why the criteria are not reasonably applicable to the particular study, what alternative procedures, if any, are to be, or have been employed, and what results have been obtained. The petition is also required to state why the studies so conducted will yield, or have yielded, substantial evidence of effectiveness, notwithstanding nonconformance with the criteria for which waiver is requested.

(d) *Uncontrolled studies.* Uncontrolled studies or partially controlled studies, including studies for which the Director has granted a waiver, under paragraph (c) of this section, of the use of any necessary control described in paragraph (b)(4) of this section, are not acceptable as the sole basis for the approval of claims of effectiveness or target animal safety. Such studies, carefully conducted and documented, may provide corroborative support of adequate and well-controlled studies regarding effectiveness and may yield valuable data regarding safety of the new animal drug. Such studies will be considered on their merits in the light of the characteristics listed here. Isolated case reports, random experience, and reports lacking the details which permit scientific evaluation will not be considered.

Dated: April 29, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–11846 Filed 5–7–97; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 95–116; DA 97–916]

The North American Numbering Council (NANC) Issues Recommendations Regarding the Implementation of Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has released a Public Notice which establishes a pleading cycle for comments on the NANC's recommendations regarding local number portability administrators (LPNAs), the duties of LPNAs, the location of regional number portability databases, and technical specifications for the regional databases.

DATES: Comments are due on or before June 2, 1997, and reply comments are due on or before June 17, 1997.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Steven Teplitz or Kyle Dixon, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION:

Synopsis of Public Notice

On June 27, 1996, the Commission adopted the *First Report and Order and Further Notice of Proposed Rulemaking* (*First Report & Order*) (61 FR 38605 (July 25, 1996)) in the above-referenced docket implementing the requirement under section 251(b) of the Communications Act of 1934, as amended, that all local exchange carriers offer number portability in accordance with requirements prescribed by the Commission. In the *First Report & Order*, the Commission directed the North American Numbering Council (NANC), a federal advisory committee, to select one or more independent, non-governmental entities that are not aligned with any particular telecommunications segment, to serve as a local number portability administrator(s) (LNPA(s)). The Commission also directed the NANC to make recommendations regarding, *inter alia*, the duties of LNPA(s), the location of regional databases, and technical specifications for the regional databases.

The NANC forwarded its recommendations to the Commission on May 1, 1997 in a report from its Local Number Portability Administration Selection Working Group, dated April 25, 1997. Specifically, the NANC issued recommendations in the following areas: (1) What party or parties should be selected as LNPA(s); (2) whether one or multiple LNPA(s) should be selected; (3) how the LNPA(s) should be selected; (4) specific duties of the LNPA(s); (5) geographic coverage of the regional databases; (6) technical standards, including interoperability standards, network interface standards, and technical specifications, for the regional databases; (7) the sharing of numbering information between the North American Numbering Plan Administrator and the LNPA(s); and (8) the future role of the NANC with respect to local number portability issues. The Commission will act on these recommendations in a future order.

Copies of the NANC's Local Number Portability Administration Selection Working Group report are available for public inspection and copying during normal business hours, in the Commission's Public Reference Center, Room 239, 1919 M Street, NW., Washington, D.C. 20554. Copies can also be obtained from International Transcription Service, Inc. (ITS), the Commission's contractor for public service records duplication, at 2100 M Street, NW., Washington, D.C. 20037, or by calling (202) 875–3800. In addition, the NANC's Local Number Portability Administration Selection Working Group report is available for review via the Commission's website at http://www.fcc.gov/ccb/Nanc.

The *First Report & Order* directed the Chief, Common Carrier Bureau, to issue a Public Notice that specifically identifies the administrator(s) selected by the NANC and the proposed locations of the regional databases. Pursuant to this directive, we hereby announce that the NANC has made the following recommended LNPA selections, in the following regions:

Region	Specific states per region	Administrator
Northeast	Vermont, New Hampshire, Maine, New York, Connecticut, Rhode Island, and Massachusetts	Lockheed Martin IMS.
Mid-Atlantic	New Jersey, Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and Washington, DC	Lockheed Martin IMS.
Mid-West	Illinois, Wisconsin, Indiana, Michigan, and Ohio	Lockheed Martin IMS.
Southeast	Florida, Georgia, North Carolina, South Carolina, Tennessee, Kentucky, Alabama, Mississippi, and Louisiana.	Perot Systems, Inc.
Southwest	Texas, Oklahoma, Kansas, Arkansas, and Missouri	Lockheed Martin IMS.
Western	Washington, Oregon, Montana, Wyoming, North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Colorado, Utah, Arizona, New Mexico, Idaho, and Alaska.	Perot Systems, Inc.
West Coast	California, Nevada, and Hawaii	Perot Systems, Inc.

The NANC also recommends that the U.S. territories choose from one of the seven regions. A state has 60 days from the release date of this Public Notice to notify the Common Carrier Bureau and the NANC that it does not wish to participate in the regional database system for number portability.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 9, and consistent with its charter, the NANC's authority is limited to providing advice and recommendations to the Commission. Moreover, all procedural requirements of the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and other applicable statutes continue to apply. Interested parties should file an original and four copies of their comments on the NANC's number portability recommendations by June 2, 1997 and reply comments by June 17, 1997 with the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments should reference CC Docket No. 96–115. In addition, parties should send one copy to Janice Myles, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and one copy to ITS, at 2100 M Street, N.W., Washington, D.C. 20037. Comments and reply comments will be available for public inspection and copying during regular business hours in the Commission's Public Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Copies of comments and reply comments will also be available from ITS, at 2100 M Street, N.W., Washington, D.C. 20037, or by calling (202) 875–3800.

We will continue to treat this proceeding as a non-restricted rulemaking for purposes of the Commission's *ex parte* rules. *See generally* 47 CFR §§ 1.1200(a), 1.1206. For further information contact Steven Teplitz or Kyle Dixon, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418–1580.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–12074 Filed 5–7–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 041597C]

RIN 0648–AG25

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Amendment 8; Correction

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

ACTION: Notice of availability of an amendment to a fishery management plan; correction.

SUMMARY: NMFS published a document in the **Federal Register** on April 23, 1997, announcing the availability of Amendment 8 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic. The document contained an incorrect I.D. number.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 813–225–2015.

Correction

In the **Federal Register** issue of April 23, 1997, in FR DOC 97–10555, on page 19733, in the second column, correct the I.D. number to read: [I.D. 041497C].

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

Dated: May 2, 1997.

Gary C. Matlock,

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

[FR Doc. 97–12056 Filed 5–7–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 89

Thursday, May 8, 1997

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

Submission for OMB Review; Comment Request

May 2, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1955, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) May be obtained by calling (202) 720–6204 or (202) 720–6747.

An agency May not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: 7 CFR 340 Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe are Plant Pests.

OMB Control Number: 0579–0085.

Summary: Information collected includes a permit application and a petition for nonregulated status.

Need and Use of the Information: The information to be collected is needed to determine the risks to agriculture and the environment from certain genetically engineered organisms and products.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 297.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5,028.

National Agricultural Library

Title: Agroecosystem Use Survey.

OMB Control Number: 0518–New.

Summary: Input from members of the agriculture and research community is needed to estimate the demand for a digital terrestrial ecosystem database.

Need and Use of the Information: Information will be used to determine necessary actions to provide terrestrial ecosystem data that meets customers needs through a National Data Center for Terrestrial Ecosystems.

Description of Respondents: Federal Government; Not-for-profit institutions.

Number of Respondents: 1,950.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 293.

Emergency processing of this submission has been requested by May 9, 1997.

Cooperative State Research, Education, and Extension Service

Title: National Research Initiative Competitive Grants Program Application Kit.

OMB Control Number: 0524–0033.

Summary: Information is required from applicants including projects summaries, descriptions of research and supporting documentation of an administrative and budgetary nature.

Need and Use of the Information: The information is used to evaluate proposals and award grants.

Description of Respondents: Not-for-profit institutions; Individuals or households; Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 4,800.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 4,400.

National Agricultural Statistics Service

Title: Census List Enhancement Survey.

OMB Control Number: 0535–New.

Summary: Respondents provide name and address for inclusion on a list for the Census of Agriculture.

Need and Use of the Information: The information will be used to help make sure that minority farmers are not undercounted on the Census of Agriculture.

Description of Respondents: Farms.

Number of Respondents: 2,100.

Frequency of Responses: Reporting: One time Only.

Total Burden Hours: 175.

Emergency processing of this submission has been requested by May 9, 1997.

Rural Business-Cooperative Service

Title: Cooperative Value-Added Program.

OMB Control Number: 0570–New.

Summary: Information collected from respondents includes an application for Federal assistance and a project proposal.

Need and Use of the Information: The information will be used to determine eligibility for the funding of programs that will encourage value-added activities to enhance the economic sustainability of rural communities.

Description of Respondents: Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 75.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 1,446.

Emergency processing of this submission has been requested by May 14, 1997.

Food and Consumer Services

Title: 7 CFR Part 226, Child and Adult Care Food Program.

OMB Control Number: 0584–0055.

Summary: This submission incorporates requirements of an interim rule into the regulations for the Child and Adult Care Food Program. These new requirements establish a two-tiered reimbursement system for day care homes participating in the program.

Need and Use of the Information: The forms included are designed for use by Food and Consumer Service which administer the Child and Adult Care Food Program. These forms also give a prototype for State agencies to use in developing appropriate application, agreements and reviewing forms.

Description of Respondents: Not-for-profit institutions; Individuals or households; Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 706,001.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly; Semi-annually; Annually; Biennially; Daily.

Total Burden Hours: 4,596,081.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–12020 Filed 5–7–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[CN 97–002]

Proposal to Reestablish the Advisory Committee on Universal Cotton Standards

AGENCY: Office of the Secretary, USDA.

ACTION: Notice; Proposal to reestablish the Advisory Committee on Universal Cotton Standards.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to reestablish the advisory committee to review official Universal Standards for American Upland cotton prepared by USDA and make recommendations regarding the establishment or revision of the standards.

DATES: Comments must be received by May 23, 1997.

ADDRESSES: Send written comments to: Ross Griffith, Cotton Marketing Specialist, Cotton Division, AMS, USDA, 1400 Independence Ave., S.W., Rm 2641-S, Washington, D.C. 20250–0224.

FOR FURTHER INFORMATION CONTACT: Ross Griffith (202) 720–3193.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given that the Secretary of Agriculture intends to reestablish the Advisory Committee on Universal Cotton Standards composed of foreign and domestic representatives of the cotton industry. The purpose of the committee is to review official Universal Standards for U.S. Upland cotton prepared by USDA and make recommendations regarding the establishment or revision of the standards.

The Secretary has determined that the work of the committee is in the public interest and is in connection with the duties of the Department of Agriculture. No other advisory committee in existence is capable of advising and assisting the Department on the task assigned, nor does the Department have an alternative means to obtain the technical and practical expertise needed from private industry.

Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Balanced committee membership would be attained domestically and internationally through the following committee composition:

Representation by Domestic Industry

The U.S. cotton industry's committee membership will be comprised of 12 producers and ginners, 6 representatives of merchandising firms, and 6 representatives of textile manufacturers. These representatives from the domestic industry will be appointed by the Secretary of Agriculture.

Each member will have one vote. Accordingly, voting privileges will be divided as follows:

(1) U.S. cotton producers and ginners—12 votes;

(2) U.S. merchandising firms—6 votes;

(3) U.S. textile manufacturers—6 votes.

Representation by Foreign Signatory Associations

There will be two committee members from each of the foreign signatory associations. These committee members will be designated by the respective associations. Voting privileges will be divided as follows:

(1) Foreign signatory merchant associations—6 votes;

(2) Foreign signatory spinner associations—6 votes.

Dated: May 2, 1997.

Pearlie S. Reed,

Acting Assistant Secretary for Administration.

[FR Doc. 97–11956 Filed 5–7–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Snowcreek Golf Course Expansion

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, Department of Agriculture, issued a notice of intent to prepare an environmental impact statement (EIS) for the proposed expansion of the Snowcreek Golf Course on National Forest System lands on June 26, 1995. This notice appeared in the **Federal Register** on July 3, 1995 (Volume 60, Number 127, Pages 34502–34504). The proposed expansion is located adjacent to the Town of Mammoth Lakes, within the boundary of the Inyo National Forest, Mono County, California. This revised notice of intent is to provide notice that the original time frames outlined in the notice of intent that was published in July of 1995 have been extended. The original date for release of the Draft EIS was August 1995, and the actual release date was December 1995. The original planned release date for the Final EIS and decision was December 1995, and the revised date is now June of 1997. All other information in the original notice of intent remains unchanged.

ADDRESSES: Dennis Martin, Forest Supervisor, Inyo National Forest, 873 North Main Street, Bishop, California 93514, ATTN: Snowcreek.

FOR FURTHER INFORMATION CONTACT: Direct questions about this environmental impact statement to Bob Hawkins, Winter Sports, Specialist, Inyo National Forest, 873 North Main Street, Bishop, California 93514 or telephone (619) 873–2400.

Dated: April 22, 1997.

Dennis W. Martin,

Forest Supervisor.

[FR Doc. 97–12000 Filed 5–7–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sea Level Environmental Impact Statement

AGENCY: Forest Service, USDA.

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

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber for the Ketchikan Area Independent Timber Sale Program. The Record of Decision will disclose how the Forest Service has decided to provide harvest units, roads, and associated timber harvesting facilities. The proposed action is to harvest an estimated 60 million board feet (mmbf) of timber on an estimated 2,500 acres. A range of alternatives will be developed and include a no-action alternative. The proposed timber harvest is located within Tongass Forest Plan Management Area K35, VCU's 746, 753, 745.2, 755.2, 756, 757 and 759 on Revillagigedo (Revilla) Island, Alaska, on the Ketchikan Ranger District of the Ketchikan Area of the Tongass National Forest.

EFFECTIVE DATE: Comments concerning the scope of this project should be received by June 15, 1997.

ADDRESSES: Please send written comments and suggestions concerning the scope of this project to: District Ranger; Ketchikan Ranger District; Tongass National Forest, Ketchikan Area; Attn: Sea Level EIS, 3031 Tongass Avenue; Ketchikan, AK 99901.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to Bill Nightingale, District Planning Staff Officer or to Jimmy Deherrera, District Ranger, Ketchikan Ranger District, Tongass National Forest, 3031 Tongass Ave., Ketchikan, AK 99901, telephone (907) 225–2148.

SUPPLEMENTARY INFORMATION:

(1) Public Participation

Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) identification of potential issues; (2) identification of issues to be analyzed in depth; and, (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Public scoping meetings are scheduled in Alaska at Saxman, May 21, 1997, and Ketchikan, May 22, 1997. Written scoping comments are being solicited through a scoping package that will be sent to the project mailing list. For the Forest Service to best use the scoping input, comments should be received by June 15, 1997.

Tentative issues identified for analysis in the EIS include the potential effects of the project on the relationship of the project to: subsistence resources, old-growth ecosystem management and the maintenance of habitat for viable populations of wildlife and plant species, timber sale economics, timber supply, visual and recreational resources, anadromous fish habitat, potential road connections on Revilla Island, soil and water resources, cultural resources, Misty Fiords National Monument wilderness values, and others.

Based on results of scoping and the resource capabilities within the project area, alternatives including a ''no action'' alternative will be developed for the Draft Environmental Impact Statement (Draft EIS). The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in December 1997. Public comment on the Draft EIS will be solicited for a minimum of 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. Subsistence hearings, as provided for in Section 8 of the Alaska National Interest Lands Conservation Act (ANILCA), are planned during this 45-day comment period. The Final EIS is anticipated by June 1998.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments during scoping and comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.8 in addressing these points.

In addition, Federal court decisions have established that reviewers of Draft EIS statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and concerns. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final EIS. *City of Angoon* v. *Hodel, Harris*, (9th Circuit, 1986), and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits

Permits required for implementation include the following:

1. U.S. Army Corps of Engineers

—Approval of the discharge of dredged or fill materials into waters of the United States under Section 404 of the Clean Water Act

—Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899

2. Environmental Protection Agency

—National Pollutant Discharge Elimination System (402) Permit

—Review Spill Prevention Control and Countermeasure Plan

3. State of Alaska, Department of Natural Resources

—Tideland Permit and Lease or Easement

4. State of Alaska, Department of Environmental Conservation

—Solid Waste Disposal Permit
—Certification of Compliance with Alaska Water Quality Standards (401 Certification)

Responsible Official

Bradley E. Powell, Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: May 1, 1997.

Robert L. Vaught,

Acting Forest Supervisor.

[FR Doc. 97–11975 Filed 5–7–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rock Mountain Region; Environmental Impact Statement for Uncompahgre National Forest Travel Plan; Grand Mesa, Uncompahgre and Gunnison National Forests; Gunnison, Hinsdale, Mesa, Montrose, Ouray, San Juan and San Miguel Counties, Colorado

AGENCY: Forest Service, USDA.

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

RESPONSIBLE OFFICIAL: Robert Storch, Forest Supervisor of the Grand Mesa, Uncompahgre, and Gunnison National Forests, 22550 Highway 50, Delta, Colorado 81416.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to revise the existing Uncompahgre National Forest Travel Plan. The existing travel plan was implemented in 1984 as directed by the 1983 Land and Resource Management Plan for the Grand Mesa, Uncompahgre and Gunnison National Forests. The 1991 Amended Land and Resource Management Plan for the Grand Mesa, Uncompahgre and Gunnison National Forests identified a need to refine travel management on the Forest.

The purpose of revising the existing Uncompahgre National Forest plan is to provide safe access to and through the National Forest to support resource management and to provide a variety of recreation opportunities for public users, while protecting the environment.

Reasons why the National Forest is proposing to revise the existing travel plan include: 1) There is a need to plan for the current as well as the future recreation demands which will be placed on the Forest. There has been an increase in the amount and a change in the type of public recreational travel on the Uncompahgre National Forest since 1984. 2) There is a need to provide transportation systems that provide recreational opportunities for many different users. Most transportation routes on the Uncompahgre National Forest developed as access for commodity uses, such as livestock grazing, timber harvesting and mining, and were not designed or located for recreational travel. 3) There is a need to restrict indiscriminate vehicle travel off of roads and trails. Currently much of the Uncompahgre National Forest has an open travel designation, which means off-route travel with motorized vehicles is allowed so long as resource damage does not occur. However, unplanned and unauthorized routes have developed through off-route use, and efforts to close routes or restrict travel to meet Forest Plan objectives have been ineffective as a result of the open travel. 4) There is a need to make travel management consistent between the four Ranger Districts on the Uncompahgre National Forest and the various Counties, especially concerning travel by off-highway vehicles (OHVs).

The decisions to be made in revising the Uncompahgre National Forest Travel Plan include: 1) Determining which area-wide travel management option(s) will be applied to what specific areas. Options are: (a) open travel, off-route travel by motorized and mechanized vehicles is allowed. (b) restricted travel, travel by motorized and mechanized vehicles is allowed only on designated routes with the possible exception of snowmobile travel occurring on snow. (c) closed travel, travel by motorized and mechanized vehicles is not allowed. 2) Determining which Recreation Opportunity Spectrum (ROS) setting will be maintained in specific areas. 3) Determining the roads and trails that will comprise the transportation system for the Uncompahgre National Forest. 4) Determining the uses to be allowed on each specific road and trail. 5) Amending the Forest Plan to incorporated changes needed based on the four previous decisions.

The Forest Service held a series of 38 public meetings between April 1994 and June 1996 to discuss travel management issues and alternatives. Written comments from people unable to attend these meetings were also accepted. As a result, the following issues were identified; 1) Open road/trail density exceeds Forest Plan standards (as related to habitat effectiveness) in some areas. 2) Unauthorized routes are developing on National Forest System land. 3) Closing some and designating other routes will result in increased use and damage from concentrating use on the remaining open routes. 4) Riparian/acquatic habitats and other special resources need to be protected. 5) Wet season access needs to be managed to prevent damage to vegetation, soils and water quality. 6) There are conflicts between different types of recreational users. 7) Indiscriminate motorized travel during hunting season conflicts between different types of recreational users. 7) Indiscriminate motorized travel during hunting season conflicts with hunting experience and results in unauthorized route development. 8) Habitat capability is affected by travel. 9) Big game distribution is affected by travel. 10) There are conflicts with winter recreation and big game winter range. 11) There are conflicts with existing and proposed routes in important habitat. 12) Threatened, endangered and sensitive species and their habitat needs to be protected.

As a result of public input, five alternatives were developed and will be analyzed in the environmental impact statement. Alternatives vary in the emphasis placed on providing different recreational opportunities; ranging from providing more non-motorized settings, to providing more motorized settings, to no change (no action). Restricting travel by motorized and mechanized vehicles to routes designated for those types of use is common to the four action alternatives.

The decision to prepare an environmental impact statement is a result of preliminary analysis indicating that some of the effects to the human environment from revising the Travel Plan may be significant. All public comment received to date will be considered in this analysis. Parties who previously expressed interest have been informed individually by mail that this analysis is continuing. No additional public meetings are planned; however, the Forest Service will consider any new information that may be received as a result of this notice of intent. Written comment should be sent by May 15, 1997.

DATES: Publication of Draft EIS: June 1997; Final EIS: September 1997.

ADDRESSES: Send written comments to Uncompahgre National Forest Travel Plan, USDA Forest Service, 2250 Highway 50, Delta, CO 81416.

FOR FURTHER INFORMATION CONTACT: Steve Hemphill, Team Leader. Phone: 970–874–6600. FAX: 970–874–6698.

SUPPLEMENTARY INFORMATION: The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental 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 propose 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 meaningful consider them and respond to them in the final environmental impact statement.

To assist the Forest Service 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 to Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 21, 1997.

Robert L. Storch,

Forest Supervisor.

[FR Doc. 97–11949 Filed 5–7–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on May 21, 1997, at the Pack Forest Conference Center (Pack Hall) in Eatonville, Washington. For directions call (360) 891–5102. The meeting will begin at 10 a.m. and continue until 5 p.m. The purpose of the Advisory Committee meting is to (1) Utilize the Province Health Matrix and Watershed Analyses, to advise on proposed Timber sales, for the Wind River and White Salmon Basins, and (2) Present draft alternatives on the Cispus Adaptive Management Area.

Agenda items to be covered include: (1) 1997–1998 Timber Sale Program on the Wind River and White Salmon Basins, (2) Updates from Subcommittees on the Social and Economic Indicators of Basin Health, (3) Presentation of draft alternatives for the Cispus Adaptive Management Area, (4) Update on Plum Creek Land Exchange, and (5) Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The open forum is scheduled as part of agenda item (5) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Sue Lampe, Public Affairs, at (360) 891–5091, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE 51st Circle, Vancouver, WA 98682.

Dated: May 2, 1997.

Claire Lavendel,

Deputy Forest Supervisor.

[FR Doc. 97–12022 Filed 5–7–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Louisiana

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

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for review and comment.

SUMMARY: It is the intention of the NRCS in Louisiana to issue revised conservation practice standards: Firebreak (code 394), Forest Stand Improvement (code 666), Prescribed Burning (code 338), Tree/shrub Establishment (code 612), Tree/shrub Pruning (code 660), Access Road (code 560), Waste Storage Facility (code 313), and Composting Facility (code 317), in Section IV of the FOTG.

DATES: Comments will be received on or before June 9, 1997.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service (NRCS), 3737 Government Street, Alexandria, Louisiana 71302. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Louisiana will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Louisiana regarding disposition of those comments and a final determination of change will be made.

Dated: April 29, 1997.

Donald W. Gohmert,

State Conservationist, USDA, Natural Resources Conservation Service.

[FR Doc. 97–11997 Filed 5–7–97; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Wednesday, May 14, 1997.

PLACE: Room 5066, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving FCC rulemaking affecting the Bank and RUS telecommunications programs; proposed budget for FY 1998; proposed rules 7 CFR parts 1610 and 1735; directors' liability insurance; Federal Credit Reform accounting procedures; and status of State Telecommunications Modernization Plans.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATE: 9 a.m., Thursday, May 15, 1997.

PLACE: Room 0305, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Action on Minutes of December 11, 1996, Board meeting.
3. Report on loans approved first and second quarters of FY 1997.
4. Report on requests for waiver of prepayment premium for first and second quarters of FY 1997.
5. Summary of financial activity for first and second quarters of FY 1997.
6. Consideration of resolution to establish a date for the biennial meeting of stockholders and the ''as of date'' for determining voting rights.
7. Establish date and location of next regular Board meeting.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Barbara L. Eddy, Deputy Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: May 2, 1997.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 97–12091 Filed 5–5–97; 4:42 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 883]

Grant of Authority; Establishment of a Foreign-Trade Zone, Mesa, AZ

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, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the City of Mesa, Arizona (the Grantee), has made application to the Board (FTZ Docket 16–96, 61 FR 9675, 3/11/96), requesting the establishment of a foreign-trade zone at a site in Mesa, Arizona, adjacent to the Phoenix Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register**, and the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 221, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 25th day of April 1997.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–12047 Filed 5–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Antidumping Duty Administrative Review; Time Limits

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

ACTION: Notice of extension of time limits of preliminary results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary results of the fourth antidumping duty administrative review of extruded rubber thread from the Malaysia. The review covers three manufacturers/exporters of the subject merchandise to the United States and the period October 1, 1995 through September 30, 1996.

EFFECTIVE DATE: May 8, 1997.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Jim Terpstra, AD/CVD Enforcement, Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5831/3965.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by the Uruguay Round Agreements Act (245 days from the last day of the anniversary month for preliminary determinations, 120 additional days for final determinations), pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended, the Department is extending the time limit for completion of the preliminary results until October 31, 1997. *See* Memorandum to Robert S. LaRussa dated April 30, 1997.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: May 1, 1997.

Jeffrey P. Bialos

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–12046 Filed 5–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan

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

SUMMARY: We preliminarily determine that sales of roller chain, other than bicycle, from Japan have been made below normal value (NV). We also preliminarily determine that one manufacturer/exporter under review had no sales or shipments of the subject merchandise during the POR. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: May 8, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Katt, Jack K. Dulberger, or Ron Trentham, AD/CVD Enforcement Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253, (202) 482–4793, or (202) 482–0498, respectively.

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 to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the Department's interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION: The Department published the antidumping finding on roller chain, other than bicycle, from Japan in the **Federal Register** on April 12, 1973 (38 FR 9926) (Roller Chain). On April 3, 1996, the Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping finding on roller chain, other than bicycle, from Japan covering the period April 1, 1995, through March 31, 1996 (POR) in the **Federal Register** (60 FR 17052). In accordance with 19 CFR 353.22(a)(2), on April 25, 1996, the petitioner, American Chain Association (ACA), requested that the Department conduct an administrative review of the antidumping duty order for the following six manufacturers/exporters of roller chain in Japan: (1) Daido Kogyo Co., Ltd. (Daido); (2) Enuma Chain Mfg. Co., Ltd. (Enuma); (3) Izumi Chain Manufacturing Co. Ltd. (Izumi); (4) Hitachi Metals Techno Ltd. (Hitachi); (5) Pulton Chain Co., Ltd. (Pulton); and (6) R.K. Excel Co. Ltd. (RK) (collectively, the respondents). On April 30, 1996, Izumi, Daido, and Enuma also requested that the Department conduct an administrative review of their shipments of roller chain to the United States during the POR. In their April 30, 1996 letters, Daido and Enuma also requested partial revocation of the finding as to themselves, pursuant to section 353.25(b) of the Department's regulations. On May 24, 1996, the Department published a notice of initiation of administrative review (61 FR 26158) for the period April 1, 1995, through March 31, 1996. The Department is now conducting this administrative review in accordance with section 751 of the Act.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of a preliminary determination if it determines that it is not practicable to complete the review within the statutory time limit. On August 8, 1996, the Department extended the time limit for the preliminary and final results of this case. *See* Notice of Extension of Time Limits of Antidumping Duty Administrative Review, 61 FR 68237 (December 27, 1996).

Verification

In accordance with section 782(i) of the Act, we verified the further manufacturing costs for merchandise produced by Enuma during March 1997. The results of this verification are outlined in the public version of the verification report on file in room B–099 of the main Commerce building. (*See* April 2, 1997, Memorandum to the File from Jack K. Dulberger and Justin Jee.)

Scope of Review

The merchandise subject to this review is roller chain, other than bicycle, from Japan. The term ''roller chain, other than bicycle,'' as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

Period of Review

The POR is April 1, 1995, through March 31, 1996.

Non-Shipper

Hitachi claimed in an August 5, 1996 letter to the Department that it did not have shipments during the POR, which we confirmed with the United States Customs Service. Since Hitachi made no shipments of the subject merchandise during the POR, and is not an exporter or producer as defined in section 771(28) of Act, we are rescinding this review with respect to Hitachi. *See* Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking, Sec. 351.213(d)(3), (61 FR 7308, 7365) (February 27, 1996). Consequently, Hitachi's cash deposit rate will continue to be that established in the most recently completed final results. (For further discussion of Hitachi, see the Memorandum to the File from Jack Dulberger, dated April 1, 1997, on file in room B–099 of the main Commerce building.)

Facts Available

Pulton

During the current POR, the Department requested that Pulton report its sales of all roller chain models sold in the home market. Despite our request, Pulton did not report its sales of all home market models, but rather chose to report only its home market sales of models which, according to Pulton, were the most similar models to the models sold in the United States. In addition, Pulton failed to provide the requested difference in merchandise

(DIFMER) information for all home market models. Therefore, the Department was unable to determine whether other home market models were sufficiently similar for comparison purposes.

On February 5, 1997, the Department issued a supplemental questionnaire to Pulton, requesting additional information on the home market models and the DIFMER calculations. In the same questionnaire, the Department also requested constructed value (CV) information pertaining to the models sold in the U.S. market. In both instances, the Department advised Pulton that failing to provide the requested information may result in the application of facts available (FA).

In response to the February 5, 1997, supplemental questionnaire, Pulton stated that the DIFMER data for the home market sales ''is not currently available;'' and regarding the CV information Pulton stated that ''no response is required.'' *See* Pulton's February 10, 1997 Supplemental Questionnaire Response. On February 24, 1997, the Department provided Pulton with an additional opportunity to submit a complete response to the Department's February 5, 1997, supplemental questionnaire. In the supplemental letter to Pulton, the Department informed Pulton that should it fail to provide the requested information, the Department may apply adverse FA in its determination. On February 24, 1997, Pulton responded to the Department's additional request for information by stating that it would not provide additional information because of the ''burden and expenses involved'' including ''a substantial amount of time and research * * * plus legal expenses.'' Pulton did not propose any alternatives to the Department. *See* the February 24, 1997 Letter from Pulton to the Department.

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use FA in reaching the applicable determination.

Section 782(d) provides certain conditions that must be satisfied before the Department may, subject to subsection (e), disregard all or part of the information submitted by a respondent. First, this section states that if the Department determines that a response to a request for information does not comply with the request, it shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. Section 782(d) continues that if the party submits further information in response to the deficiency and the Department finds the response is still deficient or submitted beyond the applicable time limits, the Department may disregard all or part of the original and subsequent responses.

As noted above, on several occasions the Department notified Pulton of the nature of its deficiencies and provided Pulton with the opportunity to submit the requested DIFMER information for those home market models which were not reported on the home market sales listing. On each occasion Pulton failed to provide the requested data, declined to provide an explanation for the deficient nature of its responses, and failed to provide the Department with any suggested alternatives for the requested data.

Because the DIFMER information for these models was not provided by Pulton and there were other unreported home market models with physical characteristics identical to the two models reported by Pulton, the Department does not have complete information on sales of identical merchandise and is unable to determine whether any of Pulton's unreported home market models passed the Department's 20 percent DIFMER test and should be included in the calculation of NV for the preliminary results. In addition, no CV information was supplied. Therefore, the Department is compelled to use total FA with regard to Pulton.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action (SAA) at 870. Pulton's failure to report the DIFMER data requested by the Department, despite several warnings by the Department regarding the consequences of such an action, demonstrates that Pulton has, to date, failed to cooperate to the best of its ability in this review. Thus, in selecting among the FA for Pulton, an adverse inference is warranted. Section 776(b) states that an adverse inference may include reliance on information derived from: (1) The petition; (2) the final determination in the LTFV investigation; (3) any previous review under section 751 of the Act or investigation under section 753 of the Act; or (4) any other information placed on the record. *See also SAA* at 829–831.

Therefore, we are applying as total adverse FA the rate of 43.29 percent. This rate represents the highest calculated rate for Pulton from any prior segment of this proceeding (*i.e.*, the margin calculated for Pulton in the first administrative review (46 FR 44488, September 4, 1981)).

Section 776(c) of the Act provides that when the Department relies on secondary information in using FA, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see SAA* at 870). However, unlike other types of information such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations and reviews. Thus, in an administrative review, if the Department relies on a calculated dumping margin from a prior segment of the proceeding, as FA, the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(i) of the Act. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, *et. al.*, 62 FR 2083, 2087 (January 15,1997)(AFBs). Furthermore, there is no reliable evidence on the record indicating that this selected margin is not appropriate as adverse FA. *See Id.*, at 2088. The Department has, in an earlier segment of this proceeding, applied a rate of 43.29 percent as ''best information available (BIA).'' See Final Results of Antidumping Administrative Review: Roller Chain, Other Than Bicycle, From Japan, 62 FR 5590, 5591 (December 4, 1996) (1993–1994 POR). (For further discussion of FA for Pulton, see the Memorandum from Holly Kuga to Jeffrey P. Bialos dated April 15, 1997, on file in room B–099 of the main Commerce building).

Enuma

Enuma reported that it owned part of a Japanese trading company, Daido Tsusho. Daido Tsusho, in turn, owns a U.S. sales subsidiary, Daido Corporation. In the U.S. market, Enuma makes all U.S. sales through Daido Tsusho, which then resells the subject merchandise either directly to unaffiliated U.S. customers, or to Daido

Corporation. Daido Corporation then resells the subject merchandise to unaffiliated U.S. customers.

Despite owning less than five percent of Daido Tsusho during this review segment, Enuma characterized its relationship with Daido Tsusho and Daido Corporation as ''affiliated'' throughout its questionnaire response. Furthermore, Enuma reported its direct sales made through Daido Tsusho as export price (EP) sales and its sales made through Daido Corporation as constructed export price (CEP) sales. In addition, in its claim for a CEP offset, Enuma characterized the companies as being affiliated.

We also note that in prior administrative reviews, Enuma had a greater equity share in Daido Tsusho and, as a result, the Department considered these parties to be ''related'' or ''affiliated''. During the 1992–1993 review period, Enuma's equity share dropped to its current level. Given that Enuma now owns less than five percent of Daido Tsusho, the two companies are no longer considered affiliated under section 771(33)(E) of the Act. Moreover, there is no other information on the record of this review at this time indicating affiliation, pursuant to section 771(33) of the Act, between these two entities. Accordingly, for purposes of these preliminary results, we find that Enuma is not affiliated with either Daido Tsusho or Daido Corporation. Since we do not consider these entities to be affiliated, we believe that the appropriate U.S. transactions to be reviewed are those between Enuma and Daido Tsusho.

Section 776(a) of the Act authorizes the Department, subject to section 782(d), to use FA when necessary information is not available on the record. Given that Enuma has not reported its sales to Daido Tsusho in the U.S. sales listing, we cannot calculate United States price with respect to Enuma. Therefore, we are compelled to use FA.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. As noted above, Enuma, in its questionnaire response, in various places, expressly characterized Enuma and Daido Tsusho as affiliated when in fact they do not appear to be affiliated. Also, Enuma did not report the proper U.S. sales data. However, we note that the Department did not specifically request that Enuma provide this data in its supplemental questionnaires. Therefore, for purposes of these preliminary results, we do not believe an adverse inference is warranted and are applying non-adverse FA under Section 776 of the Act. We are applying, as non-adverse FA, the simple average of the calculated dumping rates for Daido, Izumi, and RK (*i.e.*, those respondents in this segment of the proceeding whose margins are not based on adverse FA).

For purposes of the final results, we will request that Enuma report all U.S. sales made to Daido Tsusho, and provide any additional explanations and/or clarifications regarding the nature of the affiliation and any forms of control between the two companies. The Department is mindful of the need for accuracy in representations made in questionnaire responses which the Department must rely upon in making its decisions. Inaccurate responses undermine the integrity of the review process. We therefore will take the accuracy of Enuma's overall responses into account in our final results.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the ''Scope of the Review'' section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the following three product characteristics listed in order of importance: (1) The type of roller chain (*e.g.*, industrial roller chain, motorcycle chain, or leaf chain); (2) the number of strands (*e.g.*, single, double, triple, multiple, etc.); and (3) the finish (*e.g.*, carbon steel, nickel plated, stainless steel, etc.).

In past segments of this proceeding, the Department has used the model match databases submitted by the respondents to identify identical and similar merchandise in the home market. For this review, however, we have determined it appropriate to make the analysis in this proceeding consistent with the Department's current practice of defining identical and similar merchandise based only on the product characteristics outlined in the antidumping questionnaire. In this administrative review, the questionnaire instructed the respondents to provide data regarding the three product characteristics specified above for all reported United States and home market sales. In addition, the questionnaire informed the respondents that they could report additional product characteristics if they believed there were other product characteristics that the Department should consider in performing product comparisons. If a respondent chose to report additional product characteristics, the questionnaire instructed the respondent to describe in the narrative response why it believed the Department should consider the additional characteristics in defining identical and similar merchandise.

Although no additional product characteristics were specifically identified by Daido, Enuma, and Izumi in their questionnaire responses, it was apparent from the model match databases submitted by these respondents that these companies had considered product characteristics beyond those specified in the Department's questionnaire to define unique products. However, based on information on the record in this proceeding, we are unable to determine what additional characteristics these respondents relied upon in identifying unique products. Regarding RK, the company identified additional product characteristics in its questionnaire response, including pitch length, roller width, roller diameter, pin diameter, pin length, link height, link thickness, average strength and average weight. However, RK did not explain why it believed the Department should consider these characteristics in identifying identical and similar merchandise for product comparison purposes. Therefore, for purposes of these preliminary results, we have redefined the product control numbers reported by the respondents using only the three product characteristics outlined in the Department's questionnaire to define a unique product.

Interested parties are requested to comment on these matching criteria and to provide comments on whether the Department should consider any additional criteria within its matching analysis. All comments must be submitted no later than 14 days from the date of publication of this notice in the **Federal Register**. If a party believes that there are product characteristics other than the three enumerated in the Department's questionnaire which should be considered in performing product comparisons, the party should: (1) Specify the characteristic(s); (2) explain why they believe the characteristic is essential in defining identical and similar merchandise, including the effect of the product characteristics on both the cost of manufacturing and the selling price of

the merchandise; and (3) if the party is a respondent in this administrative review, the respondent should explain how the product characteristic(s) has been captured in the respondent's reported control numbers.

In this administrative review, Daido did not submit DIFMER information for its United States and home market products because the company claimed that there were contemporaneous home market sales of identical merchandise for comparison to every U.S. sale. However, in performing product comparisons using the methodology described above, we were unable to identify an identical product for every U.S. sale, as claimed by Daido.

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use FA in reaching the applicable determination. Because the Department is unable to compare every U.S. sale to identical sales of identical merchandise in the comparison market and Daido failed to provide DIFMER information in its questionnaire response, the Department is compelled to use FA with regard to the DIFMER. Accordingly, for those U.S. sales where contemporaneous home market sales of identical merchandise do not exist, we are applying, as non-adverse FA, the weighted-average price-to-price margin calculated for those U.S. sales where we were able to make identical comparisons. For purposes of the final results, we will request that Daido provide the requisite DIFMER information.

Level of Trade

To the extent practicable, we determine NV for sales at the same level of trade as the U.S. sales (either EP or CEP). When there are no sales at the same level of trade, we compare U.S. sales to home market (or, if appropriate, third-country) sales at a different level of trade.

For both EP and CEP, the relevant transaction for the level-of-trade analysis is the sale (or constructed sale) from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the CEP results in a price that would have been charged if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an independent U.S. customer the expenses under section 772(d) of the Act and the profit associated with these expenses. These expenses represent activities undertaken by the affiliated importer. Because the expenses deducted under section 772(d) represent selling activities in the United States, the deduction of these expenses normally yields a different level of trade for the CEP than for the later resale (which we use for the starting price). Movement charges, duties and taxes deducted under section 772(c) do not represent activities of the affiliated importer, and we do not remove them to obtain the CEP level of trade. The NV level of trade is that of the starting-price sales in the home market. When NV is based on constructed value, the level of trade is that of the sales from which we derive SG&A and profit.

To determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user, regardless of whether the final user is an individual consumer or an industrial user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for each claimed level of trade. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are commonly used by respondents to describe levels of trade, but, without substantiation, they are insufficient to establish that a claimed level of trade is valid. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed levels of trade. If the claimed levels are different, the selling functions performed in selling to each level should also be different. Conversely, if levels of trade are nominally the same, the selling functions performed should also be the same. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the levels of trade. A different level of trade is characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in levels of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. We use the average difference in net prices to adjust NV when NV is based on a level of trade different from that of the export sale. If there is a pattern of no consistent price differences, the difference in levels of trade does not have a price effect and, therefore, no adjustment is necessary.

CEP Offset. The statute also provides for an adjustment to NV when NV is based on a level of trade different from that of the CEP if the NV level is more remote from the factory than the CEP and if we are unable to determine whether the difference in levels of trade between CEP and NV affects the comparability of their prices. This latter situation can occur where there is no home market level of trade equivalent to the U.S. sales level or where there is an equivalent home market level but the data are insufficient to support a conclusion on price effect. This adjustment, the CEP offset, is identified in section 773(a)(7)(B) and is the lower of the following:

- The indirect selling expenses on the home market sale, or
- The indirect selling expenses deducted from the starting price in calculating CEP.

The CEP offset is not automatic each time we use CEP. The CEP offset is made only when the level of trade of the home market sale is more advanced than the level of trade of the U.S. (CEP) sale and there is not an appropriate basis for determining whether there is an effect on price comparability.

In this administrative review, Daido claimed that there were different LOTs between the home market and U.S. CEP sales and that a CEP offset was warranted. As noted above, Daido owns a Japanese trading company, Daido Tsusho, which, in turn, owns a U.S. sales subsidiary, Daido Corporation.

Daido, Daido Tsusho, and Daido Corporation are therefore considered affiliated parties within the meaning of section 771(33) of the Act.

In implementing the above referenced principles in this review, we first looked for different stages of marketing between CEP and NV. We found that there was one stage of marketing in the home market—direct sales of roller chain from Daido to unaffiliated customers. We then examined the selling functions performed by Daido with respect to both markets. In analyzing whether separate LOTs existed, we found that no single selling activity was sufficient to warrant finding a separate LOT (*see* Notice of proposed rulemaking and request for public comments, 61 FR 7307, 7348 (February 27, 1996)). We found that Daido's selling functions in the home market included sales administration, billing, maintaining inventory, and arranging freight services. In the U.S. market, we also found one stage of marketing—direct sales of roller chain between Daido/Daido Tsusho and Daido Corporation. We found that the selling functions included in the CEP after making deductions under section 772(d) of the Act included sales administration, maintaining inventory, arranging freight services, and preparing export documentation.

A different level of trade is characterized by purchasers at different places in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them. *See AFBs* at 2105. Based on the findings noted above concerning Daido's U.S. and home market sales, we conclude for these preliminary results that the U.S. and home market sales were not made at different points in the channel of distribution and that the selling functions performed for Daido's CEP sales were not sufficiently different from those performed for home market sales. We find, therefore, that Daido's sales in the home market and in the United States market are at the same level of trade. (For further discussion of this issue, see the LOT Memorandum from Holly Kuga to Jeffrey P. Bialos dated April 30, 1997, on file in room B–099 of the main Commerce building.)

With respect to RK, in its questionnaire responses, it did not state that there were differences in its selling activities by customer categories within each market or between markets. Therefore, in the absence of information in R.K.'s questionnaire responses, which might lead us to reach a different conclusion, we have determined for purposes of these preliminary results that all sales in the home market and the U.S. market were made at the same level of trade and no adjustment pursuant to section 773 (a) (7) (A) of the Act is warranted.

Sales Comparisons

To determine whether sales of roller chain by the respondents to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we compared the EP and CEP of individual transactions to the weighted-average NV of contemporaneous sales of the foreign like product.

Export Price and Constructed Export Price

For Izumi and certain sales made by Daido, we calculated EP, in accordance with subsections 772(a) of the Act because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of record. Regarding RK, the company made sales to Nissho Iwai Corporation (NIC), an affiliated trading company. NIC, in turn, sold the merchandise to Alloy Tool Steel, Inc. (ATSI), its affiliated selling agent in the United States. Where these sales to the unaffiliated customer took place prior to importation into the United States, we preliminarily determine U.S. price to be based on EP for the following reasons: (1) The merchandise in question was shipped directly from the manufacturer to the unaffiliated buyer, without being introduced into the physical inventory of the affiliated selling agent; (2) this was the customary commercial channel for sale of this merchandise between the parties involved, and; (3) the affiliated selling agent in the United States acted only as a processor of documentation and a communication link with the unaffiliated buyer. See Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and Beryllium Alloys from the Republic of Kazakstan, 62 FR 2648, 2649 (January 17, 1997); *see also* April 30, 1997, Memorandum from the Team to Jeffrey P. Bialos, Regarding the Treatment of U.S. Sales of Roller Chain Manufactured by RK.) It is the Department's practice in instances where all three criteria are met to regard the routine selling functions of the exporter as ''merely having been relocated geographically from the country of exportation to the United States,'' and to, therefore, find the sales to be EP sales. See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166 (July 23, 1996).

NIC is affiliated with both ATSI and RK pursuant to section 771(33) of the Act. However, based on the information on the record, we preliminarily conclude that RK and ATSI are not affiliated parties under section 771(33) of the Act. Therefore, for purposes of these preliminary results, we are treating RK's sales to ATSI as EP sales.

We calculated CEP for certain sales made by Daido and RK, in accordance with section 772(b) of the Act, where sales to the first unaffiliated purchaser took place after importation into the United States.

For Daido, RK, and Izumi we calculated EP and CEP based on packed prices to the first unaffiliated customer in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, for inland freight from the plant to port, inland insurance, brokerage and handling, international freight, marine insurance, and U.S. Customs duties.

For CEP sales made by Daido and RK, we made deductions, where appropriate, for direct selling expenses including advertising, credit and commissions paid to unaffiliated distributors and agents in accordance with section 772(d)(1) of the Act. In addition, we deducted those indirect selling expenses which were associated with economic activity occurring in the United States. These included inventory carrying costs incurred in the United States and the indirect selling expenses of the affiliated U.S. distributors. For RK, we also deducted certain indirect selling expenses incurred in the home market which were associated with economic activity occurring in the United States. We made adjustments for CEP profit in accordance with sections 772(d)(3) and (f) of the Act. Because neither Daido or RK were required to report cost information, the Department was unable to use such data submitted to determine the total expenses (*i.e.*, cost of manufacturing and selling, general and administrative expenses) and total actual profit for purposes of computing CEP profit. Section 772(f) of the Act provides three alternative methods for determining total expenses and total actual profit. These alternatives form a hierarchy where the use of any one of the methods depends on the data available to the Department from the case record. We were unable to apply the first alternative (section 772(f)(2)(C)(i), the actual expenses incurred in the United States and the

home market with respect to the merchandise under investigation) because the Department is not conducting a sales below cost investigation and, therefore, the Department did not request COP information for the home market products and CV information for all U.S. products. In addition, we were unable to apply the second alternative (section 772(f)(2)(C)(ii), the expenses incurred with respect to the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise) because the financial statements of RK and Daido are not specific to the production costs and sales information of merchandise sold only in the United States and home market. Therefore, we calculated CEP profit using alternative three (section 772(f)(2)(C)(iii), the expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise). Under this alternative, we calculated the profit percentage for RK and Daido based on the respondent's own financial statements for fiscal year 1995/1996 for merchandise produced and sold by the respondent in all countries.

We made additional company-specific adjustments as follows:

A. RK

For CEP sales, we deducted the cost of further manufacturing in the United States in accordance with Section 772(d) (2) of the Act.

B. Daido

For EP sales, we added the amount of interest revenue collected by Daido in instances where the U.S. customer made a late payment. We also made deductions for quantity discounts.

Normal Value

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 each respondent's volume of home market sales of foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Since the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, and there was no evidence indicating that a particular market situation in the exporting country did not permit a proper comparison, we determined that the home market was viable for the respondents. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country. We calculated NV as described in the ''Price-to-Price Comparisons'' and ''Price-to-Constructed Value'' sections of this notice, below.

Regarding Izumi, the company identified a reseller in the home market to which it was affiliated pursuant to section 771(33)(E) of the Act. However, Izumi failed to report the downstream sales of this affiliated customer to the first unaffiliated customer. Instead, the company reported its own sales to the affiliated customer. Izumi claimed that it was unable to obtain the downstream sales information of its affiliated customer because it does not hold any stock ownership in the customer and the customer is a much larger entity than Izumi. Because Izumi's sales to this affiliated customer accounted for a significant percentage of its total sales of the foreign like product during the POR, in our supplemental questionnaire we requested that Izumi either: 1) Report the downstream sales of this affiliated customer; or 2) demonstrate that its sales to this affiliated customer were at arm's length prices.

In its supplemental questionnaire response, Izumi failed to report the downstream sales and failed to show that its sales to the affiliated customer were at arm's length. In addition, because the total quantity of sales to unaffiliated parties during the POR was so small and certain products were only sold to affiliated customers, we found that there are an insufficient number of unaffiliated sales to provide a meaningful comparison to affiliated party sales. Therefore, we concluded that our standard arm's length test would not produce reliable results. *See* Final Results of Antidumping Administrative Review: Roller Chain, other than Bicycle, from Japan, 61 FR 64329 (December 4, 1996).

Insofar as we were unable to test whether Izumi's sales to this affiliated customer were made at arm's-length prices, we have, therefore, assumed for these preliminary results that all sales between Izumi and the affiliated customer were not made at arm's length prices and have excluded these sales from the calculation of NV. *See, e.g.,* Preliminary Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 1350 (January 19, 1996) (excluding sales that were not at arm's length from the calculation of NV); *see also* Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products, 55 FR 42230 (October 18, 1990) (stating that affiliated party sales can only be used if the Department is satisfied that the price is comparable to the price at which the exporter/producer sold the foreign like product to an unaffiliated person).

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or requested format, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use FA in reaching the applicable determination. Despite numerous requests by the Department, Izumi failed to report the downstream sales of its affiliated customer in its home market sales listing. In addition, as noted above, the Department is unable to conduct an arm's length price analysis to determine whether Izumi's sales to this affiliated customer were indeed at arm's length prices. Therefore, the Department has no reliable basis for determining whether these sales can be used to calculate NV. Since Izumi's home market sales do not provide a reliable basis on which to calculate NV, the Department is compelled to use FA.

Given that Izumi attempted to obtain the downstream sales information of its affiliated customer and Izumi has otherwise complied with all of the Department's requests for information, we find that Izumi has acted to the best of its ability to comply with the Department's information requests in this review and that an adverse inference is not warranted pursuant to Section 776(b) of the Act. *See also* the SAA at 870. However, we will continue to examine the relationship between Izumi and its affiliated customer in future reviews.

As noted above, the quantity of sales to unaffiliated parties in the home market during the POR is insignificant. Because we did not find this quantity to be sufficient to validate the arm's length nature of the affiliated party sales and we believe that a significant potential for price manipulation exists with regard to these sales, we find that these sales do not provide a reliable basis on which to calculate NV for these preliminary results. Therefore, we have disregarded all home market sales and have calculated NV based on CV in accordance with section 773(a)(4) of the Act. For discussion of the CV calculation, see the ''Price-to-CV'' section of this notice, below.

Price to Price Comparisons

With respect to RK, where there were contemporaneous sales of the

comparison product, we based NV on home market prices. As noted in the ''Product Comparisons'' section above for Daido, we based NV on home market prices only in instances where contemporaneous sales of an identical home market product existed. In instances where contemporaneous home market sales of identical home market merchandise did not exist, we disregarded the similar home market sales and applied the weighted-average price-to-price margin calculated for those U.S. sales where we were able to make identical comparisons to the quantity of U.S. sales. (For a further discussion of this issue, *see* the ''Product Comparisons'' section of this notice, above).

We made deductions, where appropriate, from the starting price for inland freight, insurance, and other transportation expenses. In addition, we made circumstance of sale adjustments for direct expenses, including credit, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. We deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6) (A) and (B) of the Act.

Where commissions were paid on EP sales for RK and Daido, we deducted home market indirect selling expenses up to the amount of the U.S. commission from NV and added the amount of the U.S. commission. Where commissions were paid on CEP sales made by RK, we deducted from NV the lesser of either: (1) the weighted-average amount of commission and indirect selling expenses paid on a U.S. sale for a particular product; or (2) the weighted-average amount of indirect selling expenses paid on the home market sales for a particular product.

A. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV for Izumi based on the sum of the COM of the product sold in the United States, plus amounts for home market selling, general and administrative expenses (SGA), profit, and U.S. packing costs. Since Izumi had no sales of the foreign like product in the ordinary course of trade during the POR, we calculated home market selling expenses and profit using alternative methodologies in accordance with section 773(e)(2)(B). We calculated Izumi's selling expenses as described in section 773(e)(2)(B)(ii). That is, we used the weighted-average selling expenses experienced by Daido and RK, which are exporters or producers subject to review, in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. We calculated profit as described in section 773(e)(2)(B)(iii) of the Act, which specifies that profit can be calculated using any other reasonable alternative. For these preliminary results, we used the actual amount of profit realized by another publicly-held non-investigated producer of roller chain in Japan. (For a further discussion, see the Izumi Memorandum from Holly Kuga to Jeffrey Bialos dated April 30, 1997, on file in room B–099 of the main Commerce building.)

Price-to-CV Comparisons

For Izumi, where we compared EP to CV, we deducted from CV the weighted-average home market direct selling expenses and added the product-specific U.S. direct selling expenses, in accordance with sections 773(a)(8) and 773(a)(6)(iii) of the Act.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A (a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate in accordance with established practice.

Intent Not To Revoke

Daido and Enuma submitted a request in accordance with 19 CFR 353.25 (b) to revoke the order with respect to its sales of roller chain in the United States. In the final results of our most recently completed administrative review of this order, Daido and Enuma had margins that were greater than *de minimis. See Roller Chain* at 64327. Therefore, Daido and Enuma do not qualify for revocation.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the period April 1, 1995, through March 31, 1996:

Manufacturer/exporter	Weighted-average margin percentage
Daido	4.98.
Enuma	10.13 (facts available).
Izumi	14.13.
Pulton	43.29 (adverse facts available).
R.K. Excel	11.29.

Parties to the proceeding may request disclosure within five (5) days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. (As noted above, all comments on the model matching criteria must be submitted on or before May 22, 1997. Rebuttal comments may be filed no later than May 29, 1997.) 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 written comments, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this review for all shipments of roller chain from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be those rates specified in the final results, (2) for merchandise exported by manufacturers

or exporters not covered in these reviews but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in these reviews, or the original investigation, but the manufacturer is covered, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews, the cash deposit rate will be 15.92 percent, the ''all-others'' rate based on the first review conducted by the Department in which a ''new shipper'' rate was established in the final results of antidumping administrative review (48 FR 51801, November 14, 1983). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 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 administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 30, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–12045 Filed 5–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–824]

Silicomanganese From Brazil; Extension of Time Limit of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the 1994–95 administrative review of the antidumping duty order on silicomanganese from Brazil. The Department has determined that it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). The review covers exports of this merchandise to the United States by one manufacturer/exporter, Companhia Paulista de Ferro-Ligas (CPFL) and Sibra Eletro-Siderurgica Brasileira S.A. (Sibra) (collectively ''Ferro-Ligas Group''), for the period June 17, 1994 through November 30, 1995.

EFFECTIVE DATE: May 8, 1997.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Thomas O. Barlow, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to 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).

Background

On January 9, 1997, the Department published in the **Federal Register** (62 FR 1320) the preliminary results of 1994–95 administrative review of the antidumping duty order on silicomanganese from Brazil (59 FR 66003, December 22, 1994)). The period of review (POR) is June 17, 1994 through November 30, 1995. In our notice of preliminary results of review we stated that we intended to publish the final results of this review within 120 days of publication of the preliminary results.

Postponement of Final Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the foregoing time, the Department may extend the 120 day period for making a final determination to 180 days.

We determine that it is not practicable to issue the final results of this review within the 120-days for the reasons contained in the Memorandum from Richard W. Moreland to Robert S. LaRussa, April 30, 1997, on file in Room B–099 of the Main Commerce Building.

Accordingly, we are extending the deadline for making our final determination and issuing the final results in this review. We intend to issue the final results of review by July 8, 1997, which is 180 days after the publication of our preliminary results. This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 30, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 97–12048 Filed 5–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–827, C–428–823, C–274–803, and C–307–814]

Steel Wire Rod From Canada, Germany, Trinidad and Tobago, and Venezuela; Extension of Time Limit for countervailing duty investigations

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

ACTION: Notice of extension of time limit for countervailing duty investigations.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for its preliminary determinations in the countervailing duty investigations on steel wire rod from Canada, Germany, Trinidad and Tobago, and Venezuela.

EFFECTIVE DATE: May 8, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Bolling (Canada), Daniel Lessard (Germany), Vince Kane (Trinidad and Tobago) and Chris Cassel (Venezuela), Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–1386, 482–1778, 482–2815, and 482–4847.

SUPPLEMENTARY INFORMATION: At the request of the petitioners, the Department is extending the time limit for the completion of the preliminary determinations to no later than July 28, 1997, in accordance with section 703(c)(1)(A) of the Tariff Act of 1930 (the Act), as amended by the Uruguay

Round Agreements Act (URAA). (See Memorandum from Joseph A. Spetrini, Richard W. Moreland, and Jeffrey P. Bialos to Robert S. LaRussa on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

These extensions are in accordance with section 703(c)(1)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: May 2, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–12049 Filed 5–7–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of a Government Owned Invention Available for Licensing

SUMMARY: The invention listed below is owned by the U.S. Government, as represented by the Department of Commerce, and is available for licensing on only a non-exclusive basis in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into one or more Cooperative Research and Development Agreements (''CRADA'') with the licensees to perform further research on the invention for purposes of commercialization. NIST may grant licensees an option to negotiate for exclusive royalty-bearing licenses to any jointly owned inventions which arise from the CRADAs as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADAs.

The invention available for licensing is:

NIST Docket Number: 96–009.

Title: Interferometric Thickness Variation Test Method For Windows and Sili.

Abstract: This interferometric apparatus and non-contact method measure central thickness and thickness variations of silicon wafers and other window-like optics by using a diverging wavefront and an infrared interferometer operating at a wavelength to which silicon is transparent. The speed and accuracy of the invention offer cost-effective measurements of 300 mm wafers.

Dated: May 1, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–11977 Filed 5–7–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of a Government Owned Invention Available for Licensing

SUMMARY: The invention listed below is owned by the U.S. Government, as represented by the Department of Commerce, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Industrial Partnership Program, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRDA'') with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

NIST Docket Number: 96–033.

Title: Superconducting Transition-Edge Sensor.

Abstract: This NIST invention provides particle detection, particularly x-ray detection, using an aluminum/normal-metal bilayer superconducting transition-edge sensor as a thermometer in a microcalorimeter. Fabrication is easier, applications are more diverse, and results are more reliable than with previous methods.

Dated: May 1, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–11978 Filed 5–7–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology's Visiting Committee on Advanced Technology (NIST) will meet on Tuesday, June 3, 1997, from 8:30 a.m. to 5:00 p.m. The Visiting Committee on Advanced Technology is composed of 15 members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include presentations on NIST programs, including an action plan to respond to the Technology Transfer Act of 1995, the status of the NIST effort to update its facilities needs assessment and the progress on developing a new master plan for the Gaithersburg and Boulder sites, NIST Budget, and a laboratory tour.

Discussions on the NIST budget, including funding levels of the Applied Technology Program (ATP), and the staffing of management positions at NIST scheduled to begin at 4:15 p.m. and to end at 5:00 p.m. on June 3, 1997, will be closed.

DATES: The meeting will convene June 3, 1997, at 8:30 a.m. and will adjourn at 5:00 p.m. on June 3, 1997.

ADDRESS: The meeting will be held in the Radio Building, Room 1107 (seating capacity 60, includes 35 participants), National Institute of Standards and Technology, Boulder, CO.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 23, 1997, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the MEP and the ATP Programs may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: May 1, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–11972 Filed 5–7–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043097C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Scoping Committee for Dungeness Crab will hold a public meeting.

DATES: The meeting will be held on May 21, 1997, beginning at 1:00 p.m. and continuing on May 22, 1997, from 8:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Sheraton - Portland Airport Hotel, 8235 NE. Airport Way, Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The committee will explore the issue of whether or not the Council should proceed with a fishery management plan for Dungeness crab. The meeting will focus on (1) Developing goals for management of the Dungeness crab fishery, (2) identifying options for Federal involvement or non-involvement, and (3) exploring the advantages and disadvantages of those options.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 1, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–12003 Filed 5–7–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050297A]

Endangered Species; Permits

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

ACTION: Issuance of Scientific Research Permit 1033, issuance of Modification 1 to Permit 944, issuance of Modification 1 to Permit 984, and notice of receipt of application for a Scientific Research Permit (P645).

SUMMARY: Notice is hereby given that on April 23, 1997, NMFS issued a scientific research permit (1033) to David A. Nelson, U.S. Army Corps of Engineers (P496A), to take listed sea turtles for the purpose of scientific research, and issued Modification 1 to permit 944 issued to Boyd Kynard, US Geological Survey (P45P), to take listed shortnose sturgeon for the purpose of scientific research subject to certain conditions set forth therein. On May 1, 1997, NMFS issued Modification 1 to permit 984 issued to Mary L. Moser and Steve W. Ross of the University of North Carolina (P423B), to take listed shortnose sturgeon for the purpose of scientific research subject to certain conditions set forth therein. Notice is also given that Molly Lutcavage of the New England Aquarium (P645) has applied in due form for a scientific research permit to take listed sea turtles.

ADDRESSES: The applications, permits, and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250); or

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

SUPPLEMENTARY INFORMATION: Notice was published on January 22, 1997 (62 FR 3270) that an application had been filed by David A. Nelson, U.S. Army Corps of Engineers (P496A), to take listed Sea Turtles, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Mr. Nelson requested a five year permit to tag, track, blood sample, and relocate 200 loggerhead (*Caretta caretta*), 40 green (*Chelonia mydas*), 20 Kemp's ridley (*Lepidochelys kempii*), 1 leatherback (*Dermochelys coriacea*), and 1 hawksbill (*Eretmochelys imbricata*) sea turtle annually. These turtles would be captured incidental to dredging activities in the U.S. Atlantic and Gulf of Mexico, as authorized by section 7 consultation. The turtles may receive PIT-tags, flipper-tags, and radio, satellite, or sonic tags. The research purpose is to minimize sea turtle-dredge interactions by determining sea turtle habits, abundance, and distribution in shipping channels. On April 23, 1997, NMFS issued Permit 1033 authorizing the above activities.

On April 23, 1997, NMFS issued Modification 1 to permit 944 issued to Boyd Kynard, U.S. Geological Survey, to take listed shortnose sturgeon, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Dr. Kynard is authorized under Permit 944 to examine, tag, and tissue sample adult shortnose sturgeon captured in the Connecticut, Merrimack and Hudson Rivers. The original permit authorized the collection of 20 tissue samples annually from adult shortnose sturgeon for contaminant analysis. Modification 1 to Permit 944 authorizes Dr. Kynard to collect an additional 130 tissue samples from adult shortnose sturgeon annually in an effort to identify the energetic levels of fall migratory fish, spring migratory fish, spawners, and overwintering fish.

Notice was published on March 21, 1997 (62 FR 13601) that a request had been filed by Mary L. Moser and Steve W. Ross (P423B), to modify scientific research permit 984, to take listed shortnose sturgeon, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Drs. Moser and Ross are authorized under Permit 984 to weigh, measure, photograph, tag and tissue sample adult shortnose sturgeon in North Carolina Rivers. Modification 1, issued by NMFS on May 1, 1997, extends Permit 984 until December 31, 2000, removes authorization to conduct research in the Alligator and Chowan Rivers, and authorizes research in the Pee Dee and Waccamaw Rivers.

On April 29, 1997, Molly Lutcavage of the New England Aquarium submitted an application (P645) for a scientific research permit to take listed sea turtles. Dr. Lutcavage has requested a one year permit to satellite tag eight (8) listed leatherback (*Dermochelys* coriacea) turtles captured incidental in commercial fisheries to determine vulnerability of leatherbacks to incidental capture by pelagic longline fisheries; to relate specific travel routes of leatherback turtles equipped with satellite transmitters to fishing activities and oceanographic features; to assist pelagic fishermen in the development of fishing techniques that reduce interactions with leatherback turtles; and to develop safe handling procedures and satellite attachment techniques.

Issuance of these permits/modifications, as required by the ESA, was based on a finding that such permits/modifications: (1) Were applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of the permits/modifications, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 2, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–12002 Filed 5–7–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Public Affairs American Forces Information Service.

ACTION: Notice.

In compliance with Section 3505(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Public Affairs, American Forces Information Service, announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 4, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the American Forces Information Service (Richard Oleszewski), 601 North Fairfax Street, Alexandria, VA 22314–2007.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call the Print Media Directorate at (703) 428–0629.

Title: Stars and Stripes Audience Survey.

Needs and Uses: The information collection requirements is necessary to evaluate current *Stars and Strips* newspaper policies and practices, and provide information on demographics and consumer habits of *Stars and Stripes* readers for use in marketing initiatives.

Affected Public: Department of Defense civilian employees and their families living in the European and Pacific theaters served by the *Stars and Stripes.*

Annual Burden Hours: 1,200.

Number of Respondents: 3,000.

Responses per Respondents: 1.

Average Burden per Response: 24 minutes.

Frequency: Trienially.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are Department of Defense civilian employees and their families living in areas served by the *Stars and Stripes* newspapers. As the last similar survey was conducted in 1990, no current information exists on the *Stars and Stripes* readership. In order to serve effectively its audience the *Stars and Stripes* needs current information on reader demographics, preferences, opinions and purchasing habits. This information will assist in evaluating current policies and practices, provide guidance on potential changes in current activities, and guide future activities in the areas of circulation and advertising.

Dated: May 2, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–11931 Filed 5–7–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Board of Visitors, Marine Corps University

ACTION: Notice.

SUMMARY: The Board of Visitors, Marine Corps University has been established pursuant to Section 7102, Title 10 U.S.C., and in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act.''

The Board provides advice and recommendations to the Commanding General, Marine Corps Combat Development Command, Commandant of the Marine Corps, and Secretary of the Navy on the broad framework of institutional policies needed to enable the University to meet all requirements of the Southern Association of Colleges and Schools, to include: Academic and administrative policies; curriculum; the University's Professional Military Education program; and, the sustaining of high academic standards and cost effective operations.

The Board will be composed of approximately 15 members from the field of education, from both the private sector and government. Efforts will be made to ensure that there is a fairly balanced membership in terms of the

functions to be performed and the interest groups represented.

For further information regarding the Board of Visitors, contact: Dr. Keith Fleming, Office of the President, Marine Corps University, at (703) 784–4037.

Dated: May 2, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–11932 Filed 5–7–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Service Committee on Military Justice: Public Meeting

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the 1997 annual public meeting of the JSC. This notice also describes the functions of the JSC.

Dates and Times: Thursday, July 10, 1997, at 10:00 a.m.

Address: Conference Room, Suite 404B, U.S. Army Legal Services Agency Litigation Center, 901 North Stuart Street, Arlington, VA 22303–1837.

Function: The JSC was established by the Judge Advocates General in 1972. The JSC currently operates under Department of Defense Directive 5500.17, May 8, 1996. The function of the JSC is to improve military justice through preparation and evaluation of proposed amendments and changes to the Uniform Code of Military Justice and the *Manual for Courts-Martial.*

Agenda: The JSC will receive public comment concerning its 1997 draft review of the *Manual for Courts-Martial* as published on May 6, 1997.

This notice is provided in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

FOR FURTHER INFORMATION CONTACT: LTC Paul P. Holden, Jr., U.S. Army, Office of the Judge Advocate General, Criminal Law Division, 2200 Army Pentagon, Washington, DC, 20310–2200, 703–695–1891; Fax 703–693–5086.

Dated: May 2, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–11934 Filed 5–7–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: DoD, National Defense Panel.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on May 12 and 13, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public from 0830–1700, May 12 and 13, 1997 in order for the Panel to discuss classified material.

DATES: May 12 and 13, 1997.

ADDRESSES: Suite 624, 1931 Jefferson Davis Hwy, Arlington, VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

Proposed Schedule and Agenda

The National Defense Panel will meet in closed session from 0830–1700 on May 12 and 13, 1997. The meeting will be held at Suite 624, 1931 Jefferson Davis Highway, Arlington, VA. During the closed sessions the Panel will discuss the response to the Secretary of Defense's Quadrennial Defense Review (QDR) (to include classified portions of the QDR). The NDP staff will provide presentations that will be used by the panel to formulate recommendations in the areas of the QDR required by the implementing legislation. This notice is late due to the fact that this meeting was scheduled during the 28 and 29 April 1997 meeting. The National Defense Panel decided that this meeting is required to accomplish the National Defense Panel's assigned mission.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: May 2, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–11933 Filed 5–7–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Small Business Innovation Research Program Office.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Small Business Innovation Research announces the proposed revision of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 7, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Small Business Innovation Research Program Office, HQ AFMC/STXP, ATTN: R. Jill Dickman, 4375 Chidlaw Rd, Ste 6, Wright-Patterson AFB, OH 45433–5006.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collections instruments, please write to the above address, or call the Small Business Innovation Research Program Office at 1–800–222–0336.

Title, Associated, Form and OMB Number: Survey of Air Force Small Business Innovation Research (SBIR)

Contract Awardees, No Form required, OMB No. 0701–0117.

Needs and Uses: This information collection is a survey on noteworthy Small Business Innovation Research (SBIR) accomplishments and commercialization of small business research and development. It is used to evaluate the success of the program in meeting the objectives of the public law and to publicize successful SBIR research and development (R&D) to potential purchasers.

Affected Public: Businesses or other for-profit; small businesses or organizations.

Annual Burden Hours: 3.4.

Number of Respondents: 17.

Responses per Respondent: 1.

Average Burden per Response: 12 min.

Frequency: Biennially.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are small business companies who are awarded SBIR dollars to perform needed Air Force technologies. This survey is background for a metric which indicates to the SBIR Program Manager the companies who have commercialized as a result of their Phase II awards.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–11995 Filed 5–7–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The 1997 Summer Study Panel Meeting on Lean Sustainment of the HQ USAF Scientific Advisory Board will meet at Hurlburt Field, FL on June 9–12, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefing for the 1997 Summer Study topic on Lean Sustainment.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–12010 Filed 5–7–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The 1997 Summer Study Panel Meeting on Operational Context and Training of the HQ USAF Scientific Advisory Board will meet at St. Louis, MO on June 16, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefing for the 1997 Summer Study topic on Operational Context and Training.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–12011 Filed 5–7–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The 1997 Summer Study Chair Panel Meeting of the Air Expeditionary Forces of the HQ USAF Scientific Advisory Board will meet at McDonnell Douglas, St. Louis, MO on June 17, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefing for the 1997 Summer Study topic on Air Expeditionary Forces.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–12012 Filed 5–7–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The 1997 Summer Study Panel Meeting on Lean Sustainment of the HQ USAF Scientific Advisory Board will meet at Scott Air Force Base, IL on June 18–19, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefing for the 1997 Summer Study topic on Lean Sustainment.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–12013 Filed 5–7–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Global Air Navigation System Panel Chairs, of the HQ USAF Scientific Advisory Board will meet on June 18–19, 1997, at Peterson Air Force Base, Colorado Springs, CO from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to receive briefings and gather information for the study on Global Air Navigation System.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–12014 Filed 5–7–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The 1997 Summer Study Panel Meeting on Lean Sustainment of the HQ USAF Scientific Advisory Board will meet at the Rand Corporation, Los Angeles, CA on June 24–25, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefing for the 1997 Summer Study topic on Lean Sustainment.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97–12015 Filed 5–7–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice

AGENCY: Department of the Navy, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Navy proposes to add one record system to its inventory of system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective without further notice on June 9, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 24, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 2, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01650–1

SYSTEM NAME:

Awards Information Management System and Records.

SYSTEM LOCATION:

Database location: Naval Computer Telecommunications Station, Washington Navy Yard, Washington, DC 20374–1435.

User locations: Chief of Naval Operations (N09B33), 2000 Navy Pentagon, Washington, DC 20350–2000;

Secretary of the Navy Administrative Office, 1000 Navy Pentagon, Washington, DC 20350–1000;

Chief of Naval Personnel (Pers-324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001;

Commandant of the Marine Corps, Headquarters, U.S. Marince Corps (MHM), 2 Navy Annex, Washington, DC 20380–0001;

National Personnel Records Center, 9700 Page Avenue, St. Louis. MO 63132–5100 and Fleet Commanders in Chief and Type Commanders. Official mailing addresses for the Fleet Commanders in Chief and Type Commanders are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All U.S. military recipients (includes U.S. Coast Guard) of Navy personal awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Awards Information Management System (AIMS): Contains electronic records of individual personal awards for 1967 and continuing and unit awards for 1941 and continuing that are maintained by the Board of Decorations and Medals (BDM). Data includes information extracted from OPNAV Form 1650/3, Personal Award Recommendation, such as name, Social Security Number, type of award, approval authority, recommended award, approved award, meritorious start and end dates, service status of recipient, originator of the recommendation, designator, Unit Identification Code, officer or enlisted, service component, rate/rating, pay grade, number of award recommended, assigned billet of individual, campaign designation, classified or unclassified designated award, date of recommendation, award approved date, approved award, chain of command data, extraordinary heroism determination, letter type, board serial number, pertinent facts, date forwarded to Secretary of the Navy (SECNAV), Board's recommendation, participating command field, Board meeting data, receipt date by Board of Decorations and Medals, name of unit, name of ship, etc.

Master Record of Awards to Navy and Marine Corps personnel maintained by the Board of Decorations and Medals: File includes awards approved by SECNAV and those authorized for approval by subordinate commanders. Record includes service member's name, service number/Social Security Number, award recommended, award approved, and a narrative summary of the SECNAV approved citation. A second section of the file contains activities awarded Unit Awards and the dates of eligibility.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 9397 (SSN); Secretary of the Navy Instruction 1650.1F, Navy and Marine Corps Awards Manual.

PURPOSE(S):

To maintain records of military personal awards and unit awards.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

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

STORAGE:

Computerized data base; microfiche; and paper records.

RETRIEVABILITY:

Social Security Number and individual or unit name.

SAFEGUARDS:

Automated data base requires authorized access; password protected; some user sites only have read capability; designated user capability regarding add/delete/change functions. Paper and microfiche records are under the control of authorized personnel during working hours and the office space in which records are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Permanent. A duplicate copy of the active file is provided to the National Archives and Records Administration. History files for the years 1967 to 1989 have been transferred to NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (N09B33/BDM), 2000 Navy Pentagon, Washington, DC 20350–2000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Chief of Naval Operations (N09B33/BDM), 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, award time-frame, and service component.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Operations (N09B33/BDM), 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, award time-frame, and service component.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

OPNAV Form 1650/3, Personal Award Recommendation Form, general orders, award letter 1650.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–11936 Filed 5–7–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 7, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 2, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Postsecondary Education

Title: Evaluation Form for the Fulbright-Hays Seminars Abroad Program.

Frequency: One time.

Affected Public: Individuals or households.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 125.

Burden Hours: 94.

Abstract: The form is to be used by participants under the Fulbright-Hays Seminars Abroad program to evaluate the substance and quality of the seminars and the administrative capability of the participating overseas agencies.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Written Request for Assistance or Application for Client Assistance Program.

Frequency: 3-year cycle for State Assurances or plan for CAP formula grant.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 9.

Abstract: This document is used by States to request funds to establish and carry out Client Assistance Programs (CAP). CAP is mandated by the Rehabilitation Act of 1973, as amended, to assist vocational rehabilitation and client applicants in their relationships with projects, programs, and facilities authorized by the Rehabilitation Act of 1973, as amended.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 1999 National Study of Postsecondary Faculty (NSOPF—99): List Collection Procedures and Institution Questionnaire.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting Burden and Recordkeeping:

Responses: 1,550.

Burden Hours: 2,306.

Abstract: The third cycle of the NSOPF is being conducted in response to a continuing need for data on faculty and instructors. The study will provide

information about faculty in postsecondary institutions which is key to learning about the quality of education and research in these institutions. This study will expand the information about faculty and instructional staff in two ways—allowing comparisons to be made over time and examining critical issues surrounding faculty that have developed since the first two studies. This clearance request covers field test and full scale activities for the first phase of the study—collection of lists of current faculty and instructors from sampled postsecondary institutions and a questionnaire to be filled by institution administrative officials to provide information about the context of the institution, such as hiring and promotion practices, policies on benefits, tenure, workload and salary, etc. A second clearance request will be submitted shortly covering the faculty survey materials.

[FR Doc. 97–11955 Filed 5–7–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–350–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 1997.

Take notice that on April 30, 1997, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets with a proposed effective date of May 31, 1997:

Thirtieth Revised Sheet No. 20A
Original Sheet No. 98J

Algonquin states that the filing is submitted pursuant to Section 37.1(f), Transition Costs Relating to Retained Capacity, of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Fourth Revised Volume No. 1.

Algonquin states that the purpose of the filing is to flow through upstream transition costs of $9,009.50 to be billed to Algonquin by Texas Eastern Transmission Corporation. Algonquin states that the upstream transition costs to be recovered pursuant to this filing are allocated to Algonquin's customers in accordance with Section 37.1(f) of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Fourth Revised Volume No. 1.

Algonquin states that copies of the filing were served on all firm customers of Algonquin and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12038 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–347–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 1997.

Take notice that on April 30, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective May 1, 1997:

First Revised Twenty-first Revised Sheet No. 8
Twenty-fourth Revised Sheet No. 9
Twenty-third Revised Sheet No. 13
Twenty-fourth Revised Sheet No. 16
Twenty-eighth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to commence recovery of approximately $2.6 million of additional pricing differential (PD) and carrying costs that have been incurred by ANR during the period December 1, 1996 through February 28, 1997 as a result of the implementation of Order Nos. 636, et seq. ANR proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to recover ninety percent (90%) of the PD costs, and an adjustment to the maximum base tariff rates applicable to Rate Schedule ITS and overrun service rendered pursuant to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that the proposed charges would increase its PD surcharge from $0.157 to $0.182.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12035 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–348–000]

CNG Transmission Corporation; Notice of Section 4 Filing

May 2, 1997.

Take notice that on April 30, 1997, CNG Transmission Corporation (CNG), tendered for filing, pursuant to Section 4 of the Natural Gas Act, a notice of termination of service on pipeline facilities which CNG will abandon by sale to American Refining May 30, 1997, effective thirty days from the date of filing. CNG states that no contract for transportation of service with CNG will be terminated because delivery of gas will occur further downstream of the current delivery points.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Any person wishing to become party must file a motion to intervene. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12036 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–349–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff and Report of Refunds

May 2, 1997.

Take notice that on April 30, 1997, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets, with an effective date of June 1, 1997:

Sheet No. 38
First Revised Sheet Nos. 320–328
Sheet No. 329

CNG states that the purpose of this filing is to revise its tariff to reflect the collection of known direct and indirect take-or-pay costs under Sheet Nos. 38 through 55 of CNG's FERC Gas Tariff. CNG also submits its report of refunds attributable to the reconciliation of cumulative direct and indirect take-or-pay charges, which have been collected from CNG's customers in accordance with the Commission-approved Stipulation and Agreement in Docket Nos. RP88–217–000, et al. On March 31, 1997, CNG states that it refunded to its customers an aggregate amount of $1,628,933.

CNG states that copies of this letter of transmittal and enclosures are being mailed to affected customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12037 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–52–003]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 1997.

Take notice that on April 29, 1997, Columbia Gulf Transmission Company (Columbia Gulf) filed a motion to place its suspended rates and tariff sheets into effect on May 1, 1997, and tendered for filing the revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, listed on Appendix A, attached to the filing. The revised tariff sheets bear an issue date of April 29, 1997, and a proposed effective date of May 1, 1997.

Columbia Gulf states that the revised filing is being made in accordance with the Commission's suspension order issued November 27, 1996, in this proceeding and Section 154.206 of the Commission's Regulations (18 CFR Section 154.206). The rates on the Appendix A tariff sheets reflect the changes required by the suspension order.

Columbia Gulf states that it is also moving into effect the non-rate tariff sheets identified separately on Appendix B, attached to the filing, which were accepted and suspended effective May 1, 1997. The filing is explained in greater detail in the transmittal letter accompanying the filing.

Columbia Gulf states that copies of its filing have been mailed to Columbia Gulf's firm customers and interruptible customers, affected state regulatory commissions, and to each of the parties set forth on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12029 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–350–000]

Copano Field Services/ Copano Bay, L.P.; Notice of Petition for Declaratory Order

May 2, 1997.

Take notice that on April 17, 1997, Copano Field Services/Copano Bay, L.P. (Copano), 1300 Post Oak Boulevard, Suite 1750, Houston, Texas 77056, filed a petition for declaratory order in Docket No. CP97–350–000, requesting that when Copano acquires the Encinal Channel Lateral Facilities, which are certain pipeline and measuring facilities with appurtenances located in San Patricio, and Nueces Counties, Texas, from Florida Gas Transmission Company (FGT), that the Commission declare that the facilities are gathering facilities exempt from the Commission's Regulations pursuant to Section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Copano states that it currently renders non-jurisdictional gathering services through its Copano Bay System located adjacent to the Encinal Channel Lateral Facilities to be acquired from FGT. It is further stated that the Encinal Channel Lateral Facilities will be operated independently from its existing gathering systems, although the facilities may be integrated in the future. Copano indicates that it anticipates attaching additional supplies to the Encinal Channel Lateral Facilities.

Copano relates that it will, effective on the date of transfer, assume all future operational and commercial responsibilities and maintenance obligations for the Encinal Channel Lateral Facilities. Copano further indicates that it expects to negotiate acceptable gathering agreements with any shipper using the Encinal Channel Lateral Facilities.

Copano states its belief that the Encinal Channel Lateral Facilities meet the criteria of ''gathering facilities'' under Section 1(b) of the NGA as interpreted by the Commission under the ''modified primary function'' test, as set forth in Amerada Hess Corporation, *et al.*, as amended. 52 FERC ¶ 61,268 (1990).

It is asserted that the Encinal Channel Lateral Facilities are well within the range of systems the Commission has determined to be gathering because the facilities consist of relatively short, small-diameter pipe configured in a web-like arrangement; there is a typical backbone-type arrangement which collects gas from many wells for delivery to the FGT mainline; there are no compressors or processing plants located on the Encinal Channel Lateral Facilities; and the facilities operate based on wellhead pressures for delivery to FGT's mainline.

Copano also states its belief that its acquisition of the Encinal Channel Lateral Facilities for use as non-jurisdictional gathering will bring increased use of the Encinal Channel Lateral Facilities for the benefit of consumers served by means of the FGT transmission system.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 23, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11988 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–362–000]

Florida Gas Transmission Company; Notice of Application

May 2, 1997.

Take notice that on April 21, 1997, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP–362–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon, by sale to Copano Field Services Copano Bay, L.P., a Texas Limited Partnership (Copano), certain natural gas supply laterals and related appurtenant facilities located in the counties of Nueces and San Patricio, Texas, all as more fully set forth in FGT's application which is on file with the Commission and open to public inspection.

FGT states that it has agreed to sell Copano the 17.5 mile 12-inch Encinal Channel Lateral; the 0.3 mile 4-inch Shell East White Point Lateral; the 2.7 mile 4-inch Nueces Bay Lateral; the 0.2 mile 4-inch Phillips East White Point Lateral; the 2.1 mile 3-inch Angelita Lateral; and all related appurtenant facilities. In addition, FGT states that it seeks Commission permission to transfer by sale to Copano the 0.3 mile 4-inch Phillips Spradley Lateral which FGT states was abandoned in place pursuant to an order issued by the Commission on May 5, 1983, in Docket No. CP83–80–000.

It is further stated that the abandonment and sale proposed herein will not impair any current services nor will it disadvantage any existing customer of FGT. FGT indicates that the proposed abandonment and sale of the subject facilities will save FGT approximately $10,500 per year in operating and maintenance costs.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 23, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11986 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT97–22–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Filing

May 2, 1997.

Take notice that on April 30, 1997, Great Lakes Gas Transmission Limited Partnership (Great lakes) tendered for filing the following tariff sheets, proposed to become effective January 1, 1997:

Second Revised Volume No. 1
Second Revised Sheet No. 3
First Revised Sheet No. 3A
First Revised Sheet No. 3B
First Revised Sheet No. 3C

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to § 154.106(c) of the Commission's regulations. The revisions to the maps reflect the addition of several meter stations on Great Lakes' system as well as the construction of two loop sections.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12026 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–351–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 1997.

Take notice that on April 30, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective June 1, 1997:

Second Revised Sheet No. 1902
Fifth Revised Sheet No. 1906
Fifth Revised Sheet No. 2707
First Revised Sheet No. 2708
Original Sheet No. 2709

Koch states that it is filing is submitted as an application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. § 717c (1988), and Part 154 of the Rules and Regulations of the Federal Energy Regulatory Commission.

Koch states that it files the above tariff sheets to provide certain options to the procedure for assessing the Unauthorized Gas penalty on its shippers.

Koch also states that it has served copies of this filing upon each affected customer, state commission, and interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12039 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–359–000]

National Fuel Gas Supply Corporation; Notice of Application to Abandon Facilities and Petition for Declaratory Order

May 2, 1997.

Take notice that on April 21, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, and Lobo Energy, Inc. (Lobo), 3333 East Florida Avenue, No. 6, Denver, Colorado 80210, filed an application in Docket No. CP97–359–000. In the application, National Fuel requests permission and approval, pursuant to section 7(b) of the Natural Gas Act, to abandon/sell a certificated gathering line (Line N–50, in Erie County, New York) to Lobo, and Lobo requests a declaratory order from the Commission disclaiming jurisdiction over the Line N–50 facilities after it acquires them, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The Line N–50 facilities to be sold to Lobo include Line N–50 (approximately 6,086 feet of 2-inch and 4-inch pipeline), one uncertificated metering and regulating station (designated EM–MS–93–XX), and the applicable rights-of-way, easements, permits, and property interests related thereto. According to National Fuel and Lobo, Line N–50 is a dead-end system with five (5) production wells attached to it, that operates at a pressure of 60 psig, without compression or gas processing facilities.

National Fuel further states that Line N–50 was constructed under budget authorization granted to National Fuel on July 6, 1978 in Docket No. CP78–297, and that it has agreed to sell the Line N–50 facilities to Lobo for $1,000.

Lobo requests the Commission to determine that, subsequent to their transfer to Lobo, the Line N–50 facilities will not be subject to the Commission's jurisdiction. Lobo states that the Commission should find that the primary function of the Line N–50 facilities is gathering, given the characteristics of the facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 23, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel and Lobo to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11987 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–22–005]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 1997.

Take notice that on April 16, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective April 1, 1997:

Ninth Revised Sheet Number 156

Northern Border states that the proposed tariff change is being filed to correct an inadvertent error in the Maximum Rate shown on Sheet Number 156 in its tariff filing in Docket No. RP97–22–003 as approved by Commission order dated March 26, 1997.

Northern Border states that the proposed change does not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of the filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12028 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–275–002]

Northern Natural Gas Company; Notice of Compliance Filing

May 2, 1997.

Take notice that on April 29, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff the following tariff sheets effective on April 4, 1997:

Fifth Revised Volume No. 1

Substitute First Revised Sheet No. 300
Original Sheet No. 301

Northern states that this filing is made in compliance with the Commission's Order issued April 3, 1997 in Docket No. RP97–275–000.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestants a parties to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12031 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES96–19–000]

Rochester Gas and Electric Corporation; Notice of Filing

May 2, 1997.

Take notice that on April 29, 1997, Rochester Gas and Electric Corporation (RG&E) filed a letter with the Federal Energy Regulatory Commission requesting that the order issued on April 17, 1996, by the Commission on delegated authority, be amended to authorize RG&E to issue securities in an amount up to $200 million.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with 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 May 14, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12025 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–167–003]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 1997.

Take notice that on April 29, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheets in compliance with the Commission's Order dated April 22, 1997 in this docket, to become effective May 1, 1997.

First Revised Fourth Revised Sheet No. 7
Fifth Revised Sheet No. 8
Fifth Revised Sheet No. 9

On December 31, 1996, Sea Robin filed a Stipulation and Agreement in Docket No. RP95–167 in which it proposed to resolve all of the issues in the proceeding and implement new rates effective January 1, 1997. On April 22, 1997, the Commission issued an ''Order on Settlement, Establishing Just and Reasonable Rates,'' in which the Commission ordered Sea Robin to reduce its rates at the levels contained on the sheets filed herein effective May 1, 1997.

Sea Robin states that the tariff sheets filed herewith reflect Sea Robin's compliance filing of the Commission's April 22 Order. Sea Robin states that since it is planning to seek rehearing of the Commission's Order nothing

contained in this filing should be construed as Sea Robin's acceptance of the Order or the rates contained therein or estoppel of its rights to seek adjustments based on the outcome of the Order on appeal.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154. 210 of the Commission Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12027 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–343–000]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 1997.

Take notice that on April 29, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets set forth on Appendix A to the filing, pursuant to Section 4 of the Natural Gas Act in compliance with the Commission's March 3, 1997, Order in Docket No. RP97–224 to become effective November 1, 1997.

On July 17, 1996, the Commission issued Order No. 587 in Docket No. RM96–1–000 which revised the Commission's Regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in Order No. 587, 18 CFR 284.10(b). The standards govern certain aspects of the following practices of natural gas pipelines: nominations, allocations, balancing, measurement, invoicing, and capacity release. On January 3, 1997, Sea Robin made its compliance filing submitting pro forma tariff sheets to comply with Order No. 587 in Docket No. RP97–224. On March 3, 1997 filing.

The March 3, Order required Sea Robin to file to implement a pooling service on its system effective June 1, 1997. The tariff sheets filed by Sea Robin set for the terms and conditions under which Sea Robin proposes to implement a pooling service on its system. Sea Robin does not propose to charge a rate for such service at this time, although it reserves the right to file with the Commission under Section 4 of the Natural Gas Act to implement a specific rate for the service. In conjunction with the proposed pooling service, Sea Robin proposes to change its methodology for scheduling interruptible transportation service in the event of a capacity constraint on the system. Currently, Sea Robin's tariff provides for a last-on, first-off priority based on the Valid Date of the Service Agreement.

Sea Robin proposes to change this methodology to pro rata for all interruptible services. In addition, Sea Robin proposes to made some clarifications to the manner in which it calculates the Monthly Index Price used for cashing out imbalances under Section 6 of the General Terms and Conditions of its Tariff.

Sea Robin has requested a waiver of the March 3 Order to place the pooling service into effect November 1, 1997, because it does not have the capability to make the necessary programming changes to implement the service by June 1, 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12032 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1906–000]

Southern California Edison Company; Notice of Filing

May 2, 1997.

Take notice that on March 28, 1997, Southern California Edison Company tendered for an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 12, 1997. 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 this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11984 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–345–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

May 2, 1997.

Take notice that on April 30, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of May 1, 1997:

Tariff Sheets Applicable to Contesting Parties

Twenty Fourth Revised Sheet No. 14
Forty Sixth Revised Sheet No. 15
Twenty Fourth Revised Sheet No. 16
Forty Sixth Revised Sheet No. 17
Thirty First Revised Sheet No. 29

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN GSR Surcharge,

due to an increase in GSR billing units effective May 1, 1997.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12034 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 2, 1997.

Take notice that on April 30, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, pursuant to Section 4 of the Natural Gas Act, changes to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2. These changes are reflected in the tariff sheets identified in Appendix A to the filing, with an effective date of June 1, 1997.

Texas Gas states that the proposed general rate case changes would increase revenues from jurisdictional transportation services by approximately $70.9 million, based on the twelve-month period ended January 31, 1997, as adjusted, compared with the underlying rates.

Texas Gas states that the adjustments in rates are attributable to:

(1) An increase in the utility rate base;

(2) Increases in operating expense;

(3) Increase in rate of return and related taxes; and

(4) Revised system rate design quantities.

Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protect said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C., in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary,

[FR Doc. 97–12033 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–71–004]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 2, 1997.

Take notice that on April 30, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to become effective May 1, 1997.

Transco states that the purpose of the instant filing is to place into effect on May 1, 1997, upon the conclusion of the suspension period in this proceeding, the rates filed herein on November 1, 1996, as adjusted (i) to eliminate the costs associated with facilities not in service as of April 30, 1997, the end of the Docket No. RP97–71 test period (ii) to incorporate revisions necessitated by Commission approval of the Docket No. RP95–197 Phase II Settlement and (iii) to incorporate, as appropriate, intervening filings which have been made effective or are pending Commission approval to be effective subsequent to the November 1, 1996, filing in this docket.

Transco states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties to Docket No. RP97–71.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12030 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–373–000]

Washington Water Power Company; Notice of Filing

May 2, 1997.

Take notice that on March 27, 1997, Washington Water Power Company tendered for an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 12, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11985 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–348–000]

Williston Basin Interstate Pipeline Company; Notice of Application

May 2, 1997.

Take notice that on April 17, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed an application pursuant to Section 7(b) of the Natural Gas Act for an order authorizing the replacement of 2.1 miles of Marmarth-Bowman Lateral natural gas transmission pipeline located in Fallon County, Montana and 5.2 miles of the Marmarth-Bowman Lateral natural gas transmission pipeline located in Bowman and Slope Counties, North Dakota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin states that it is also requesting authority to uprate the Maximum Allowable Operating Pressure (MAOP) of the Marmarth-Bowman Lateral from the Baker to Little Beaver mainline to the town of Marmarth, North Dakota from its existing MAOP of 350 psig to an MAOP of 500 psig.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 23, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11989 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2393–000, et al.]

UtiliCorp United, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 1, 1997.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United, Inc.

[Docket No. ER97–2393–000]

Take notice that on April 3, 1997, UtiliCorp United Inc. (UtiliCorp) tendered for filing, on behalf of its WestPlains Energy-Kansas operating division, a service agreement for short term firm point-to-point transmission service between WestPlains Energy-Kansas and Sunflower Electric Power Corp. Under the service agreement, WestPlains Energy-Kansas will provide Sunflower Electric Power Corp. with 20 megawatts of firm point-to-point service for a five-day period commencing April 5, 1997, pursuant to WestPlains Energy-Kansas' open access transmission tariff on file with the Commission. UtiliCorp requests waiver of the Commission's Regulations to permit the service agreement to become effective on April 5, 1997.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. The Trust Known As PPL Facility Trust 97–C, Created Pursuant to a Trust Agreement Dated as of March 19, 1997, as amended and Restated on April 24, 1997, With Resources Capital Investment Corporation

[Docket No. EG97–59–000]

On April 24, 1997, the Trust known as PPL Facility Trust 97–C, Created Pursuant to a Trust Agreement Dated as of March 19, 1997, As Amended and Restated on April 24, 1997, With Resources Capital Investment Corporation, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The applicant will lease an undivided interest in the following eligible facility in England: the electric generating facility known generally as Peterborough Power Facility with a net power capacity of 355 megawatts.

Comment date: May 15, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration to those that concern the adequacy or accuracy of the application.

3. The Trust Known As PPL Facility Trust 97–B, Created Pursuant to a Trust Agreement Dated as of March 19, 1997, as Amended and Restated On April 24, 1997, With Public Service Resources Corporation

[Docket No. EG97–60–000]

On April 24, 1997, the Trust known as PPL Facility Trust 97–B, Created Pursuant to a Trust Agreement Dated as of March 19, 1997, As Amended and Restated on April 24, 1997, with Public Service Resources Corporation, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The applicant will lease an undivided interest in the following eligible facility in England: the electric generating facility known generally as Peterborough Power Facility with a net power capacity of 355 megawatts.

Comment date: May 15, 1997, 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. NP Energy Inc.

[Docket No. ER97–1315–001

Take notice that NP Energy Inc., a broker and marketer of electric power, filed on March 27, 1997, a notice of change in status relating to an agreement to sell and issue to National Power of America, Inc. common stock constituting 50 percent of the issued and outstanding common stock of NP Energy, Inc., and to sell and issue to National Power of America, Inc. all of the preferred stock of NP Energy Inc.

Comment date: May 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Company

[Docket No. ER97–2394–000]

Take notice that on April 3, 1997, Virginia Electric and Power Company (Virginia Power) tendered for filing executed Service Agreements between Virginia Electric and Power Company and Illinois Power Company, Commonwealth Electric Company, and American Energy Solutions,™ Inc. under the Power Sales Tariff to Eligible

Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service agreements Virginia Power agrees to provide services to Illinois Power Company, Commonwealth Electric Company, and American Energy Solutions,™ Inc. Under the rates terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, the Illinois Commerce Commission and the Massachusetts Department of Public Utilities.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER97–2395–000]

Take notice that on April 3, 1997, Virginia Electric and Power Company (Virginia Power) tendered for filing executed Service Agreements to be substituted for the timely filed unexecuted service agreements with: (1) Equitable Power Services filed on February 21, 1997; (2) the Power Company of America, L.P. filed on March 5, 1997; (3) NIPSCo Energy Services, Inc. filed on March 13, 1997; (4) ConAgra Energy Services, Inc. filed on March 14, 1997; (5) Valero Power Services filed on March 26, 1997; and (6) USGen Power Services, L.P. filed on March 26, 1997.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER97–2595–000]

Take notice that on April 18, 1997, Commonwealth Edison Company (ComEd) submitted for filing a Service Agreement for a firm transaction with Sonat Power Marketing, LP (Sonat), two Service Agreements for various firm transactions with Commonwealth Edison Company, in its wholesale merchant function (ComEd WMD), and three non-firm Service Agreements with EnerZ Corporation (EnerZ), Cenerprise, Inc. (Cenerprise), and Carolina Power and Light Company (CP&L) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests various effective dates, corresponding to the date each service agreement was entered into, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Sonat, ComEd WMD, EnerZ, Cenerprise CP&L, and the Illinois Commerce Commission.

Comment date: May 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER97–2596–000]

Take Notice that on April 18, 1997, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Ohio Edison Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Ohio Edison Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of March 25, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER97–2597–000]

Take Notice that on April 18, 1997, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Atlantic City Electric Company.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Atlantic City Electric Company under Northern Indiana Public Service Company's Power Sales Tariff. Northern Indiana Public Service Company and Atlantic City Electric Company request waiver of the Commission's sixty-day notice requirement to permit an effective date of April 30, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Louisiana Electric Company, Inc.

[Docket No. ER97–2603–000]

Take notice that on April 18, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing a service agreement under which CLECO will provide non-firm point-to-point transmission service to Equitable Power Services Company under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Equitable Power Services Company.

Comment date: May 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Applied Resources Integrated Services, Inc.

[Docket No. ER97–2604–000]

Take notice that on April 18, 1997, Applied Resources Integrated Services, Inc. (ARIS) petitioned the Commission for acceptance of ARIS 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.

ARIS intends to engage in wholesale electric power and energy purchases and sales as a marketer. ARIS is not in the business of generating or transmitting electric power. Applied Resources Integrated Services, Inc. (ARIS) through its affiliates provides energy conservation and power systems/electrical contracting services.

Comment date: May 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Company

[Docket No. ER97–2605–000]

Take notice that on April 18, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for Southern Energy Trading and Marketing, Inc. (Southern). Boston Edison requests that the Service Agreement become effective as of April 1, 1997.

Edison states that it has served a copy of this filing on Southern and the Massachusetts Department of Public Utilities.

Comment date: May 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). 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 this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–11983 Filed 5–7–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5823–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Public Water System Annual Compliance Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): ''Public Water System Annual Compliance Report.'' Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 7, 1997.

ADDRESSES: Interested persons wishing to obtain a copy of this ICR may contact the U.S. Environmental Protection Agency; Office of Enforcement and Compliance Assurance; Chemical, Commercial Services and Municipal Division; 401 M St. SW (2224A) Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Melanie La Force, (202) 564–7068, (202) 564–0034, LaForce.Melanie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are State governments.

Title: Public Water System Annual Compliance Report.

Abstract: States are required to prepare for EPA by January 1, 1998, a detailed report with Executive Summary on drinking water violations. EPA is to then take the information prepared by the States and prepare a national report that aggregates the information collected from the States as well as report on Indian Tribes information. EPA is to make recommendations to remedy problems associated with drinking water violations in the States. This activity is required under section 1414(c)(3) of the Safe Drinking Water Act to ensure compliance and public safety. The information reported by States is required under the Safe Drinking Water Act. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

States are required to prepare a report that lists violations in the following four categories: Maximum Contaminant Levels, Treatment Techniques, Variances and Exemptions, and Monitoring violations considered to be significant. EPA is to then take this information and prepare a national report summarizing the information reported by the States.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated annual hour burden for this report is 22,000 hours. Each year, States will be required to produce data reports, report to the EPA database, make corrections, and assemble a report summarizing the data. This reporting activity is combined with other types of reporting activities and includes gathering of information used in other required reports. There are estimated 50 responses for 50 States. The annual burden hours per response is 444 hours. The responses are in the form of an annual report to EPA. This report uses resources and data systems that are currently available to the State. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Elliott Gilberg,

Division Director, Chemical and Commercial Services and Municipal Division.

[FR Doc. 97–11990 Filed 5–7–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5823–5]

Amendment to Common Sense Initiative Council, Printing Sector Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Amendment to open meeting of the Public Advisory Common Sense Initiative Council, Printing Sector Subcommittee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is given that the dates and times for the Common Sense Initiative Council's Printing Sector Subcommittee meeting and workgroup meetings scheduled for May 20 and 21, 1997, in Washington, DC, have been amended.

AMENDMENT OF OPEN MEETING NOTIFICATION: Notice is hereby given that the Environmental Protection Agency has amended an open meeting of the

Common Sense Initiative Council's Printing Sector Subcommittee (reference FRN dated May 2, 1997, 62 FR 24106) scheduled for Tuesday, May 20 and Wednesday, May 21, 1997, in Washington, DC. The Printing Sector Subcommittee will meet on May 20, 1997 from 10:30 a.m. EDT until 5:00 p.m. EDT. There are no scheduled workgroup meetings on May 20. The Printing Sector Subcommittee will meet on May 21, 1997, from 8:30 a.m. until noon only if the members determine at their May 20 meeting that they need to continue their meeting. No workgroup meetings are scheduled at this time for May 21, 1997; however, if the Subcommittee determines workgroup meetings are necessary, the Multimedia Flexible Permitting Team and the New York City Education Project Team will meet as time allows. The Subcommittee Meeting will be held at the Helen Dwight Reid Education Foundation, 1319 Eighteenth Street, NW., Washington, DC as previously noted. The telephone number is (202) 296–6267.

FOR FURTHER INFORMATION CONTACT: For more information regarding the amendment of this meeting, please contact Frank Finamore, Designated Federal Officer (DFO), at EPA, by telephone on (202) 564–7039, or Mick Kulik, Alternate DFO, at EPA Region 3 in Philadelphia, PA on (215) 566–5337.

Dated: May 1, 1997.

Robert A. English,

Acting Designated Federal Officer.

[FR Doc. 97–11992 Filed 5–7–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5823–2]

Proposed Past Response Costs Provision, Part of an Administrative Order on Consent, Noticed Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: The Galary Property Site, Fairhaven, MA

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed past response costs provision in an administrative order on consent, and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (''EPA'') has signed an administrative order on consent (''AOC'') with Cornell-Dubilier Electronics, Inc. (''CDE'') in which CDE has agreed to perform a removal action at the Galary Property Site, Fairhaven, Massachusetts (''Site''). The AOC contains a provision stating that the EPA will not sue CDE for recovery of the EPA's past response costs incurred in connection with the removal action or the AOC. The EPA is giving notice of this provision and is seeking public comment on it.

DATES: Comments must be provided on or before June 9, 1997.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCH, Boston, Massachusetts 02203, and should refer to: Past Response Cost Provision, Galary Property Site, Fairhaven, Massachusetts, CERCLA Docket No. I–97–1034.

FOR FURTHER INFORMATION CONTACT: Sharon C. Fennelly, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building, Mailcode HBR, Boston, Massachusetts 02203, (617) 223–5541.

SUPPLEMENTARY INFORMATION: On April 15, 1997, the EPA signed the above-described AOC. The AOC contains a provision (the ''Past Response Cost Provision'') stating that the EPA will not sue or take administrative action under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. § 9607(a), against CDE for recovery of past response costs incurred by the EPA or the United States in connection with the removal action or the AOC, provided that certain conditions are met. ''Past response costs'' are defined elsewhere in the AOC to mean all costs incurred by the EPA and the United States in connection with the Site for the period of time up to and including the effective date of the AOC. The AOC's effective date is April 18, 1997.

Notice of the Past Response Costs Provision (AOC Paragraph 48) is being published, and an opportunity for public comment being provided, in accordance with section 122(I) of CERCLA, 42 U.S.C. § 9622(I). The public comment period will last thirty (30) days from the date of publication of this notice.

The EPA will consider any public comments received during the thirty (30) day comment period before the EPA makes a final decision as to whether to accept the Past Response Cost Provision as part of the AOC. Should the EPA accept the Past Response Costs Provision, the EPA would do so under the authority of section 122(h) of CERCLA, 42 U.S.C. § 9622(h), which provides the EPA with authority to consider, compromise, and settle a claim under section 107 of CERCLA, 42 U.S.C. § 9607, for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action.

To facilitate public comment on the Past Response Cost Provision, the EPA will place the AOC, together with all exhibits, into the Docket for public inspection. Further, a copy of the AOC may be obtained in person or by mail from Sharon C. Fennelly, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building, Mailcode HBR, Boston, Massachusetts 02203, (617) 223–5541.

The EPA's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCH, Boston, Massachusetts 02203 (CERCLA Docket No. I–97–1034).

Dated: May 1, 1997.

Frank Ciavattieri,

Acting Director of the Office of Site Remediation and Restoration.

[FR Doc. 97–11991 Filed 5–7–97; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, May 20, 1997, at 2:00 p.m. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

Task Force Report on Litigation Strategy.

Closed Session

1. Litigation Authorization: General Counsel Recommendations.

2. Agency Adjudication and Determination of Federal Agency Discrimination Complaint Appeals.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission meetings.) Please telephone (202) 663–7100

(voice) and (202) 663–4074 (TTD) at any time for information on these meetings. **CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: May 6, 1997.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 97–12282 Filed 5–6–97; 3:46 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; FCC To Hold Open Commission Meeting Wednesday, May 7, 1997

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, May 7, 1997, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Office of General Counsel and Office of Communications Business Opportunities.	Title: Section 257 proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (GN Docket No. 96–113). Summary: The Commission will consider addressing implementation of Section 257.
2	Common Carrier	Title: Federal-State Joint Board on Universal Service (CC Docket No. 96–45). Summary: The Commission will consider action concerning the rules to implement section 254 of the Telecommunications Act of 1996.
3	Common Carrier	Title: Access Charge Reform (CC Docket No. 96–262), Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94–1), Transport Rate Structure and Pricing (CC Docket No. 91–213), End User Common Line Charges (CC Docket No. 95–72). Summary: The Commission will consider action concerning various issues raised in the above-captioned proceedings.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capital Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1700; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418–0460, or TTY (202) 418–1398; fax numbers (202) 418–2809 or (202) 418–7286.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–12171 Filed 5–6–97; 11:52 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy on Assistance to Operating Insured Depository Institutions; Rescission of Policy Statement

AGENCY: Federal Deposit Insurance Corporation (the FDIC).

ACTION: Rescission of policy statement.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, the FDIC is rescinding its Statement of Policy on Assistance to Operating Insured Depository Institutions (the Policy Statement). The Policy Statement, which reflects various statutory requirements of the Federal Deposit Insurance Act (the FDI Act), provides criteria for the FDIC's consideration of proposals it receives for assistance to operating insured depository institutions under section 13(c) of the FDI Act (assistance proposals). The FDIC is rescinding the Policy Statement, as it is duplicative of statutory requirements in the FDI Act, it is not required by the FDI Act or necessary for purposes of the FDIC's consideration of assistance proposals it receives. The FDIC does not anticipate receiving many viable assistance proposals in the future, as it is unlikely that any assistance proposals will meet the statutory requirements.

DATES: This Policy Statement is rescinded May 8, 1997.

FOR FURTHER INFORMATION CONTACT: Herbert J. Held, Assistant Director, Division of Resolutions and Receiverships, (202) 898–7329; Sean Forbush, Resolutions Specialist, Division of Resolutions and Receiverships, (202) 898–8506; Barbara I. Taft, Assistant General Counsel, Legal Division, (202) 736–0183, Michael B. Phillips, Counsel, Legal Division, (202) 898–3581, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI)[1] requires the FDIC, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision each to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) of CDRI also requires each of the federal banking agencies to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

The current Statement of Policy on Assistance to Operating Insured Depository Institutions, which was adopted by the Board of Directors of the FDIC, was published in the **Federal Register** on December 18, 1992.[2] The Policy Statement, which reflects various statutory requirements of the FDI Act, provides criteria for the FDIC's

[1] 12 U.S.C. 4803(a).

[2] *See* 57 FR 60203 (December 18, 1992).

consideration of proposals it receives for assistance to operating insured depository institutions under section 13(c) of the FDI Act. The FDIC published for comment in the **Federal Register** on July 3, 1996, a proposed revision to the Policy Statement, which updated and revised the Policy Statement.[3] The proposed revision to the Policy Statement resulted from the FDIC's systematic review of its regulations and written policies under section 303(a) of CDRI. The following primary changes to the Policy Statement were reflected in the proposed revision to the Policy Statement: (i) Deletion of references to the Resolution Trust Corporation, which statutorily ''sunset'' on December 31, 1995; and (ii) the incorporation of the requirements of section 11 of the Resolution Trust Corporation Completion Act of 1993,[4] which revised section 11(a)(4) of the FDI Act, 12 U.S.C. 1821(a)(4), to prohibit the use of the Bank Insurance Fund or the Savings Association Insurance Fund to benefit shareholders of a failed or failing insured depository institution, except in cases of systemic risk determined in accordance with section 13(c)(4)(G) of the FDI Act.[5]

The only comment received on the proposed revision to the Policy Statement was a letter dated November 25, 1996, from Representative James A. Leach (R-Iowa), Chairman, Committee on Banking and Financial Services, U.S. House of Representatives. Chairman Leach indicated his strong opposition to providing any assistance which benefits shareholders of a failed or failing institution, except in cases of systemic risk as provided in section 13(c)(4)(G) of the FDI Act.

As part of its ongoing review under section 303(a) of CDRI, the FDIC has determined that the FDIC's written policies can be streamlined by rescinding the Policy Statement. The Policy Statement, which is duplicative of statutory provisions of the FDI Act, is not required by the FDI Act. It is not necessary for consideration by the FDIC of assistance proposals it receives. Assistance proposals the FDIC receives will be evaluated against the applicable provisions of the FDI Act.

The Policy Statement has not been utilized much in recent years. As section 13(c)(4) of the FDI Act requires the FDIC to select the resolution alternative that involves the least cost to the relevant deposit insurance fund, any open assistance proposal must be evaluated on a competitive basis with other available resolution alternatives. Because of the cost savings inherent in FDIC-assisted transactions involving the appointment of a receiver for an institution, it is unlikely that an open assistance proposal will be more cost effective than an available closed institution resolution.[6] Further, it will be extremely difficult for assistance proposals to meet the least-cost test, the requirements of section 11(a)(4), and other applicable statutory requirements. The FDIC has not approved any assistance proposals since 1992, when two proposals were approved. During the period 1993–1996, the FDIC received only two assistance proposals which were not approved, as they did not meet the applicable statutory requirements.

For the above reasons, the Policy Statement is rescinded.

By order of the Board of Directors.

Dated at Washington, D.C. this 29th day of April, 1997.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–11966 Filed 5–7–97; 8:45 am]

BILLING CODE 6714–01–P

[3] *See* 61 FR 34814 (July 3, 1996).

[4] Pub. L. 103–204 (1993).

[5] In pertinent part, section 13(c)(4)(G) of the FDI Act, 12 U.S.C. 1823(c)(4)(G) provides that the FDIC has the authority to provide to an operating insured institution assistance that does not meet the requirements of section 13(c)(4)(A) of the FDI Act only if the Secretary of the Treasury (in consultation with the President and upon the written recommendations of two-thirds of the Board of Directors of the FDIC and two-thirds of the Board of Governors of the Federal Reserve System) determines that the FDIC's compliance with section 13(c)(4)(A) of the FDI Act would have serious adverse effects on economic conditions or financial stability and the assistance to the operating insured institution would avoid or mitigate such adverse effects.

[6] Among the cost advantages favoring a resolution transaction following appointment of a receiver for an institution are the effect of the receivership on the contingent liabilities of the failed institution, the potential for uninsured depositors and other unsecured creditors to share in the loss incurred on the institution and the ability of the FDIC as receiver to repudiate burdensome contracts.

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: 97–11509.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, May 8, 1997, 10:00 a.m., Meeting open to the public.

This meeting was cancelled.

DATE & TIME: Tuesday, May 13, 1997 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, May 15, 1997 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1997–05: Paul B. O'Kelly, General Counsel, on behalf of the Chicago Mercantile Exchange.
Status Report of Computerization Projects.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–12200 Filed 5–6–97; 1:07 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Worldwide International, 1816 Cedarwillow Drive, Columbus, OH 43229, Carolyn Sue Logan, Sole Proprietor
Air-Land & Sea Transport, Inc., 447 West 38th Street, Houston, TX 77018, Officers: Ray Ludwick, President, Cindy Ludwick, Secretary
Stevens Forwarders, Inc., 155 Diplomat Drive, Suite D, Columbia City, IN 46725, Officers: Morrison M. Stevens, President, John H. Stevens, Treasurer
Vendome Cargo Services, Inc., 8032 NW 68th Street, Miami, FL 33166, Officers: Jose L. Ceballos, President, Melba E. Ceballos, Treasurer

Dated: May 5, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–11971 Filed 5–7–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 97–08]

Possible Unfiled Agreements Among A.P. Moller-Maersk Line, P&O Nedlloyd Limited and Sea-Land Service, Inc.; Order of Investigation and Hearing

On February 22, 1996, the Federal Maritime Commission (''Commission'' or ''FMC'') served an order pursuant to section 15 of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. 1714, upon the Trans-Atlantic Conference Agreement (''TACA'') and its members to develop facts and evidence related to a possible agreement to restrict the members' rights to charter space to non-conference carriers.[1] Among documents received in response to that section 15 order were incomplete copies[2] of an unfiled Record of Discussions (''ROD'') among A.P. Moller-Maersk Line (''Maersk''), P&O Containers Limited (''P&O''), and Sea-Land Service, Inc. (''Sea-Land'') dated August 16, 1990. That ROD has a counterpart in FMC Agreement No. 203–011299 (''FMC agreement'') among the same three carriers, signed and filed with the Commission on August 27, 1990.[3] Both agreements provide for slot chartering in the U.S. Pacific Coast/North Europe trade.

While the form of the ROD and the FMC agreement are very similar, and both agreements are organized as required by the Commission's rules set forth at 46 CFR 572.403, there appear to be at least three substantive differences between the filed and unfiled agreements. First, there is a specific conference membership provision in the ROD which reads, in pertinent part:

5.2 Upon effectiveness of this Agreement, the Parties are to be members of the USA-North Europe Rate Agreement and the North Europe-USA Rate Agreement.[4]

At the time ROD was executed, Maersk was a member of the eastbound USA-North Europe Rate Agreement, but had been operating as a non-conference carrier in the westbound direction in these trades. P&O and Sea-Land were members of both the eastbound and westbound conferences. Maersk joined the westbound North Europe-USA Rate Agreement on October 1, 1990.

The FMC agreement, signed and filed eleven days after execution of the ROD, reads in pertinent part:

5.6 The Parties shall discuss and agree on a common position as to their conference/non-conference status in the Trade.

The FMC agreement became effective on October 11, 1990, ten days after Maersk joined the westbound North Europe-USA Rate Agreement.

Second, the ROD contains specific authority under which Maersk will charter to P&O and Sea-Land a defined minimum and maximum number of slots on Maersk vessels to and from California ports. The ROD contains no agreement under which any of the parties will charter space on P&O or Sea-Land vessels and, in fact, it appears that P&O and Sea-Land have operated no vessels in this service since this slot charter became effective. In addition, the ROD appears to contain no authority for any of the parties to influence the number and size of vessels, or number of sailings provided by other parties.

In contrast to this specific and limited agreement set forth in the ROD, the FMC agreement covers both California and U.S. Pacific Northwest ports and states, in pertinent part:

5.1 The Parties may charter, exchange or otherwise make space and slots available to each other in such amounts, for such charter hire, and upon such other terms as they may from time to time agree.

5.2 The Parties may consult and agree upon the deployment and utilization of their vessels in the Trade, including, without limitation, their sailing schedules, service frequency, ports to be serviced, port rotation, determining which vessels they will operate and adding or withdrawing vessels from the Trade.

5.3 The Parties may agree upon the number and type of vessels to be operated by each party in the Trade. The Parties may charter vessels to and from each other, or from other persons, for use in the Trade on such terms as they may from time to time agree. The maximum number of vessels to be operated hereunder, without further amendment, is 25, each vessel having a maximum size of 4,500 TEU's.

The third notable difference is related to the second, and is consistent with the conversion of the one-way slot charter agreed to in the ROD into a reciprocal space charter arrangement for filing purposes. The FMC agreement provides that the parties may discuss and agree upon the use of terminal facilities, may jointly negotiate and enter into leases of such facilities, and may jointly contract for stevedoring, terminal, or other related ocean and shoreside services and supplies, and may operate joint equipment maintenance and repair facilities and joint equipment pools. There appears to be no such authority in the ROD.

The 1984 Act and the Commission's regulations are explicit in requiring that a true and complete copy of every applicable agreement be filed with the Commission, and that the parties operate only pursuant to the terms of such agreements. Section 5(a) of the 1984 Act, 46 U.S.C. app. 1704(a), requires that:

A true copy of every agreement entered into with respect to an activity described in section 4 (a) or (b) of this Act shall be filed with the Commission. * * * The Commission may by regulation prescribe the form and manner in which an agreement shall be filed and the additional information and documents necessary to evaluate the agreement.

Sections 10(a)(2) and 10(a)(3) of the 1984 Act, 46 U.S.C. app. 1709(a)(2) and 1709(a)(3), state that no person may:

(2) operate under an agreement required to be filed under section 5 of this Act that has not become effective under section 6, or that has been rejected, disapproved, or canceled; or

(3) operate under an agreement required to be filed under section 5 of this Act except in accordance with the terms of the agreement or any modifications made by the Commission to the agreement.

The Commission's rules implementing these statutory provisions are set forth at 46 CFR part 572, and, as pertinent to the issues set forth herein, provide as follows:

46 CFR 572.103 Policies * * *

(g) An agreement filed under the Act must be clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among the agreement members.

46 CFR 572.407 Complete and definite agreements

(a) Any agreement required to be filed by the Act and this part shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties.

(b) Except as provided in paragraph (c) of this section, agreement clauses which contemplate a further agreement, the terms of which are not fully set in the enabling agreement, will be permitted only if the enabling agreement indicates that any such further agreement cannot go into effect unless filed and effective under the Act.

[1] This section 15 order was addressed to TACA and its seventeen member lines. Responses were submitted in May 1996, and required follow-up with the conference and its members which was complete in December 1996.

[2] These copies do not include certain appendices and an addendum which are mentioned in the text of the document.

[3] On December 31, 1996, the FMC agreement was amended to change the name of P&O Containers Limited to P&O Nedlloyd Limited (''P&O Nedlloyd''). No other amendments to this agreement have been filed with the Commission.

[4] These conference were predecessors to TACA in the U.S./North Europe trades.

(c) Further specific agreements or understandings which are established pursuant to express enabling authority in an agreement are considered interstitial implementation and are permitted without further filing under section 5 of the Act only if the further agreement concerns routine operational or administrative matters, including the establishment of tariff rates, rules, and regulations.

In view of the differences between the ROD and the FMC agreement among Maersk, P&O (now P&O Nedlloyd) and Sea-Land, which appear to extend beyond routine operational or administrative matters and concern activities which affect competition in the U.S. Pacific Coast/North Europe trade, the Commission questions whether the FMC agreement is the true and complete agreement or agreements among the parties. Neither the ROD nor subsequent operations by the parties indicate that the parties agreed to, or have engaged in, reciprocal space chartering in this trade. It appears, instead, that P&O and Sea-Land may have terminated direct vessel service to and from certain U.S. Pacific coast ports in connection with this charter of space on Maersk vessels.[5] Thus, the FMC agreement may not reveal the true competitive impact of the parties' arrangements. Moreover, there is nothing in the FMC agreement which would indicate that the parties had already entered into and implemented a specific agreement under which Maersk became a member of the North Europe-USA Rate Agreement.

Section 7(a) of the 1984 Act, 46 U.S.C. app. 1706(a), provides, as pertinent here, that the antitrust laws of the United States do not apply to—

(1) Any agreement that has been filed under section 5 of this Act and is effective under section 5(d) or section 6 * * *, [or]

(2) Any activity or agreement within the scope of this Act, whether permitted under or prohibited by this Act, undertaken or entered into with a reasonable basis to conclude that (A) it is pursuant to an agreement on file with the Commission and in effect when the activity took place.

This broad grant of antitrust immunity necessitates careful Commission oversight of the activities carried out pursuant to agreements. Effective oversight could be thwarted by failure to disclose essential elements of agreements, or by language filed with the Commission which may not permit an assessment of an agreement's true competitive impact.

[5] Prior to this agreement with Maersk, P&O and Sea-Land apparently provided service in this trade on vessels operated in conjunction with Hapag-Lloyd AG, Container Line AB, and Compagnie Generale Maritime.

In view of the above, the Commission is instituting this investigation to determine whether Maersk, P&O Nedlloyd and/or Sea-Land are violating or have violated pertinent provisions of the 1984 Act and Commission regulations by operating pursuant to an agreement or agreements not filed with the Commission, the terms of which may be substantively different from those contained in the parties' agreement which is on file with the Commission and effective pursuant to the 1984 Act. If so, this proceeding also shall determine whether civil penalties should be assessed and, if so, in what amount, and whether a cease and desist order should be issued.

Now therefore, it is ordered, That pursuant to sections 5(a), 10(a)(2), 10(a)(3), 11, and 13 of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. 1704(a), 1709(a)(2), 1709(a)(3), 1710, and 1712, and the Commission's regulations set forth at 46 CFR 572.103(g), and 46 CFR 572.407, an investigation is hereby instituted to determine, with respect to space/slot chartering in the U.S. Pacific Coast/North Europe trade:

1. Whether Maersk, P&O Nedlloyd and Sea-Land are violating or have violated section 5(a) of the 1984 Act by failing to file a true copy of any agreement entered into with respect to an activity described in section 4(a) or (b) of the 1984 Act, 46 U.S.C. app. 1703(a) or (b);

2. Whether Maersk, P&O Nedlloyd and Sea-Land are violating or have violated section 10(a)(2) of the 1984 Act by operating under any agreement required to be filed under section 5 of the 1984 Act that has not become effective under section 6 thereof;

3. Whether Maersk, P&O Nedlloyd and Sea-Land are violating or have violated section 10(a)(3) of the 1984 Act by operating in a manner not in accordance with the terms of an agreement required to be filed under section 5 of the 1984 Act;

4. Whether Maersk, P&O Nedllyod and Sea-Land are violating or have violated 46 CFR 572.103(g) by filing an agreement with the Commission that does not embody the complete understanding of the parties and/or does not set forth the specific authorities and conditions under which the parties will conduct their present operations and regulate the relationships among the agreement members; and

5. Whether Maersk, P&O Nedllyod and Sea-Land are violating or have violated 46 CFR 572.407 by filing an agreement with the Commission that is not the complete agreement among the parties and/or does not specify in detail the substance of the understanding of the parties.

It is further ordered, That Maersk, P&O Nedlloyd and Sea-Land are designated as Respondents in this proceeding.

It is further ordered, That, in the event violations of the 1984 Act or the Commission's regulations are found, this proceeding shall determine whether civil penalties should be assessed against any of the Respondents and, if so, in what amounts.

It is further ordered, That, in the event violations of the 1984 Act or the Commission's regulations are found, this proceeding shall determine whether a cease and desist order should be issued against any or all of the Respondents.

It is further ordered, That a public hearing be held in this proceeding and that these matters be assigned for hearing before an Administrative Law Judge (''ALJ'') of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the ALJ in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding ALJ only after consideration has been given by the parties and the presiding ALJ to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be solved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding.

It is further ordered, That notice of this Order be published in the **Federal Register,** and a copy be served on each party of record.

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72.

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on each party of record.

It is further ordered, That all documents submitted by any party of record in this proceeding shall be

directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on each party of record.

Finally, it is ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the presiding ALJ shall be issued by May 5, 1998, and the final decision of the Commission shall be issued by September 2, 1998.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–11999 Filed 5–7–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 97–07]

Possible Unfiled Agreement Between Hyundai Merchant Marine Company, Ltd., and Mediterranean Shipping Co., S.A.; Order of Investigation and Hearing

On September 6, 1995, Hyundai Merchant Marine Company, Ltd. (''Hyundai'') and Mediterranean Shipping Co., S.A. (''MSC'') filed with the Federal Maritime Commission (''Commission'' or ''FMC'') FMC Agreement No. 217–011512 (''FMC agreement'' or ''filed agreement''), under which Hyundai is authorized to charter space on MSC's vessels in the trade between U.S. Atlantic and Gulf ports and ports in North Europe. At the time this FMC agreement was filed, MSC was a member of the Trans-Atlantic Conference Agreement (''TACA''). Hyundai became a member of TACA on September 11, 1995.

As a result of discussions with filing counsel concerning possible restrictions on the rights of TACA members to charter space to non-conference carriers, the staff questioned whether the FMC agreement reflected the entire agreement between the parties. There was no reference to TACA membership in the FMC agreement, as initially filed. In response to the staff's inquiry, on September 29, 1995, the parties filed an amendment to the FMC agreement, as follows:

> 5.7 In the event either or both of the Parties shall, at any time during the period this agreement may remain in effect, adhere to any other agreement in the Trade, including the Trans-Atlantic Conference Agreement (''TACA'') and/or Transatlantic Policing Agreement (''TPA'') and any successor to the TACA and/or TPA, they herein undertake to abide by the terms and conditions of any such other agreements and, in the particular case of the TACA, the provisions of Article 15 thereof.

The FMC agreement between Hyundai and MSC, as amended, became effective, pursuant to section 6 of the Shipping Act of 1984, 46 U.S.C. app. 1701, *et seq.* (''1984 Act'') on October 21, 1995.

Article 15 of the TACA agreement is entitled ''Adherence to Tariffs, Service Contracts and Authorized Practices; Conflicts of Interest.'' Article 15.3 thereof reads, in part:

> All Parties shall strictly abide by and observe Agreement rules, regulations and authorized practices and no Party shall engage, directly or indirectly, through any holding, parent, subsidiary, associated or affiliated company or companies (''Related Companies'') or otherwise, in the transportation of cargo in the Trade at rates or on terms and conditions other than those agreed upon or otherwise authorized pursuant to the provisions of this Agreement * * *.

On the basis of concerns that this language may preclude TACA members from chartering space on their vessels to non-conference lines, the Commission issued an order pursuant to section 15 of the 1984 Act on February 22, 1996, requiring information and documents related to this issue.[1]

In response to that order, Hyundai and MSC produced a number of documents, including a slot charter agreement between Hyundai and MSC, dated August 4, 1995, and referred to by the parties as a memorandum of agreement (''MOA''). In addition, Hyundai and MSC produced copies of correspondence between negotiators for the two carriers, indicating that the terms of the MOA were the focus of extensive negotiations, while the first draft of the FMC agreement was agreed to without change or substantive discussion. Moreover, the negotiator for MSC informed his counterpart at Hyundai that, where there were discrepancies between the two documents, the terms of the MOA would supersede those of the filed agreement.

The MOA is a detailed document with four appendices,[2] while the FMC agreement is written in general terms and does not contain any appendices or certain other specifics set forth in the MOA.[3] In addition to this difference in the level of detail, there are at least three differences of a more substantive nature between the filed agreement and the MOA.

First, the MOA makes several references, on the title page and in the preamble, to the relationship between this slot charter and TACA. The title page of the MOA states that the slot charter agreement is ''Under the Trans Atlantic Conference Agreement.'' The preamble states:

> This agreement is adopted pursuant to the Conference Agreement.[4] In furtherance of the Conference agreement, the parties have met and communicated among themselves for the purpose of effecting the purposes and provisions of the Conference Agreement. Their decisions are set forth in this agreement. This agreement is supplemental to the Conference Agreement and is subject to all of the rights, obligations, definitions, terms and conditions set forth in the Conference Agreement.

The filed agreement contains no counterpart to this preamble, nor any reference to TACA on the title page.

Second, as originally signed by the parties, the MOA contained an Article 15 which stated:

> 15. Conference Membership
>
> Hyundai and MSC shall take a common position to membership in TACA for the period of this Agreement. No Party will resign from TACA without the agreement of the other Party.

Nothing similar to this commitment appears in the filed agreement. The MOA appears to have been amended by the parties on May 20, 1996, to delete this conference membership provision.[5] A copy of that amendment to the unfiled MOA was submitted to the Commission on June 28, 1996.

The third significant difference between the MOA and the filed agreement is found in the duration of the respective agreements. The MOA states that:

> This agreement will have a firm validity of three years and shall commence on October 1st, 1995 or latest January 1st, 1996. It will remain in effect for a minimum of 36 months. [T]hereafter it will be subject to termination on six months notice given by any party in writing to the party [sic]. The earliest effective notice of termination date, however, will be March 30th, 1998.

Article 9 of the filed agreement states, in pertinent part, that:

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[1] This section 15 order was addressed to TACA and its seventeen member lines. Responses were submitted in May 1996, and required informal follow-up with the conference and its members which was completed in December 1996.

[2] These appendices are: 1. Containerships/capacity/schedules; 2. Financial arrangements; 3. Slot Charter Party; and 4. Restrictions in respect of dangerous goods.

[3] E.g., compensation for unavailable slots; carriage of empty containers; intercoastal moves; utilization reports; costs of vessels out of service; etc.

[4] Conference Agreement is defined by the MOA to mean TACA.

[5] The MOA was first disclosed to the Commission on May 7, 1996, in response to the section 15 order.

This Agreement may be implemented as from the date it becomes lawfully effective and its term shall be of indefinite duration. The Parties may terminate or suspend this Agreement at any time upon such terms as they may determine * * *.

The 1984 Act and the Commission's regulations are explicit in requiring that a true and complete copy of every applicable agreement be filed with the Commission, and that parties operate only pursuant to the terms of such agreements. Section 5(a) of the 1984 Act, 46 U.S.C. app. 1704(a), requires that:

A true copy of every agreement entered into with respect to an activity described in section 4(a) or (b) of this Act shall be filed with the Commission * * *. The Commission may by regulation prescribe the form and manner in which an agreement shall be filed and the additional information and documents necessary to evaluate the agreement.

Sections 10(a)(2) and 10(a)(3) of the 1984 Act, 46 U.S.C. app. 1709(a)(2) and 1709(a)(3), state that no person may:

(2) operate under an agreement required to be filed under section 5 of this Act that has not become effective under section 6, or that has been rejected, disapproved, or canceled; or

(3) operate under an agreement required to be filed under section 5 of this Act except in accordance with the terms of the agreement or any modifications made by the Commission to the agreement.

The Commission's rules implementing these statutory provisions are set forth at 46 CFR part 572, and, as pertinent to the issues set forth herein, provide as follows:

46 CFR 572.103 Policies * * *

(g) An agreement filed under the Act must be clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among the agreement members.

46 CFR 572.407 Complete and Definite Agreements

(a) Any agreement required to be filed by the Act and this part shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties.

(b) Except as provided in paragraph (c) of this section, agreement clauses which contemplate a further agreement, the terms of which are not fully set forth in the enabling agreement, will be permitted only if the enabling agreement indicates that any such further agreement cannot go into effect unless filed and effective under the Act.

(c) Further specific agreements or understandings which are established pursuant to express enabling authority in an agreement are considered interstitial implementation and are permitted without further filing under section 5 of the Act only if the further agreement concerns routine operational or administrative matters, including the establishment of tariff rates, rules, and regulations.

Section 7(a) of the 1984 Act, 46 U.S.C. app. 1706(a), provides, as pertinent here, that the antitrust laws of the United States do not apply to—

(1) any agreement that has been filed under section 5 of this Act and is effective under section 5(d) or section 6 * * *, [or]

(2) any activity or agreement within the scope of this Act, whether permitted under or prohibited by this Act, undertaken or entered into with a reasonable basis to conclude that (A) kit is pursuant to an agreement on file with the Commission and in effect when the activity took place * * *.

This broad grant of antitrust immunity necessitates careful Commission oversight of the activities carried out pursuant to agreements. Effective oversight could be thwarted by failure to disclose essential elements of agreements, or by language filed with the Commission which may not permit an assessment of an agreement's true competitive impact.

It appears that the differences between the Hyundai/MSC filed agreement and the MOA extend beyond routine operational or administrative matters and provide for activities which affect competition between the parties and with other carriers in the transatlantic trades. In particular, it appears that the MOA, as originally signed, effectively ties Hyundai, traditionally a non-conference carrier, to membership in TACA for at least three years. There is nothing in the filed agreement which would alert the Commission or the public to this anticompetitive aspect of the slot charter agreement.

As noted, Hyundai joined TACA effective September 11, 1995, and the FMC agreement became effective on October 21, 1995. Thus, it appears that Hyundai and MSC implemented at least the first part of their unfiled agreement on conference membership, i.e. Hyundai and MSC took a common position to membership in TACA, more than eight months prior to its reported deletion from the MOA on May 20, 1996, and more than a month prior to effectiveness of the FMC agreement.

In view of the above, the Commission is instituting this investigation to determine whether Hyundai and/or MSC are violating or have violated pertinent provisions of the 1984 Act and Commission regulations by operating pursuant to an agreement not filed with the Commission, the terms of which may be substantively different from those contained in the parties' agreement which is on file with the Commission and effective pursuant to the 1984 Act. If so, this proceeding also shall determine whether civil penalties should be assessed and, if so, in what amount, and whether a cease and desist order should be issued.

Now therefore, it is ordered, that pursuant to sections 5(a), 10(a)(2), 10(a)(3), 11, and 13 of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. 1704(a), 1709(a)(2), 1709(a)(3), 1710, and 1712, and the Commission's regulations set forth at 46 CFR 572.103(g), and 46 CFR 572.407, an investigation is hereby instituted to determine, with respect to space/slot chartering in the transatlantic trades:

1. Whether Hyundai and MSC are violating or have violated section 5(a) of the 1984 Act by failing to file a true copy of an agreement entered into with respect to an activity described in section 4(a) or (b) of the 1984 Act, 46 U.S.C. app. 1703 (a) or (b);

2. Whether Hyundai and MSC are violating or have violated section 10(a)(2) of the 1984 Act by operating under an agreement required to be filed under section 5 of the 1984 Act that has not become effective under section 6 thereof;

3. Whether Hyundai and MSC are violating or have violated section 10(a)(3) of the 1984 Act by operating in a manner not in accordance with the terms of an agreement required to be filed under section 5 of the 1984 Act;

4. Whether Hyundai and MSC are violating or have violated 46 CFR 572.103(g) by filing an agreement with the Commission that does not embody the complete understanding of the parties and/or does not set forth the specific authorities and conditions under which the parties will conduct their present operations and regulate the relationships among the agreement members; and

5. Whether Hyundai and MSC are violating or have violated 46 CFR 572.407 by filing an agreement with the Commission that is not the complete agreement among the parties and/or does not specify in detail the substance of the understanding of the parties.

It is further ordered, That Huyndai and MSC are designated as Respondents in this proceeding.

It is further ordered, That, in the event violations of the 1984 Act or the Commission's regulations are found, this proceeding shall determine whether civil penalties should be assessed against either or both of the Respondents and, if so, in what amounts.

It is further ordered, that, in the event violations of the 1984 Act or the

Commission's regulations are found, this proceeding shall determine whether a cease and desist order should be issued against either or both to the Respondents.

It is further Ordered, That a public hearing be held in this proceeding and that these matters be assigned for hearing before an Administrative Law Judge (''ALJ'') of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the ALJ in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding ALJ only after consideration has been given by the parties and the presiding ALJ to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

It is further Ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding.

It is further Ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on each party of record.

It is further Ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72.

It is further Ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on each party of record.

It is further Ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on each party of record.

Finally, it is further Ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the presiding ALJ shall be issued by May 5, 1998, and the final decision of the Commission shall be issued by September 2, 1998.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–11998 Filed 5–7–97; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of revised system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent by the General Services Administration (GSA) to revise a system of records maintained by GSA.

The system of records, Credentials, Passes, and Licenses, GSA/HRO–8, will be revised to show that GSA will collect individual next of kin name and phone number and medical information from employees on a voluntary basis, so that this information may be made available to security and medical personnel in the event of a medical emergency. The system will also be revised to show that data storage will be in the form of or in electronic chips in the individual's identification card itself, and in associated automated data systems.

A new system report was filed with the Chairman of the Committee on Government Operations in the House, the Committee on Governmental Affairs in the Senate, and the Office of Management and Budget.

DATES: Any interested party may submit written comments about this revision. Comments must be received on or before the 30th day following publication of this notice. The system will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESS: Address comments to the General Services Administration (CAI) Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Cunningham, GSA Privacy Act Officer, telephone (202) 501–3415.

Background

The system of records, Credentials, Passes, and Licenses, GSA/HRO–8, will be revised to show that GSA will collect individual next of kin NAME and phone number and medical information from employees on a voluntary basis, so that this information may be made available to security and medical personnel in the event of a medical emergency. The system will also be revised to show that data storage will be in the form of or in electronic chips in the individual's identification care itself, and in associated automated data systems.

System number: GSA/HRO–8.

System name: Credentials, Passes, and Licenses.

System location: This system of records is maintained by the Director, Office of Management Services, 1800 F St. NW, Washington, DC and by the regional Administrative Services Divisions as listed in the appendix.

Categories of Individuals Covered by the System

All employees whose assigned responsibilities require the issuance of credentials for identification and security purposes.

Categories of Records in the System

1. GSA Form 15, Weekend and Holiday Pass (Various personal characteristics).

2. GSA Form 22, Employee Identification Credential—Regional (Photo, name, Social Security Number (SSN), issuance date, serial number, employee signature, and issuing official.

3. GSA Form 48, Request for and Record of Credential or Pass (Name, photo, official address and phone number, home address, next of kin and next of kin phone number, issuance date, serial number, employee signature, and issuing official).

4. GSA Form 277, Employee Identification and Authorization Credential-General (Photo, signature of bearer, name of employee, signature of issuing official, date issued, identification serial number, SSN, position title, official address and phone number, home address and phone number, next of kin, next of kin phone number and medical information).

5. OF 7, Property Pass (Name, building, description of property, agency, and effective date).

6. GSA Form 2941, Parking application (Name address, agency, correspondence symbol, office telephone number, and length of service).

Authority for Maintenance of the System

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended.

Purpose. To assemble in one system information pertaining to passes and credentials for identification and security purposes.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of such use

a. To facilitate the issuance and control of cards, parking permits, building passes, driver licenses, and similar credentials.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the General Services Administration (GSA) becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To provide information to a member of Congress or to a congressional staff member from the records of an individual in response to an inquiry from that congressional office made at the request of the individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. To disclose information to a Federal agency, in response to its requests, in connection with the hiring and retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of a job, the letting of a contract, or the issuance of license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. By the Office of Personnel Management in the production of summary descriptive statistics in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose information to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in the circular.

h. To disclose information to officials of the Merit Systems Protection Board, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

i. To an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee.

j. To the Office of Personnel Management in accordance with the agency's responsibility for evaluation of Federal personnel management.

k. To the extent that official personnel records in the custody of GSA are covered within the systems or records published by the Office of Personnel Management as Government-wide records, they will be considered as part of that Government-wide system. Other official personnel records covered by notices, published by GSA and considered to be separate systems of records may be transferable to the Office of Personnel Management in accordance with official personnel programs and activities as a routine use.

l. To an expert, consultant, or a contractor of GSA to the extent necessary to further the performance of a Federal duty.

m. To medical personnel in the event of a medical emergency.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System

Storage: Information is collected by means of electronic mail and paper forms and may be stored as paper forms, or in electronic chips in the individual's identification card itself, and in associated automated data systems.

Retrievability: Name, SSN, identification (badge) serial number.

Safeguards: When not in use by an authorized person, paper records will be stored in lockable metal file cabinets or secured rooms. Electronic records are protected by a password and may also have a personal identification number (PIN) as a second level of protection.

Retention and disposal: Disposal of records is described in the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2A) and authorized GSA records schedules.

System Manager and Address:

The official responsible for this system is the Director, Office of Management Services, 1800 F Sts., NW., Washington, DC 20405. Since this is a geographically dispersed system, individuals may gain access to it by contacting the officials at locations as listed in the appendix.

Notification Procedure

The address of the agency offices to which inquiries should be addressed and addresses of locations at which the individual may present a request as to whether a system contains records pertaining to himself or herself is the same as that shown in the appendix. Individuals should provide name, social security number, period of employment, and position held to assist the office in locating the record.

Record Access Procedures

An individual can obtain information on procedures for gaining access to records from the Director, Office of Management Services, or Regional Director, Administrative Services Division, as shown in the appendix.

Contesting Record Procedures

GSA rules for access to systems of records, contesting the contents of systems of records and appealing initial determinations are promulgated in 41 CFR 105–64, published in the Federal Register.

Record Source Categories

Information is provided by employee being issued credential and issuing official.

Dated: April 30, 1997.

John H. Davenjay,

Director, Administrative Policy and Information Management Division.

[FR Doc. 97–11958 Filed 5–7–97; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Administration on Aging.

The Administration on Aging (AoA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511):

Title of Information Collection: State Annual Long-Term Care Ombudsman Report;

Type of Request: Extension, With Minor Revision;

Use: To revise an existing information collection for States to use in reporting on activities of their Long-Term Care

Ombudsman Programs as required under Section 712 of the Older Americans Act, as amended;

Frequency: Annually;

Respondents: State Agencies on Aging;

Estimated Number of Responses: 52;

Total Estimated Burden Hours: 9,000.

Additional Information or Comments: The Administration on Aging is submitting to the Office of Management and Budget for approval an extension, with minor revisions, of a reporting form and instructions for the State annual Long-Term Care Ombudsman reports, pursuant to requirements in Section 712 (b) and (h) of the Older Americans Act. The revisions;

(1) Modify the wording of some of the complaint categories to assist respondents in categorizing some complaints which were being placed under ''other'' and;

(2) stipulate that several narrative responses which have not changed since the previous report do not need to be repeated.

The reporting system is for fiscal years 1997-99. Written comments and recommendations for the proposed information collection should be sent within 60 days of the publication of this notice directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, Room 3208, Washington, D.C. 20503.

Dated: April 30, 1997.

Alicia Valadez Ors,

Director, Office of Governmental Affairs and Elder Rights, Administration on Aging.

[FR Doc. 97–12009 Filed 5–7–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 35, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the National Health Service Corps

New

The National Health Service Corps (NHSC) was established in 1971 to help correct the maldistribution of health care personnel and to improve the delivery of services in areas with shortages of health care professionals. Through the Scholarship and Loan Repayment Programs the NHSC recruits health clinicians and places them in areas designated as health professional shortage areas.

The evaluation of this program will include three mail surveys, two directed at scholarship and loan repayment program clinicians (physicians, dentists, physician assistants, nurse practitioners and nurse midwives), and one directed at site administrators currently employing NHSC clinicians. The Survey of NHSC Alumni (clinicians who began service on January 1, 1980 and terminated their service before March 14, 1997) will assess alumni attitudes about the NHSC experience including recruitment, placement, and service contributions (for example, expanding clinical services, serving in clinical leadership positions, participating in quality improvement activities and initiating community primary care initiatives) to the site and community. In addition, the survey will examine various measures of clinician retention in underserved areas. The Survey of NHSC Clinicians (current) will also assess attitudes about the NHSC experience including recruitment, placement and service contribution to the site and community. The Survey of Administrators in Sites with NHSC Clinicians will assess sites' experiences with NHSC clinicians and will provide an assessment of their service contributions to the site and community. The data collected through the surveys will be used to formulate programmatic and policy recommendations designed to strengthen the NHSC program and increase its effectiveness.

Type of survey	No. of respondents	No. of responses per respondent	Avg.burden/response (in hours)	Total burden hours
Alumni Survey	2264	1	.5	1132
Current Clinician Survey	1411	1	.5	706
Site Administrator Survey	252	1	.5	126
Total	3927	1	.5	1964

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 30, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–12054 Filed 5–7–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Request for Nominations of Representatives to the Advisory Committee on Infant Mortality

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The HRSA is requesting nominations for representatives of specified constituencies or organizations to serve on the Advisory Committee on Infant Mortality (ACIM). The composition of the ACIM is being expanded to meet new congressional requirements to provide advice and guidance to the Secretary on health care services provided to mothers and newborns, as authorized under Section 606 (''Newborns'' and Mothers' Health Protection Act of 1996'') of Pub. L. 104–204, the Veterans Administration-Housing and Urban Development Appropriations Act of 1997.

Many of the categories of constituencies or organizations specified by Section 606(b) of the Act for membership on the panel are already represented on the ACIM. Additionally, Congress has identified other organizations with specific areas of expertise for inclusion on the panel. Those categories not already represented in the current membership or that have not been specifically identified by Congress include: health plans; hospitals; employers; and consumers. Nominations are being solicited for persons of national stature representing these four categories who are knowledgeable about maternal and infant health, study methods and quality assurance.

DATES: Nominations should be received by June 9, 1997.

ADDRESSES: All letters of nominations, specifying the nominee's expertise and category they are representing, and curricula vitae of the nominees should be sent to Audrey H. Nora, M.D., M.P.H., Director, Maternal and Child Health Bureau, and Assistant Surgeon General, 5600 Fishers Lane, Room 18–05, Rockville, MD 20857, within 30 days of this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Woodie Kessel, M.D., M.P.H., Director, Division of Science, Education, and Analysis, 5600 Fishers Lane, Room 18A–55, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: Section 606 of Pub. L. 104–204 requires health plans and insurance carriers that provide maternity benefits to provide coverage for postpartum hospital stays of at least 48 hours for uncomplicated vaginal deliveries and 96 hours for Cesarean sections. Section 606(b) of the Act directs the Secretary to establish an advisory panel to review data on health care services provided to mothers and newborns, to study several issues related to quality of care and length of maternity stay, and to report to Congress within 5 years on a series of issues related to private sector improvements in prenatal and postnatal care. An interim report is required in 18 months.

The law specifies that the advisory panel be chosen from public and private sector entities with expertise in areas such as patient care, patient education, quality assurance, outcomes research, and consumer issues, and include representatives of health care practitioners, health plans, hospitals, employers, States, and consumers. The Senate Labor and Human Resources Committee Report, S. Rpt. 104–326, which accompanied the ''Newborns' and Mothers' Health Protection Act of 1996'' (S. 969), further elaborates on the composition of the advisory panel, identifying a number of organizations by name as well as category for membership. Congressionally-identified organizations in categories not already represented by current ACIM members have already been invited to nominate a representative to the advisory panel.

On January 29, 1997, the Secretary designated the ACIM to carry out the additional responsibilities of the advisory panel authorized under Section 606(b) of the Act, with the understanding that its composition would be expanded to meet the broadened membership requirements of Section 606(b) of the Act. These membership categories are health plans, hospitals, employers, and consumers. Organizations in categories not otherwise represented by current ACIM members are being invited via this notice to nominate a representative to serve on the advisory panel. If no nomination is received from entities within these categories, the MCHB will nominate a member to represent that constituency's interests.

The Advisory Committee on Infant Mortality was established in 1991 to advise the Secretary on HHS programs directed at reducing infant mortality and improving the health status of pregnant women and infants. The Committee is governed by provisions of Public Law 92–463, as amended, (5 U.S.C. App. 2), which sets forth standards for the formation and use of advisory committees. The Committee currently consists of the Assistant Secretary for Health, the Assistant Secretary for Children and Families, the Administrator, Health Care Financing Administration and the Assistant Secretary for Food and Consumer Services, USDA, as ex-officio members, and 21 members, including the chair, selected by the Secretary. Both the public and private sectors are represented. Members from the private sector represent corporations and foundations, the media, the clergy, health and other professional organizations. Members from the public sector represent administrators from State and local levels, including minority, rural and urban interests. The ACIM receives administrative support from HRSA's Maternal and Child Health Bureau (MCHB).

Members of the advisory panel will serve for a 4-year term. The panel will meet 3 to 4 times per year.

Dated: May 2, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–11915 Filed 5–7–97; 8:45 am]

BILLING CODE 4160–15–P

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 June 1997:

Name: Advisory Committee on Infant Mortality.

Date and Time: June 5, 1997, 9:00 a.m.—5:00 p.m., June 6, 1997, 8:30 a.m.—4:00 p.m.

Place: Windham Bristol Hotel, 2430 Pennsylvania Avenue, Washington, DC 20037.

The meeting is open to the public.

Agenda: Topics that will be discussed include: Updates on the Healthy Start Program and Media Campaign; discussion of Welfare Reform and the proposed Child Health Care Initiatives; and discussion of Early Postpartum Discharge and Low-Birthweight issues.

Anyone requiring information regarding the Committee should contact Dr. Peter C. van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, Room 18–31, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2204.

Persons interested in attending any portion of the meeting or having questions regarding the meeting should contact Ms. Kerry P. Nesseler, Maternal and Child Health Bureau, Health Resources and Services Administration, Telephone (301) 443–2204.

Agenda Items are subject to change as priorities dictate.

Dated: May 5, 1997.

Henry Montes,

Director, Office of Policy and Information Coordination, HRSA.

[FR Doc. 97–12055 Filed 5–7–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–828559.

Applicant: Walter Van Power, Dallas TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–828457.

Applicant: Sonia Foerster, Scottsdale, AZ.

The applicant requests a permit to import biological samples taken from Baird's tapir (*Tapirus bairdii*) in Corcovado National Park, Costa Rica for the purpose of scientific research.

PRT–8182228.

Applicant: Antibody Systems, Bedford, TX.

The applicant requests an amendment to their permit to include the import of blood and tissue samples from Komodo Island Monitor (*Varanus kimodoensis*) from areas of Indonesia other than previously authorized, for the purpose of scientific research to benefit the species in the wild. This notice covers activities conducted by the applicant over a five year period if necessary.

PRT–828562.

Applicant: Louisville Zoological Garden, Louisiville, KY.

The applicant requests a permit to import one female Sumatran orangutan (*Pongo pygmaeus abelli*) from the Calgary Zoo, Calgery, Alberta, Canada, for the purposes of enhancement of the survival of the species through captive-breeding and conservation education.

PRT–828373.

Applicant: Richard Smith, The Woodlands, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–828251.

Applicant: The Field Museum of Natural History, Chicago, IL.

The applicant requests a permit to import 39 wild mouse lemurs *Microcebus murinus, Microcebus rufus and Microcebus sp.*, preserved as skins and skeletons from Madagascar for the purpose of scientific research.

PRT–824211.

Applicant: Peter's Taxidermy, Graham, WA.

The applicant a permit to export two mounted specimens of captive-bred snow leopards (*Uncia uncia*) to Japan for the purpose of survival of the species through conservation education.

PRT–828464.

Applicant: Charles L. Black, Shreveport, LA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

The following applicants have each requested a permit to import a sport-hunted polar bear (*Ursus maritimus*) from the Northwest Territories, Canada for personal use.

Applicant/address	Population	PRT–
Jeffrey Sorg, Kalispell, MT.	Southern Beaufort.	827890
George Mann, Opelika, AL.	Baffin Bay	828295

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on any one of these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: May 2, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–11961 Filed 5–7–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for Proposed U.S. Fish and Wildlife Service Habitat Protection Activities in Selected Areas Within the Western Portions of Washington, Oregon, and Northern California

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Cancellation of Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: As announced in **Federal Register** Vol. 59, No. 92, page 25116, May 13, 1994, the U.S. Fish and Wildlife Service (Service) advised the public that the Service intended to gather information necessary to prepare an Environmental Impact Statement (EIS) ''U.S. Fish and Wildlife Service Habitat Protection in Selected Areas of the Middle-Upper Pacific Coast.'' This notice announces the Service has decided to cancel the environmental analysis process. The May 13, 1994 Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Carey Smith, Pacific Coast Joint Venture Coordinator, U.S. Fish and Wildlife Service, 9317 N.E. Highway 99, Suite D, Vancouver, Washington, 98665, Telephone: 360–696–7630.

Dated: April 23, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 97–12001 Filed 5–7–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1220–00]

Emergency Closure of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure order.

SUMMARY: Notice is hereby given that effective May 2, 1997 certain public lands along Fremont County Road 3 (Temple Canyon Road) are closed to recreational target shooting, for the purpose of enhancing public safety. For this closure order, shooting is defined as the discharge of any weapon for the purpose of recreational target shooting. Bow & arrows, pellet guns and BB guns are included in this definition. Recreational shooters may use other public lands where public safety is not at risk or that have not been closed to shooting. No person shall violate any federal, state or local laws pertaining to use, possession or discharge of firearms while on any BLM administered public lands. This closure affects approximately 75 acres of public lands located 3 miles southwest of Canon City, Colorado.

DATES: Effective May 2, 1997 and will remain in effect unless revised, revoked or amended.

ADDRESSES: Bureau of Land Management (BLM), Canon City District Office, 3710 East Main Street, Canon City Colorado 81212; Telephone (719) 269–8500 TDD (719) (269–8597.

FOR FURTHER INFORMATION CONTACT: Jack H. Hagan, District Law Enforcement Ranger, Canon City District at the above address or by calling 719–268–8500.

SUPPLEMENTARY INFORMATION: BLM administers approximately 6400 acres in the Temple Canyon area near Fremont County Road 3. This area has become increasingly popular for mountain biking, and hiking due to its close proximity to Canon City. An environmental awareness hiking/biking trail will soon be opened in this area and will include private and BLM lands in the area of this closure. Additionally, there are private lands with residential structures and livestock operations adjacent to these public lands. This closure is necessary to protect public health and safety on public lands as well as persons and property found on adjacent private lands. The closure order reflects these concerns. Those exempted from this closure order include Law Enforcement Officers in the commission of their official duties as protectors of the public.

The public lands affected by this closure are located at:

6th Principal Meridian

T.19S., R.70W., Section 7, SW¼SW¼
T.19S., R.71W., Section 12, S½SE¼SE¼
T.19S., R.71W., Section 13, NE¼NE¼NE¼ and the N½NW¼NE¼NE¼

A copy of this **Federal Register** notice and map showing the closed area is posted in the Canon City District Office.

Authority for this action is found in 43 CFR 8364.1 and the Federal Land Policy and Management Act of 1976. Violations of this order is punishable by fines and/or imprisonment as defined in 18 U.S.C. 3571.

Donnie R. Sparks,

District Manager.

[FR Doc. 97–12073 Filed 5–7–97; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–57154]

Opening of Lands; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening Order.

EFFECTIVE DATE: May 8, 1997.

SUMMARY: A parcel of land which was segregated for exchange, N–57154, is no longer under consideration for exchange. This order terminates the exchange segregation and opens the land generally described as:

Mount Diablo Meridian

T. 12 N., R. 21 E., sec. 30, lots 7 to 16, inclusive,
E½SW¼NW¼NW¼,
E½NW¼SW¼NW¼, and
E½SW¼SW¼NW¼.

Containing 35.05 acres in Carson Valley.

The land described above is now open to the public land laws and the mining laws.

FOR FURTHER INFORMATION CONTACT: Jo Ann Hufnagle, Realty Specialist at BLM Carson City District Office, 1535 Hot Springs Road, Carson City, NV 89706, (702) 885–6000.

Dated: April 25, 1997.

Daniel L. Jacquet,

Acting Assistant District Manager, Carson City District.

[FR Doc. 97–11951 Filed 5–7–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–1430–01; CACA 7003 et al.]

Public Land Order No. 7258; Partial Revocation of Secretarial Orders Dated April 20, 1936, July 29, 1936, and July 7, 1936, and Bureau of Land Management Orders Dated February 27, 1952, and October 21, 1995; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes three Secretarial orders and two Bureau of Land Management orders insofar as they affect 1,002.74 acres of public lands withdrawn for the Bureau of Reclamation's Central Valley Project. Of the 1,002.74 acres being revoked, 906.62 acres will be opened to surface entry and mining unless closed by overlapping withdrawals or temporary segregations of record. The remaining 96.12 acres have been and will remain closed to surface entry and mining because they are included in overlapping withdrawals. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: June 9, 1997.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825, 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Orders dated April 20, 1936, July 29, 1936, and July 7, 1936, and Bureau of Land Management Orders dated February 27, 1952, and October 21, 1955, which withdrew public lands for the Bureau of Reclamation's Central Valley Project, are hereby revoked insofar as they affect the following described lands:

Mount Diablo Meridian

T. 32 N., R. 5 W.,
Sec. 4, N½S½ of lot 20, and lot 32;
Sec. 7, lots 24 through 39, inclusive;
Sec. 8, lots 5, 6, and 21;
Sec. 17, lots 2, 8, 9, 15, 16, 21, and 22;
Sec. 20, lot 1.
T. 33 N., R. 5 W.,
Sec. 21, lot 1;
Sec. 31, lots 1, 7, 9, NE¼, SE¼NW¼, and N½SE¼;
Sec. 32, W½ of lot 19, and lots 10, 16, and 21.

The areas described aggregate 1,002.74 acres in Shasta County.

2. The following described lands are included in overlapping withdrawals and thus remain withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws:

Mount Diablo Meridian

T. 32 N., R. 5 W.,
Sec. 4, N½S½ of lot 20.
T. 33 N., R. 5 W.,
Sec. 21, lot 1;
Sec. 32, lots 16 and 21.

The areas described aggregate 96.12 acres in Shasta County.

3. At 10 a.m. on June 9, 1997, the lands described in paragraph 1, except for those described in paragraph 2, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 9, 1997, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10 a.m. on June 9, 1997, the lands described in paragraph 1, except for those described in paragraph 2, will be open to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 25, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–11942 Filed 5–7–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–0777–63; GP6–0277; OR–19676 (WA)]

Public Land Order No. 7255; Revocation of Geological Survey Order Dated May 19, 1950; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety a Geological Survey order which withdrew 573.31 acres of National Forest System lands for the Bureau of Land Management's Powersite Classification No. 408. The lands are no longer needed for the purpose for which they were withdrawn. This action will open 180.75 acres of lands to surface entry, which have been and will remain open to mining and mineral leasing. Of the lands being revoked, 312.56 acres are within other overlapping withdrawals and will remain closed to surface entry and mining, but will remain open to mineral leasing, and 80 acres have been conveyed out of Federal ownership.

EFFECTIVE DATE: June 9, 1997.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Geological Survey Order dated May 19, 1950, which established Powersite Classification No. 408, is hereby revoked in its entirety:

Willamette Meridian

Colville National Forest

T. 36 N., R. 43 E.,
Sec. 15, lots 5 and 8.
T. 37 N., R. 43 E.,
Sec. 33, lots 4, 5, and 8.
T. 38 N., R. 43 E.,
Sec. 32, lots 1, 2, and 3.
T. 35 N., R. 44 E.,
Sec. 7, lot 4;
Sec. 19, lots 1, 2, 6, and 7;
Sec. 20, lot 3.

Kaniksu National Forest

T. 34 N., R. 44 E.,
Sec. 5, lots 1, 7, and 8;
Sec. 7, W.½SE¼.

The areas described aggregate 573.31 acres in Pend Oreille County.

2. At 8:30 a.m., on June 9, 1997, the following described lands will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Willamette Meridian

Colville National Forest

T. 38 N., R. 43 E.,
Sec. 32, those portions of lots 1, 2, and 3 lying outside the boundary of Power Project No. 2042.
T. 35 N., R. 44 E.,
Sec. 7, that portion of lot 4 lying outside the boundary of Power Project No. 2042;
Sec. 20, that portion of lot 3 lying outside the boundary of Power Project No. 2042.

Kaniksu National Forest

T. 34 N., R. 44 E.,
Sec. 5, lots 1, 7, and 8.

The areas described aggregate approximately 180.75 acres in Pend Oreille County.

3. The following described land has been conveyed out of Federal ownership and will not be opened to the operation of the public land laws, including the mining and mineral leasing laws:

T. 34 N., R., 44 E.,
Sec. 7, W½SE¼.

The area described contains 80 acres in Pend Oreille County.

4. The lands described in paragraph 1, except as provided in paragraphs 2 and 3, are within the overlapping withdrawals for a Forest Service recreation area or Power Project No. 2042, and will remain closed to operation of the public land laws, including the mining laws.

Dated: April 24, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–11941 Filed 5–7–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 88891–02]

Public Land Order No. 7256; Opening of Land Under Section 24 of the Federal Power Act, in the Geological Survey Order Dated August 5, 1955, Which Established Powersite Classification No. 433; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens 1,512.76 acres of National Forest System land in Powersite Classification No. 433, subject to the provisions of Section 24 of the Federal Power Act. This order will permit consummation of a pending land sale and also allows for future land sales/exchanges of Forest Service administered land. The land has been and will continue to be open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and to mineral leasing.

EFFECTIVE DATE: May 8, 1997.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1988), and pursuant to the determination by the Federal Energy Regulatory Commission in DVWY–190, it is ordered as follows:

1. At 9 a.m. on May 8, 1997, the following described National Forest System land withdrawn by the Geological Survey Order dated August 5, 1955, which established Powersite Classification No. 433, will be opened to such forms of disposition as may by law be made of National Forest System land subject to the provisions of Section 24 of the Federal Power Act, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

Bridger-Teton National Forest

T. 41 N., R. 111 W.,
- Sec. 5, lots 3 and 4, S½NW¼, N½SW¼, and SE¼SW¼;
- Sec. 6, lots 1, 2, 3, SE¼NE¼, SE¼NW¼, and E½SW¼;
- Sec. 7, lot 1, 2, 3, 4, and E½W½;
- Sec. 18, lots 1, 2, 3, and 4;
- Sec. 19, lot 3, SW¼NE¼, E½NW¼, and W½SE¼, SE¼SE¼;
- Sec. 29, W½NW¼;
- Sec. 30, lot 2, NE¼NE¼, and SE¼NW¼.

The area described contains 1,512.76 acres in Teton County.

2. The land has been and remains open to location and entry under the United States mining laws, subject to the provisions of the Act of August 11, 1955, 30 U.S.C. 621 (1988), and to applications and offers under the mineral leasing laws.

Dated: April 25, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–11943 Filed 5–7–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–094–6332–00: GP7–0173]

Proposed Establishment of Supplementary Rules; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed establishment of supplementary rules.

SUMMARY: The Eugene District, Bureau of Land Management, proposes to establish supplementary rules for use of those public lands included in the Lower Lake Creek Special Recreation Management Area (LLCSRMA) in the Coast Range Resource Area, Eugene District, Lane County, Oregon. These supplementary rules are being proposed to protect public facilities and provide for public safety within the LLCSRMA, which is located south of Triangle Lake, Oregon, within Sections 19, 20, 27–30, and 32–34 of Township 16 South, Range 7 West of the Willamette Meridian. These rules are designed to reduce the potential for damage to the environment of the LLCSRMA and to enhance the safety of visitors and neighboring residents.

ADDRESSES: Comments should be sent to Norman Gartley, Acting Coast Range Area Manager, Eugene District Office, P.O. Box 10226, Eugene, Oregon 97440–2226.

FOR FURTHER INFORMATION CONTACT: Saundra Miles, (541) 683–6600.

SUPPLEMENTARY INFORMATION: Authority for the establishment of these supplemental rules is contained in 43 CFR 8365.1–6. These supplementary rules will become effective upon publication in the **Federal Register** as final supplementary rules. A map showing the location of the lands subject to the proposed supplementary rules is available in the Eugene District Office.

DATES: Comments must be received by June 9, 1997.

For the reasons set forth in the preamble, the Eugene District, Bureau of Land Management, proposes to establish supplementary rules for the LLCSRMA as follows:

1. Operating a motorized vehicle in violation of Oregon State laws and regulations relating to use, registration, operation and parking is prohibited.

2. Consumption, possession, or furnishing of any alcoholic beverage in violation of Oregon State law is prohibited.

3. Possession of glass beverage containers is prohibited.

4. Overnight camping is prohibited without the written permission of the authorized officer.

5. Use and/or occupancy (including leaving personal property unattended) between the hours of 10 PM to 4 AM is prohibited without the written permission of the authorized officer.

6. Campfires or other open flame fires are prohibited without the written permission of the authorized officer.

7. No person shall, unless otherwise authorized, bring any animal into the Lower Lake Creek SRMA unless such animal is on a leash not longer than 6 feet and secured to a fixed object or under control of a person, or is otherwise physically restricted at all times.

8. Bicycle and equestrian travel are prohibited on Blachly-Lane Flume, Powerhouse, and Fish Creek hiking trails.

9. Smoking may be prohibited by the authorized officer when necessary to protect natural resources.

10. Use and/or discharge of weapons, including firearms, air guns, slingshots, or other projectile launching devices is prohibited.

11. Engaging in fighting, physically threatening or violent behavior is prohibited.

12. Operation or use of any audio device, noise producing device or motorized device in a manner that makes unreasonable noise or disturbs visitors is prohibited.

13. Possession or discharge of fireworks is prohibited.

Date of Issue: April 30, 1997.

Judy Ellen Nelson,

District Manager.

[FR Doc. 97–11996 Filed 5–7–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(ES–960–9800–12) ES–48649, Group 88, Arkansas]

Notice of Filing of Plat of Survey; Arkansas, Suspended

On Thursday, March 13, 1997, there was published in the **Federal Register**, Volume 62, Number 49, on pages 11916 and 11917, a notice entitled, ''Notice of Filing of Plat of Survey; Arkansas.'' Said notice referenced the filing of the plat of the dependent resurvey of the north, south and east boundaries, and the subdivisional lines of Township 2 South, Range 24 West, Fifth Principal Meridian, Arkansas, accepted March 5, 1997.

This plat officially filed on April 21, 1997, is hereby suspended pending the consideration of a protest against the survey.

Dated: April 28, 1997.

Corwyn J. Rodine,

Acting Chief Cadastral Surveyor.

[FR Doc. 97–11952 Filed 5–7–97; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Proposed East Bay Municipal Utility District's Supplemental Water Supply Project, Lower American River, California

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement/ Environmental Impact Report.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (as amended) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the East Bay Municipal Utility District (EBMUD) propose to prepare a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) on EBMUD's Supplemental Water Supply Project (Project). The Project is intended to enable EBMUD to receive delivery of Central Valley Project (CVP) Water under its water service contract with Reclamation to improve EBMUD's water supply and reliability.

DATES: Written comments on the scope of alternatives and impacts to be considered should be sent to Reclamation by June 16, 1997. It is estimated that the draft EIS/EIR will be available for public review in the summer of 1997.

ADDRESSES: Written comments on the project scope should be sent to Kurt Ladensack, EBMUD, MS 305, P.O. Box 24055, Oakland California, 94623–1055.

FOR FURTHER INFORMATION CONTACT: Kurt Ladensack, EBMUD, MS 305, P.O. Box 24055, Oakland California, 94623–1055; telephone (510) 287–1154; or Cecil Lesley, Reclamation, 7794 Folsom Dam Road, Folsom California, 95630; telephone (916) 989–7221; TDD (916) 989–7285.

SUPPLEMENTARY INFORMATION: In 1970, EBMUD entered into a water service contract with Reclamation to obtain up to 150,000 acre-feet of water annually from the CVP as a supplementary water supply for its customers. CVP water would be diverted by EBMUD from the Folsom South Canal (FSC). The FSC is a conveyance facility owned by the United States and operated by Reclamation in southeastern Sacramento County. The canal originates at Nimbus Diversion Works (Nimbus) on the American River at Lake Natoma and extends south approximately 26 miles. A turnout near Grant Line Road in Sacramento County, approximately 12 miles south of Nimbus, is the point of water delivery specified in the EBMUD-Reclamation water service contract. Currently, no facilities are in place to allow EBMUD to take water under this contract.

A lawsuit (*EDF* v. *EBMUD*, Alameda County Case No. 425,955) filed in 1972 by the Environmental Defense Fund (EDF), and intervened by Sacramento County, Save the American River Association, the California Department of Fish and Game, and the California State Lands Commission, sought to prevent EBMUD from taking delivery of American River water through the FSC as provided in the EBMUD-Reclamation water service contract. The plaintiffs' contention was that delivery of water to EBMUD from the FSC under EBMUD's federal contract would reduce downstream flows to the extent that fisheries and other instream resources of the lower American River would be harmed.

On January 2, 1990, the Alameda County Superior Court issued a decision that affirmed EBMUD's right to take delivery under its contract with Reclamation subject to minimum flows being met in accordance with the terms of a Physical Solution. The minimum instream flow levels required under the Physical Solution for the protection of fisheries and other instream resources are:

- 2,000 cubic feet per second (cfs) from October 15 through the end of February;
- 3,000 cfs from March 1 through June; and
- 1,750 cfs from July 1 through October 15.

In its decision, the court also required that use of the Reclamation contract water is to be limited to meeting water supply needs of EBMUD customers within its service area.

Reclamation and EBMUD are considering alternatives for diversion and conveyance of American River water by EBMUD. These alternatives include:

1. The no-action alternative.
2. A joint project between EBMUD, the City of Sacramento, and the Sacramento County Water Agency, which would involve the construction of a new intake-pumping facility and fish screens on the American River near its confluence with the Sacramento River, a pipeline from this diversion to the City's E.A. Fairbairn Water Treatment Plant, a pipeline henceforth to the FSC, and a connection from the FSC to EBMUD's Mokelumne Aqueducts. This alternative would require a change in the point of delivery of water to EBMUD and an amendment to the existing Reclamation contract.
3. A pipeline connection from the FSC at the current contract turnout location near Grant Line Road to the EBMUD Mokelumne Aqueducts. This alternative could be implemented without amending the existing Reclamation contract.
4. A pipeline connection from the terminus of the FSC to the EBMUD Mokelumne Aqueducts near Clements, California. This alternative would require a change in the point of delivery of water for EBMUD and an amendment to the existing Reclamation contract.
5. A pipeline connection from the terminus of the FSC to the EBMUD Mokelumne Aqueducts near Stockton, California. This alternative would require a change in the point of delivery of water for EBMUD and an amendment to the existing Reclamation contract.

Scoping is an early and open process designed to determine the significant issues and alternatives to be addressed in the EIS/EIR. The following significant issues have been identified by Reclamation to date: lower American River fishery effects; water quality; agricultural and municipal water supply quality; lower American River recreation opportunities; construction-related effects on the lower American River, urban areas, and natural habitats; and, wetland, upland, and aquatic habitats.

The draft EIS/EIR will focus on the impacts and benefits of implementing the various alternatives. It will contain an analysis of the physical, biological, social, and economic impacts arising from the alternatives. In addition, it will address the cumulative impacts of implementation of the alternatives in conjunction with other past, present, and reasonably foreseeable actions.

Reclamation and EBMUD have been seeking public input on alternatives, concerns, and issues to be addressed in the EIS/EIR through a series of scoping meetings held from April 28 through May 1, 1997 in Sacramento, Oakland, Lodi, and Galt, California. EBMUD conducted an extensive public notification program to assure that all interested parties were notified in advance about these meetings.

Dated: April 28, 1997.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 97–11962 Filed 5–7–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 to 9675

Notice is hereby given that a proposed consent decree in *United States* v. *Amtel, Inc. et al.*, Civil Action No. 91–CV–10366–BC, was lodged on April 25, 1997 with the United States District Court for the Eastern District of Michigan, Northern Division. The proposed consent decree resolves the United States' claims against settling defendant Dasco Products Company, Inc. for unreimbursed past costs incurred in connection with the Hedblum Superfund Site located near Oscoda, Michigan in return for a total payment of $110,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Amtel, Inc.*, DOJ Ref. #90–11–2–475.

The proposed consent decree may be examined at the office of the United States Attorney, 1000 Washington Street, 203 Federal Building, Bay City, Michigan 48707; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–11946 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on April 23, 1997, a proposed Consent Decree in *United States* v. *MCM Warehouse, Inc. and Theodore Lichko*, Civil Action No. 96–CV–0008, was lodged with the United States District Court for the Northern District of Ohio. This consent decree represents a settlement of claims of the United States against MCM Warehouse, Inc. and Theodore Lichko, for reimbursement of response costs and injunctive relief in connection with the Marcy Road Midnight Dump Site (''Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement between the United States, and MCM Warehouse, Inc. and Theodore Lichko, MCM Warehouse, Inc. and Theodore Lichko will pay the United States $100,000 in reimbursement of costs incurred by the Environmental Protection Agency at the Site. MCM Warehouse, Inc. and Theodore Lichko will pay $100,000 to the United States, plus accrued interest, in annual installment payments over a three year period, commencing on April 1, 1997.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *MCM Warehouse, Inc. and Theodore Lichko,* D.J. Ref. 90–11–2–1149.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, Bank One Center, 600 Superior Avenue, Cleveland, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–11944 Filed 5–1–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Period for Public Comment on Consent Decree Lodged in United States, et al. v. Montrose Chemical Corp., No. CV 90–3122–AAH (C.D. Cal)

Notice is hereby given that the United States Department of Justice will continue to receive, until June 3, 1997, comments relating to the proposed consent decree in *United States, et al.* v. *Montrose Chemical Corporation of California, et al.*, No. CV 90–3122–AAH (C.D. Cal). The proposed consent decree was lodged on March 25, 1997, with the United States District Court for the Central District of California. The notice of lodging of the proposed consent decree was published at 62 Fed. Reg. 15919 (April 3, 1997).

The consent decree resolves claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended, brought against defendant County Sanitation Districts of Los Angeles County and 150 third-party defendants for natural resource damages associated with contamination of sediments on the Palos Verdes shelf in the vicinity of Los Angeles, California, and for response costs incurred and to be incurred by the United States Environmental Protection Agency in connection with responding to the

release and threatened release of hazardous substances at the Montrose Chemical National Priorities List Site in Torrance, CA, and at the aforementioned Palos Verdes shelf.

The proposed consent decree provides that the aforementioned entities will collectively pay $45.7 million to resolve their liability to the United States for natural resource damages and response costs as described above. The proposed consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. § 6973.

Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States, et al.* v. *Montrose Chemical Corporation of California, et al.,* No. CV 90–3122–AAH (C.D. Cal), DOJ Ref. #90–11–3–159 and DOJ Ref. #90–11–3–511.

The proposed consent decree may be examined at the office of the United States Attorney, Central District of California, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting copies please refer to the referenced case and enclose a check in the amount of $67.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–11948 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Degree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 C.F.R. § 50.7, and with Section 122 of CERCLA, 42 U.S.C. § 9622, notice is hereby given that a consent decree in *United States* v. *Occidental Chemical Corporation, et al.,* Civ. Action No. 96–CV–6558 (E.D. Pa.) was lodged on April 23, 1997, with the United States District Court for the Eastern District of Pennsylvania. The consent decree resolves the claims of the United States under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), for reimbursement of response costs incurred at the Occidental Chemical Corporation Superfund Site located in Lower Pottsgrove Township, Montgomery County, Pennsylvania. The consent decree obligates Occidental Chemical Corporation to reimburse $181,416.42 of the United States' past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed amendment to the consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *Occidental Chemical Corporation, et al.,* DOJ Ref. #90–11–2–913.

The consent decree may be examined at the office of the United States Attorney, for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction cost), payable to the Consent Decree library. Attachments to the consent decree can be obtained for an additional $26.75.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–11945 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR § 50.7, notice is hereby given that on April 25, 1997, a proposed consent decree in *United States of America* versus *Puerto Rico Sun Oil Company, Inc.,* Civil Action No. 96–2183(CC), was lodged with the United States District Court for the District of Puerto Rico. The United States' complaint sought civil penalties under the Clean Air Act (''CAA'') for violations of Subparts A, J, and GGG of the New Source Performance Standards, 40 C.F.R. Part 60, and related permit requirements, at Puerto Rico Sun Oil Company, Inc. (''PRSOC'')'s Yabucoa, Puerto Rico refinery. The complaint alleged reporting and monitoring violations, as well as some exceedances of the applicable limits on the hydrogen sulfide content of gaseous fuel combusted in the reformer and hydrogen heater units at the refinery. The complaint also requested that PRSOC install a continuous monitor to measure the hydrogen sulfide content of gaseous fuel combusted in certain of its boilers.

The Consent Decree provides that PRSOC will pay a civil penalty to the United States of $250,000, plus interest, in settlement of the violations alleged in the complaint. Due to a reconfiguration of its Yabucoa facility, PRSOC currently does not combust gaseous in its boilers. The Consent Decree provides that, if PRSOC recommences usage of gaseous fuel in its boilers, PRSOC will notify EPA and install, calibrate, operate, and satisfactorily test a continuous monitor to measure the hydrogen sulfide content of the gaseous fuel utilized.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Puerto Rico Sun Oil Company, Inc.,* D.J. Ref. 90–5–2–1–1844.

The proposed Consent Decree may be examined at the office of the United States Attorney, Federico Degetau Federal Bldg., Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918 and at the Region II office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007. The proposed Consent Decree may also be examined at the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $6.50 (25 cents per page reproduction cost) payable to the ''Consent Decree Library.''

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 97–11947 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. Restonic Corporation, Serta, Incorporated, and Spring Air Company

Notice is hereby given that defendants Restonic Corporation (''Restonic''); Serta, Inc. (formerly Serta Associates, Inc.) (''Serta''); and Spring Air Company (''Spring Air'') have filed with the United States District Court for the Northern District of Illinois motions to terminate the Judgments in *United States* v. *Restonic Corporation,* Civil No. 60–C–828; *United States* v. *Serta, Inc.,* Civil No. 60–C–843; and *United States* v. *Spring Air Company,* Civil No. 60–C–845. In Stipulations also filed with the Court, the Department of Justice (''Department'') has tentatively consented to termination of the Judgments, but has reserved the right to withdraw its consent pending receipt of public comments.

The complaints in these cases, filed on May 27, 1960 in the case of Restonic and on May 31, 1960 with respect to the other defendants, alleged that each defendant had conspired with its respective licensee owners to illegally allocate exclusive territories and to fix retail prices. Judgments were entered by consent against Restonic on May 27, 1960 (and subsequently modified on July 27, 1962); and against Spring Air on May 31, 1960. Judgment was entered after a trial on the merits against Serta on September 30, 1968. The Judgments prohibited defendants from establishing territories for the sale of mattresses and from engaging in resale price maintenance.

The Department has filed with the Court a memorandum setting forth the reasons why the Government believes that termination of the Judgments would serve the public interest. Copies of the Defendants' motion papers, the Stipulations containing the Government's consent, the Government's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 215 North, Liberty Place Building, 325 Seventh St., N.W., Washington, D.C. 20530, and at the Office of the Clerk of the United States District Court for the Northern District of Illinois, Twentieth Floor, 209 South Dearborn Street, Chicago, Illinois 60604. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Judgments to the Department. Such comments must be received by the Department within sixty (60) days and will be filed with the Court by the Department. Comments should be addressed to Mildred L. Calhoun, Trail Attorney, Midwest Office, Antitrust Division, Suite 600, 209 S. LaSalle Street, Chicago, Illinois 60604 (Telephone: (312) 353–7530.

Rebecca P. Dick,

Deputy Director of Operations.

[FR Doc. 97–11940 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 31, 1996, and published in the **Federal Register** on January 9, 1997 (62 FR 1342), Ansys, Inc., 2 Goodyear, Irvine, California 92718, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (PCC) (8603).	II
Benzoylecgonine (9180)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Ansys, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Acting Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 21, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–11916 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 18, 1996, and published in the **Federal Register** on January 9, 1997 (62 FR 1342), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of N-ethylamphetamine (1475), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Arenol Chemical Corporation to manufacture n-ethylamphetamine is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Acting Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: April 4, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–11917 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 26, 1997, Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

The firm plans to manufacture the controlled substances for distribution as bulk products to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 7, 1997.

Dated: March 31, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–11918 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Correction

As set forth in the **Federal Register** (FR Doc. 96–32611) Vol. 61, No. 248 at page 67852, dated December 24, 1996, High Standard Products, 1100 W. Florence Avenue, #B, Inglewood, California 90301, made application to the Drug Enforcement Administration for registration as a manufacturer for certain controlled substances.

By letter dated March 19, 1997, High Standard Products stated that they had erroneously included marihuana (7360) in their application. Therefore, marihuana is hereby deleted from the firm's application for registration as a manufacturer.

Dated: March 31, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–11919 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 18, 1996, and published in the **Federal Register** on December 24, 1996, (61 FR 67852), High Standard Products, 1100 W. Florence Avenue, #B, Inglewood, California 90301, made application by renewal to the Drug Enforcement Administration (DEA) to be registered to manufacture small quantities of controlled substances for drug reference standards as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
1-(1-Phenylcyclohexyl)pyrrolidine (PCPY) (7458).	I
Heroin (9200)	I
Normorphine (9313)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of High Standard Products to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 USC § 823 and 28 CFR §§ 0.100 and 0.104, the Acting Deputy Assistant Administration, Office of Division Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 16, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Drug Enforcement Administration.

[FR Doc. 97–11920 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the code of Federal Regulations (CFR), this is notice that on December 18, 1996, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, NJ 08066, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Difenoxin (9168)	I
Methylphenidate (1724)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Thebaine (9333)	II

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances in bulk to supply final dosage form manufacturers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 7, 1997.

Dated: March 31, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–11921 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 26, 1997, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 7, 1997.

Dated: March 31, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–11922 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 31, 1996, and published in the **Federal Register** on January 9, 1997 (62 FR 1342), MD Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of MD Pharmaceutical, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR 0.100 and 0.104, the Acting Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 24, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–11923 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 17, 1996, and published in the **Federal Register** on January 8, 1997, (62 FR 1134), Orpharm, Inc., 728 West 19th Street, Houston, Texas 77008, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methadone (9250)	II
Methadone-intermediate (9254)	II
levo-alphacetylmethadol (9648)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Orpharm, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR 0.100 and 0.104, the Acting Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 21, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–11924 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 17, 1996, and published in the **Federal Register** on January 8, 1997, (62 FR 1134), Pharmacia & Upjoin Company, 7000 Portage Road, 2000–41–109, Kalamazoo, Michigan 49001, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-Dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. DEA has considered the

factors in Title 21, United States Code, Section 823(a) and determined that the registration of Pharmacia & Upjohn Company to manufacture 2,5-Dimethoxyamphetamine is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR 0.100 and 0.104, the Acting Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: March 31, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–11925 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 19, 1996, and published in the **Federal Register** on December 24, 1996, (61 FR 67853), Radian International LLC, 8501 North Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, made application by letter to the Drug Enforcement Administration (DEA) to be registered to manufacture small quantities of controlled substances for drug reference standards as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alpha-Ethyltryptamine (7249)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
Bufotenine (7433)	I
Codeine-N-oxide (9053)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Pholcodine (9314)	I
Alphamethadol (9605)	I
Betcetylmethadol (9607)	I
Betamethadol (9609)	I
Norlevorphanol (9634)	I
Para-Fluorofentanyl (9812)	I
Alpha-methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815)	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Phenmetrazine (1631)	II
Glutethimide (2550)	II
Cocaine (9041)	II
Codeine (9050)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Morphine (9300)	II

No comments or objections have been received.

DEA has considered the factors in title 21, United States Code, Section 823(a) and determined that the registration of Radian International LLC to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR 0.100 and 0.104, the Acting Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 31, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–11926 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 17, 1997, Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876–3771, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Methadone (9250)	II

The firm plans to manufacture small quantities of the listed controlled substances for incorporation in drug of abuse detection kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 7, 1997.

Dated: March 31, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–11927 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Extenstion of existing collection; Affidavit of support.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 3, 1997, at 62 FR 9452, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 9, 1997. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally,

comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Affidavit or Support.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–134. Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected is used to determine whether the applicant for benefit will become a public charge if admitted to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 44,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,652 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 5, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–11979 Filed 5–1–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

[OJP(NIJ)–1127]

RIN 1121–ZA73

National Institute of Justice Solicitation for Drug Court Evaluation I

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Solicitation for Drug Court Evaluation I.''

DATES: The deadline for applications is close of business June 9, 1997.

ADDRESS: Applications should be mailed to the National Institute of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421-6771.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) is soliciting proposals to conduct evaluations of four separate Drug Court sites: Las Vegas, NV; Portland, OR; Kansas City, MO; and Penascola, FL. Applicants should propose to evaluate no more than three of the sites, although successful applicants may be asked to develop proposals for sites not proposed in their original application. The Drug Court Program is administered by the Office of Justice Programs (OJP), Drug Court Programs Office (DCPO). DCPO makes available Federal Discretionary Grants for assistance with drug court programs, which DCPO defines as a court calendar or docket specially designed for the purpose of reducing recidivism and substance abuse, and increasing the likelihood of successful rehabilitation through early and continuous judicially supervised treatment.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation for Drug Court Evaluation'' (refer to document no. SL000214). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via the Internet. Telnet to ncjrsbbs.ncjrs.org, or gopher to ncjrs.org:71. For World Wide Web access, connect to the NCJRS Justice Information Center at http://www.ncjrs.org. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set the modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 97–11980 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(NIJ)–1128]

RIN 1121–ZA74

National Institute of Justice Solicitation for Measuring What Matters in Community Policing Fiscal Year 1997

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice solicitation ''Measuring What

Matters in Community Policing, Fiscal Year 1997.''

DATES: The deadline for receipt of proposals is close of business on July 1, 1997. Postmarked applications received after this date are not acceptable.

ADDRESSES: Proposals should be mailed to the National Institute of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice is soliciting proposals that develop, refine, and apply rigorous measures to four aspects of community policing: the context in which community policing occurs; the characteristics and qualities of policing operations and organizations; the direct outcomes of policing activities; and the ultimate consequences of policing for the community at large. Within these four aspects applications should address two objectives; improving measurement and assessment, and improving the application of measurement for evaluation purposes. The Institute is interested in research that will advance the fields of community policing and policing research by developing, testing, and implementing new strategies for measuring and assessing the essential practices, outcomes, and impacts of policing.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation for Measuring What Matters'' (refer to document no. SL000219). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via the Internet. Telnet to ncjrsbbs.ncjrs.org, or gopher to ncjrs.org:71. For World Wide Web access, connect to the NCJRS Justice Information Center at http://www.ncjrs.org. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set the modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 97–11981 Filed 5–7–97; 8:45 am]

BILLING CODE 4410–18–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–2A]

Eligibility for the Cable Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Termination of proceeding.

SUMMARY: The Copyright Office is terminating Docket No. 96–2A until further notice due to a Congressional request that the Office undertake a global review of copyright licensing of broadcast retransmissions for the purpose of recommending legislative revision of the Copyright Act.

EFFECTIVE DATE: June 9, 1997.

FOR ADDITIONAL INFORMATION CONTACT: Nanette Petruzzelli, Acting General Counsel, or William Roberts, Senior Attorney for Compulsory Licenses, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Section 111 of the Copyright Act, 17 U.S.C., grants a compulsory copyright license to cable television systems for the retransmission of over-the-air broadcast stations to their subscribers. In exchange for the license, cable operators submit royalty payments, along with statements of account detailing their retransmissions, to the Copyright Office on a semiannual basis, which deposits the royalties with the United States Treasury in interest bearing accounts for later distribution to copyright owners of non-network broadcast programming.

On May 6, 1996, the Copyright Office opened this notice of inquiry to consider the eligibility for the cable compulsory license of open video systems of telephone companies which retransmit broadcast signals pursuant to section 653 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56. *See* 61 FR 20197 (May 6, 1996). The Office received comments and/or reply comments from fifteen parties addressing some or all of the issues raised by the Copyright Office in its Notice of Inquiry.

While the Office was considering the commenters' arguments as to whether open video systems are eligible for a compulsory license under section 111 of the Copyright Act, the Office received on February 6, 1997, a request from Senator Orrin Hatch, Chairman of the United States Senate Committee on the Judiciary, that the Office undertake a global review of copyright licensing of broadcast retransmissions. Senator Hatch asked the Copyright Office to solicit the views of the parties affected by the licensing issues being raised in the study, analyze the information gathered, and develop policy options and legislative recommendations for the Committee to consider before the end of the legislative session. Open video systems' eligibility for a section 111 license was targeted by Senator Hatch as one of the issues to be examined in the study.

The Copyright Office has already begun its examination of the issues raised by Senator Hatch and has announced dates for public meetings in May. In the process of preparing this study, the Office expects to hear from many of the parties who submitted comments in this notice of inquiry, both in written statements and at the May proceedings; accordingly, the Office anticipates that the issues regarding the eligibility of open video systems for the cable compulsory license will be fully aired and analyzed. Those who have already commented fully in the 96–2A proceeding may incorporate those comments by reference in the record for the study (97–1).

After its analysis of the issues is completed, the Office may, in its report to Congress, propose one or more legislative solutions to the issues raised in this inquiry. Under these circumstances, the Office believes it is not appropriate or advisable to keep this rulemaking proceeding open. Therefore, the Copyright Office has decided to terminate Docket No. 96–2A until further notice.

Dated: April 21, 1997.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 97–12004 Filed 5–7–97; 8:45 am]

BILLING CODE 1410–31–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Agency Reports Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

NOTICE: (97–056).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). The reports will be utilized by NASA Goddard Space Flight Center to support services dependent upon accurate locator-type information.

DATES: All comments should be submitted on or before July 7, 1997.

ADDRESSES: All comments should be addressed to Ms. Lois Ryno, Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt Road, Greenbelt, MD 20771–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: Locator and Information Services Tracking System (LISTS).

OMB Number: 2700–0064.

Type of review: Reinstatement.

Need and Uses: The LIST System is used primarily to support services on the Center dependent upon accurate locator-type information.

Affected Public: Individuals or households.

Number of Respondents: 13,111.

Responses Per Respondent: 1.

Annual Responses: 13,111.

Hours Per Request: .083.

Annual Burden Hours: 1088.21.

Frequency of Report: As required.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–12058 Filed 5–7–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 USC 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register.** Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1995 and ending September 30, 1996.

Name and Title

Richard L. Ahearn—Regional Director, Region 9
Frank V. Battle—Deputy Director of Administration
Mary Joyce Carlson—Deputy General Counsel
Harold J. Datz—Chief Counsel to Board Member
Robert A. Giannasi—Chief Administrative Law Judge
Wayne R. Gold—Director, Office of Representative Appeals
Lester A. Heltzer—Acting Chief Counsel to Board Member
Peter B. Hoffman—Regional Director, Region 34
Gloria Joseph—Director of Administration
Barry J. Kearney—Associate General Counsel, Advice
Linda R. Sher—Associate General Counsel, Enforcement Litigation
Richard A. Siegel—Acting Associate General Counsel, Operations-Management
Elinor H. Stillman—Chief Counsel to Board Member
John J. Toner—Executive Secretary
Dennis P. Walsh—Chief Counsel to Board Member
Jeffrey D. Wedekind—Acting Solicitor
Alfred L. Wolff—Acting Chief Counsel to the Chairman

Washington, D.C.; By Direction of the Board.

Dated: May 2, 1997.

John J. Toner,

Executive Secretary.

[FR Doc. 97–12057 Filed 5–7–97; 8:45 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Monday, May 12, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Monday, May 12

2:00 p.m. Meeting with Dignitaries (CLOSED—Ex. 1)
3:00 p.m. Meeting with Boiling Water Reactor Vessel and Internals Project (BWRVIP) and NRC Staff (PUBLIC MEETING).

Note: The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: May 5, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–12145 Filed 5–6–97; 11:47 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Membership on the Executive Resources Board

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to the Executive Resources Board for the Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Executive Resources Board. The following individuals are appointed as members of the NRC Executive Resources Board responsible for providing institutional continuity in executive personnel management by overseeing NRC's Senior Executive Service (SES) and Senior Level System (SLS) merit staffing, succession planning, and position management activities.

APPOINTEES:

L. Joseph Callan, Executive Director for Operations, Chair
Karen D. Cyr, General Counsel
Anthony J. Galante, Chief Information Officer
Jesse L. Funches, Chief Financial Officer

Hugh L. Thompson, Jr., Deputy Executive Director for Regulatory Programs
Edward L. Jordan, Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigation and Enforcement
Patricia G. Norry, Deputy Executive Director for Management Services
Samuel J. Collins, Director, Office of Nuclear Reactor Regulation
Carl J. Paperiello, Director, Office of Nuclear Material Safety and Safeguards
David L. Morrison, Director, Office of Nuclear Regulatory Research
Denwood F. Ross, Jr., Director, Office for the Analysis and Evaluation of Operational Data
Luis A. Reyes, Regional Administrator, Region II
Edward L. Halman, Director, Office of Administration
Paul E. Bird, Director, Office of Personnel
Irene P. Little, Director, Office of Small Business and Civil Rights
John C. Hoyle, Secretary of the Commission
Hubert J. Miller, Regional Administrator, Region I

EFFECTIVE DATE: May 2, 1997.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Swanson, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301) 415–7103.

Dated at Rockville, Maryland, this 2nd day of May 1997.

For the U.S. Nuclear Regulatory Commission.

Paul E. Bird,

Director, Office of Personnel.

[FR Doc. 97–11970 Filed 5–7–97; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Survivor Questionnaire
(2) *Form(s) submitted:* RL–94–F
(3) *OMB Number:* 3220–0032
(4) *Expiration date of current OMB clearance:* 6/30/1997
(5) *Type of request:* Extension of a currently approved collection
(6) *Respondents:* Individuals or households
(7) *Estimated annual number of respondents:* 8,000
(8) *Total annual responses:* 8,000
(9) *Total annual reporting hours:* 1,391
(10) *Collection description:* Under Section 6 of the Railroad Retirement Act, benefits are payable to the survivors or the estates of decreased railroad employees. The collection obtains information about the survivors if any, the payment of burial expenses and administration of estate when unknown to the Railroad Retirement Board. The information is used to determine whether and to whom benefits are payable.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–11950 Filed 5–1–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Reapproval: Rule 24b–2, SEC File No. 270–153, OMB Control No. 3235–0127.

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 requests for approval of the following rule:

Rule 24b–2 (17 CFR 240.24b–2) provides a procedure, whereby persons filing documents with the Commission may request confidential treatment of information contained in such documents, and may request Commission review of adverse staff determinations regarding the confidential treatment request.

Approximately 630 requests for confidential treatment are made per year. Applications pursuant to the rule are generally prepared in conjunction with the document for which confidential treatment is being requested. Based upon our review of the applications we have received, we believe that not more than 30 minutes of the time spent in preparing the entire filing may be attributed to the application required under Rule 24b–2. Thus, the total compliance burden is 315 hours. The approximate cost per hour is $100, resulting in a total cost of compliance for respondents of $31,500 per year (315 hours @ $100).

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 25, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–11954 Filed 5–7–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Suncor, Inc., Common Shares and Common Share Purchase Rights) File No. 1–12384

May 2, 1997.

Suncor, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company has voluntarily decided to delist its Securities on the Amex and instead to list on the New York Stock

Exchange, Inc. (''NYSE''). The Company believes the NYSE is more widely followed by the international investment community and may raise the Company's profile with investors. The Company has complied with Rule 18 of the Amex for delisting its Securities.

Any interested person may, on or before May 23, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–11953 Filed 5–7–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region VI—Advisory Council Meeting; Public Meeting

The Small Business Administration—Region VI—Houston Advisory Council, located in the geographical area of Houston, Texas, will hold a public meeting beginning at 10:00 a.m., on Thursday, May 15, 1997. The meeting will be conducted at the Texas Commerce Bank National, Heritage Room, Third Floor, located at 510 Park Street, Beaumont, Texas 77704. This meeting will be conducted to discuss such business as may be presented by members of the District Council, the staff of the U.S. Small Business Administration, and others attending. For further information, write to Milton Wilson, Jr., District Director, at the Small Business Administration, 9301 Southwest Freeway, Suite 550, Houston, Texas 77074–1591 or call (713) 773–6500.

Dated: April 30, 1997.

Michael P. Novelli,

Director, Office of Advisory Councils.

[FR Doc. 97–11982 Filed 5–7–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Wright, Stearns and Sherburne Counties, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FWA is issuing this notice to advise the public that a Tier I environmental impact statement (EIS) will be prepared for proposed highway capacity improvements on existing or new alignments that connect Interstate 95 (I–94) and Truck Highway 10 (TH 10) between the cities of Becker and St. Cloud, Minnesota. The proposed alignment connections being studied include existing and new crossings of the Mississippi River. The Tier I EIS includes the analysis needed for a location decision.

FOR FURTHER INFORMATION CONTACT:

Cheryl Martin, Federal Highway Administration, Galtier Plaza, Box 75, 175 Fifth Street East, Suite 500, St. Paul, Minnesota 55101–2901, Telephone (612) 291–6120; or

Ed Idzorek, Project Manager, Minnesota Department of Transportation—District 3, 3725 12th Street North, St. Cloud, Minnesota 56302, Telephone (320) 654–5546.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare a Tier I EIS on a proposal to improve highway capacity for connections between Interstate 94 (I–94) and Trunk Highway 10 (TH 10) between the cities of Becker and St. Cloud, Minnesota, including a crossing of the Mississippi River. The area of the proposed improvements is located in Wright, Stearns and Sherburne Counties. Expansion of highway capacity is considered necessary within the next 20 years to provide for projected traffic demands in an area of rapid growth and development.

The Tier I EIS study will be initiated in late 1997 to examine the feasibility and potential impacts of the following alternative alignments:

- No Build.
- Utilize the existing TH 24 corridor from I–94 northeast (through the city of Clearwater) approximately 4 kilometers (km) then north on the current alignment of a local road to connect to TH 10 at a point approximately 2 km northwest of the existing TH 10/TH 24 intersection.
- A new alignment east of the city of Clearwater that intersects with I–94 at a point approximately 2.5 km southeast of the existing TH 24/I–94 interchange, continuing in a north-northeast direction until it intersects with CSAH 8 then continues north on an existing local road alignment to intersect with TH 10 at a point approximately 2 km northwest of the existing TH 10/TH 24 intersection.
- A new alignment east of the city of St. Cloud that intersects I–94 approximately 2.8 km northwest of the existing TH 24 interchange, continues northeast across the Mississippi River and then north to connect to TH 10 in the vicinity of the existing intersection of CSAH 3 with TH 10.
- A new alignment west of the city of Becker that intersects I–94 approximately 1 km west of the freeway rest area west of the Hasty interchange, continuing north on the alignment of existing Barton Road then north on a new alignment across the Mississippi River to continue along the current alignment of CSAH 53. Approximately 2 km south of TH 10, the alignment turns north to intersect with TH 10 at a point approximately 1.3 km east of the existing intersection of TH 10 and CSAH 53.

The Tier II EIS will be prepared in 15 to 20 years, when the need for increased river crossing capacity is imminent. At that time, design alternatives for the preferred alignment will be considered and environmental impacts and mitigation will be studied in greater detail.

The ''I–94/TH 10 Regional Connection Scoping Document and Draft Scoping Decision Document'' will be published in the Spring of 1997. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A 30-day comment period for review of the document will be provided. A public scoping meeting will also be held during the comment period to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. Public meetings have been held in the past and will continue to be held, with public notice given for the time and place of the meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 1, 1997.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration.

[FR Doc. 97–12005 Filed 5–7–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3422

Applicant: Norfolk Southern Corporation, Mr. C. M. Golias, Chief Engineer S&E Engineering, 99 Spring Street, S.W., Atlanta, Georgia 30303.

Norfolk Southern Corporation seeks approval of the proposed modification of the traffic control system, on the single main track, at Carrollton, Missouri, milepost S–211.2 and WB Junction, Missouri, milepost S–212.8, on the Kansas City District-Westward, Illinois Division, consisting of the following:

1. Discontinuance and removal of the No. 7 power-operated switch and 40LD controlled signal at WB Junction, milepost S–212.8, associated with the installation of an electrically locked hand-operated switch outside control point limits;

2. Discontinuance and removal of controlled signals 38L, 38RA, and 38RB, associated with the installation of back to back automatic intermediate signals 2113 and 2114 at Carrollton, milepost S–211.2; and

3. Conversion of No. 37 power-operated switch at Carrollton, milepost S–211.2 to an electrically locked hand-operated switch.

The reason given for the proposed changes is to reduce maintenance costs without affecting safety.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be 3 filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on May 2, 1997.

Grady Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 97–12006 Filed 5–7–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8822

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8822, Change of Address.

DATES: Written comments should be received on or before July 7, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instruction should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Change of Address.

OMB Number: 1545–1163.

Form Number: 8822.

Abstract: Form 8822 is used by taxpayers to notify the Internal Revenue Service that they have changed their home or business address or business location.

Current Actions: Line 2 is deleted because Form 942 was replaced by Schedule H, Form 1040, which is covered by line 1, and Forms 940 and 940-EZ were moved to line 8 of the form.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 16 minutes.

Estimated Total Annual Burden Hours: 387,501.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–12059 Filed 5–7–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 7018 and 7018–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 7018, Employer's Order Blank for Forms, and Form 7018–A, Employer's Order Blank for 1998 Forms.

DATES: Written comments should be received on or before July 7, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 7018, Employer's Order Blank for Forms, and Form 7018–A, Employer's Order Blank for 1998 Forms.

OMB Number: 1545–1059.

Form Number: Forms 7018 and 7018A.

Abstract: Forms 7018 and 7018–A allow taxpayers who must file information returns a systematic way to order information tax forms materials.

Current Actions: Form 7018 is being redesigned as a 3-fold self-mailer postcard. It will be more user friendly because the title of each form will be placed next to the form number instead of on the back of the form. Form 941, Emloyer's Quarterly Federal Tax Return, and Form 943, Employer's Annual Tax Return for Agricultural Employees, were inadvertently omitted from the list of available forms and have now been added. Also, three new forms are being added. They are Form 1099–LTC, Long-Term Care and Accelerated Death Benefits, Form 1099–MSA, Distributions From Medical Savings Accounts, and Form 5498–MSA, Medical Savings Account Information.

Form 7018–A is being redesigned to include the title of each form next to the form number instead of on the back of the form. Three new forms are being added to the list of available forms. They are Forms 1099–LTC, 1099–MSA, and 5498–MSA.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,668,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 83,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 1, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–12060 Filed 5–7–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Fulbright Teacher Exchange Program, Administrative and Program Services; Request for Proposals

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to provide administrative and program services for the Fulbright Teacher Exchange Program (E/ASX). The Program administers approximately 200 one-on-one exchanges (400 participants) at the primary, secondary and community college levels between U.S. and overseas counterpart teachers from over 25 countries.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided throught the Fulbright Hays Act. Programs and projects must conform with Agency requirements and

guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/ASX–98–AD.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency in Washington, D.C. by 5 p.m. on June 18, 1997. Faxed documents will not be accepted, nor will documents postmarked June 18 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Grants should begin on or about October 1, 1997 and run through September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Ilo-Mai Harding, Teacher Exchange Branch, E/ASX, room 349, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 619–4556, fax: (202) 401–1433, Internet: IHARDING@USIA.GOV to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling (202) 401–7616. The ''Table of Contents'' listing available documents and order numbers should be the first order when entering the system.

Please specify USIA Senior Program Officer Ilo-Mai Harding on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicition Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASX–98–AD, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review critiera under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'' the U.S. Information Agency ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program content, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Program and Policy

In the Administration of the Fulbright Teacher Exchange Program, USIA Will Have Responsibility for

A. establishing program policy, and providing instructions and guidance, both general and specific, on the functions listed below;

B. acting as the major agent in establishing new programs; monitoring all programs; serving as the liaison with overseas cooperating agencies in all program matters; overseeing all program activity including recruiting and matching, publicity and outreach, and orientation workshops; ensuring that the program is representative of the diversity of U.S. political, social, and cultural life by actively encouraging minority participation in all aspects of programming; and evaluating all aspects of the program;

C. preparing final paperwork for the J. William Fulbright Foreign Scholarship Board approval on U.S. and foreign candidates and projects;

D. providing funds sufficient to cover staff time and expenses incurred in the execution of this grant;

E. providing liaison and supervision to effectively carry out the responsibilities assigned under this grant.

Cooperating Agency Will Be Responsible for

A. providing administrative and program services for the Fulbright Teacher Exchange Program;

B. observing and complying with the policies of the United States Information Agency (USIA) and the J. William Fulbright Foreign Scholarship Board (FSB) in the administration of this grant, and promoting diversity in programming and staffing;

C. providing data, as required by USIA, concerning the Fulbright Teacher Exchange Program;

D. submitting quarterly budget and program reports and an annual report with recommendations for project improvement.

Proposed Budget

The contracted organization must submit a comprehensive line-item budget based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants must provide separate sub-budgets for each program component, phase, or activity in order to facilitate USIA decisions on funding. Administrative costs should be kept low; this will be an important factor in grant competition.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as other USIA elements, where appropriate. Proposals may also be reviewed by the Office of the General Counsel. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants

or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content (program meetings and resource materials).

3. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

4. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts.

5. Project Evaluation: Proposals should include a plan to evaluate the activity's success. Successful applicants will be expected to submit quarterly reports.

6. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

7. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: April 25, 1997.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–11869 Filed 5–7–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Notice; Grants and Cooperative Agreements; Availability

Title: Provision of Overseas Direct English Teaching Programs—Seeking Partnerships.

Announcement: Call for concept papers.

SUMMARY: The English Language Programs Division in the Office of Academic Programs of the United States Information Agency's (USIA) Bureau of Educational and Cultural Affairs announces an opportunity to create a public/private sector partnership with USIA in order to ensure the long-term viability of one of its direct English teaching programs (DETP) abroad. Because of the important role of these programs in achieving the United States' public diplomacy and foreign policy objectives, USIA is committed to maintaining quality American language instruction within professional programs that also reflects American cultural thoughts and concepts as well as democratic and educational values for important overseas audiences and which facilitates a channel of communications vital to America's relationships with other countries and cultures. Recent budget reductions however, have limited the operational and material support that USIA can offer to the DETPs. USIA is seeking a partner in a cooperative agreement to manage the well-established DETP in Sanaa, Yemen in cooperation with the United States Information Service (USIS) post in Sanaa. Management of the program must maintain and, if possible, strengthen the DETP's self-sufficiency. USIA invites public and private, not-for-profit organizations with a minimum of five years experience in successfully managing a self-sufficient English teaching program to submit concept papers for collaborating with USIA and USIS Sanaa. Limited support for any initiative may be available, depending on the specific current circumstances of the DETP, the interest and requirements of the post, and the availability of funds. Any USIA support may be limited to international airfare and short-term per diem expenses.

Background Information

English Language Programs Division

The English Language Programs Division (E/AL) of the United States Information Agency's Bureau of Educational and Cultural Affairs provides professional English language programming to promote a world-wide understanding and awareness of American Language, society, values and policies and to foster an English-competent world community with which Americans can engage freely. The Division's English Language Officers and Program Officers and staff work on many fronts to promote American public diplomacy and policy issues:

Address national education and language policy issues on a government to government basis, sharing American educational policies, management practices and state of the art curricula and assessment designs.

Develop and facilitate national and regional conferences, seminars and workshops focusing on state of the art language instruction, methods, techniques, materials and technologies in order to develop a professional cadre of trainers and English teachers who can use American educational products and expertise.

Develop and disseminate instructional materials for use in language learning courses, self-study programs or distance education programs as well as teacher and trainer professional development programs, utilizing the Congressionally legislated authority to recycle fees from tuition and the sale of USIA produced English teaching materials.

Increase the audiences' awareness and understanding of American society, institutions and values through the learning of American English and use of American commercially produced educational materials.

Establish a basis for American academia working in English language teaching to develop long term institutional linkages, engage in an exchange of scholars, students and research and programs.

Conduct exchange programs for English language professionals to enhance country plan objectives and provide support for field requests for English language programs.

Direct English Teaching Programs (DETP)

USIA's Direct English Teaching programs overseas are important contributors to the Agency's public diplomacy. The main objective of the DETP is to provide important audiences with quality English language instruction within a professional program that also reflects American cultural thoughts and concepts, as well as democratic and educational values.

The programs and activities the DETPs engage in reflect the goals and priorities of the U.S. Missions overseas.

The activities the DETPs generally engage in include:

American language courses: intensive and semi-intensive general language courses as well as specially designed courses for specific clients (from the legal sector, the business sector, various Ministerial and other offices in the governmental sector, etc.).

Cultural programs: lectures, discussions, literary groups, plays, movies (commercial or documentary), music/concerts, and events related to American holidays, civic education, and issues concerning education, democracy, the environment, health, ethics, commerce and trade, etc.

Outreach programs: seminars and workshops for national and local professional education associations, assistance with the national and local TESOL or IATEFL affiliate, work with the local Ministry of Education on curriculum development, teacher training, materials development and selection, and assessment.

Assessment and testing programs: engage in administering American educational tests and exams (commercial and non-commercial) such as the TOEFL, the TOEIC, the MTAC, the ECMFG, the USMLE, the USIA-produced TELP, etc.

Many DETPs are housed on USIS premises, or USIS-leased premises, but some are located at off-site facilities. Wherever the site, there should be well-lighted classrooms, an office for the Director of Courses (DOC), working space for faculty and staff, and a waiting room area for the students. Often there is a library reading room to which students have access.

While the programs are open to the public, due to space, equipment, materials and funding limitations, there may not be space for all students who wish to attend the DETPs. Because the programs exist to promote the public diplomacy efforts and goals of the U.S. Missions abroad, the desired primary enrollment at a DETP includes:

Host country government officials
University professors and secondary school teachers
USIA/USIS grantees for various scholarships and grants to the U.S.
Grantees and contacts for programs sponsored by other USG agencies
Prominent community leaders/opinion makers

The post USIS director, the Public Affairs Officer (PAO), bears the primary responsibility for ensuring that the DETP provides an effective representation on behalf of USIS and that it serves as a model American language education establishment which, concomitantly, serves as a conveyer of U.S. culture, thought and values. The DETP's administration is responsible for the management of the program under the auspices of the PAO and according to the terms of a cooperative agreement signed with USIS Sanaa. The faculty and staff of the DETP are not employees of USIA or USIS, but work for the program through an agreement with the Administrative Institution. The roles and responsibilities of all personnel associated with the DETP and the regulations for administering the program are contained in the English Language Program Administration Manual.

The DETPs should be fiscally self-sufficient based on fees received for tuition, the sale of USIA produced materials, and fees for other services related to English language programming (e.g., testing). The DETPs are not dependent on USIA/USIS for sustained financial support. Depending on the relationship between the DETP and the local USIS post, and the availability of funds, USIS may contribute towards some programming for the DETP.

The authority for USIA/USIS to engage in the DETPs is provided through legislation. Under the authorizing legislation PL 97–241 and under Section 801 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1471), and the Mutual Educational and Cultural Exchange Act of 1961, USIA is able to receive fees for tuition and services for English teaching programs conducted by or on behalf of the Agency.

The authority for USIA/USIS to enter into a cooperative agreement is found in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Sections 102(a)(1)(A), 102(b)(4) and 104(e)(1); Executive Order 11034, Section 8(a)(3), (5), (8), (9), (10), (11), (12) and (15); the Federal Grant and Cooperative Agreement Act of 1977; Reorganization Plan No. 2 of 1977, Executive Order 10248 and the United States Information and Educational Exchange Act of 1948, as amended, Section 810.

USIS Sanaa Direct English Teaching Program

The program under current consideration is in Sanaa, Yemen. The DETP has been in existence for about 22 years. The DETP currently has 950 students, of which 565 are returning students. The program employs a faculty/staff of 36 (In order to maintain the continuity and consistency of services, the new administrative institution may allow as many personnel as are qualified and as practicable to remain on the job.) Class sizes range form 10 to 17, with 16 being the average. The core program has six levels (basic to advanced) and uses the *Spectrum* series as the main text. Advanced classes beyond the core program have at various times included Advanced Writing, Advanced Grammar, Advanced Conservation, English for Business, TOEFL Preparation, and Teacher Training for Yemeni Teachers of English. The DETP is a self-sufficient program. A complete profile of the program is available to applicants wishing to submit a concept paper.

Scope of Partnership

USIS Sanaa is looking for an institutional partner to manage the DETP. Management of the program includes personnel recruitment (DOC, faculty, staff) and the administration of all aspects and activities of the program, including English language classes, cultural programs, outreach programs, and language testing/assessment activities. Management of the program must assure:

A professionally qualified and experienced Director of Courses;

A trained teaching staff with a minimum of advanced proficiency in English, and with knowledge of current methodologies, techniques and technology in teaching English as a foreign language (TEFL);

Well organized curricula that include course achievement goals and assessment criteria; Primary use of core texts which are high-quality, American-published materials, and which include a strong American cultural component which acquaints the students with the United States;

Continued program financial self-sufficiency and sound financial planning;

Close cooperation with USIS Sanaa in English for Special Purposes outreach, targeted client development, and any cultural content and programming.

Specific guidelines and evaluation criteria for the management of the DETP are in the English Language Program Administration Manual which is available upon request to applicants wishing to submit a concept paper.

Management's Role and Responsibilities

The role and responsibilities of the managing institution as outlined in the standard cooperative agreement include:

Establishing, with the approval of the Director of USIS (PAO), the level, hours and duration of courses to be taught.

Recruiting and selecting well-qualified teaching and administrative personnel; entering into a written work agreement with each person; training these individuals; inspecting, reviewing, and coordinating the work of these individuals, and deciding on the termination, renewal or non-renewal of the work agreement. All proposed staff and all proposed terminations, renewals/non-renewals must be approved by the PAO.

Establishing student prerequisites, conducting placement testing and TEFL tests, enrolling and scheduling students.

Establishing jointly with the PAO the maximum and minimum number of students per class.

Establishing jointly with the PAO a fee structure for students, a salary schedule for teachers and other staff, and fiscal structures for any other revenue sources.

Collecting fees from all sources; on a quarterly or semi-annual basis remunerate 10% of the gross receipts to USIS Sanaa.

Making disbursements to staff as well as local or other vendors for all operating expenses incurred to conduct the DETP.

Maintaining student progress reports and issuing appropriate certification to students who meet institutional standards at various levels of proficiency.

Maintaining detailed financial and statistical records in accordance with the requirements outlined in the cooperative agreement and in the English Language Program Administration Manual.

Accepting responsibility and accountability for the equipment, furniture, nonexpendable supplies, textbooks, and other physical property assigned to the DETP. Preparing an annual inventory of such property on hand as of August 31 of each year. The managing organization may be held liable for replacing any such property which cannot be accounted for during the annual inventory process.

Providing all such reports as may be requested by the PAO or stated in the English Language Programs Administration Manual.

Preparing a Financial Plan which includes all funds required to operate the DETP for one academic year, with the projected income to meet those expenses.

The management and the management's personnel shall not be considered employees of the Federal Government and shall not be eligible, by virtue of performance under the cooperative agreement, for payment by the Government or entitlements and benefits accorded federal employees unless specifically included in the cooperative agreement or the English Language Program Administration Manual.

The DETP will be established, organized and operated as described in the English Language Program Administration Manual. This manual will be used to address a number of details necessary for a successful DETP. This handbook is made a part of the cooperative agreement and its order of precedence is secondary only to the specific written terms of the cooperative agreement itself.

Benefits: Potential benefits to the applicant for entering into a cooperative agreement with USIS include, but are not limited to:

Through a sharing of resources, the opportunity to work overseas, or expand current international work;

Sharing of USIS contacts in the language education profession or related fields;

Opportunity to establish linkages and expansion beyond the immediate scope of the partnership;

Opportunity for exchanges of faculty, students, research, and staff;

On-site recruitment of international scholars and students and the ability to conduct pre-departure orientation;

Expanded international recognition and an expanded network of contacts and resources;

Potential revenue from DETP income to support the benefits mentioned above.

Announcement Title and Number: All communications with USIA concerning this announcement should refer to the above title and reference number E/AL–97–03.

Supporting Documents: Applicants should request the following supporting documents from the English Language Programs Division (E/AL):

The English Language Program Administrative Manual
The Sanaa DETP program profile
A sample copy of a Cooperative Agreement to Manage a DETP

Submissions: Organizations wishing to pursue collaborating as described above should prepare a concept paper, not to exceed 10 pages. This paper should include the following information:

A. Name and address of organization(s).
B. Principal contact information (name, phone/fax numbers, e-mail address).
C. Outline of organization's history, mission, and scope.
D. Brief description of organization's experience in successfully managing a self-sufficient English teaching program, preferably an off-site program.
E. Resources (human, financial, in-kind etc.) which applicant organization proposes to contribute to the achievement of the goals of the DETP, including the qualifications of the likely Director of Courses.
F. Brief description of applicant organization's experience in Yemen and/or the region; if no experience in the region, organization's overseas experience.
G. Scope of proposed activity, including applicant organization's management style and communication style for directing a distance program under the guidelines in the English Language Program Administration Manual.
H. Brief discussion of the goals and the benefits the applicant organization envisions upon entering into such an agreement with USIS Sanaa.

The original and six copies of the concept paper, along with the same information on a 3.5″ diskette in ASCII text format, should be sent to: U.S. Information Agency, Ref.: E/AL–97–03, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

USIA will use the electronic submissions to transmit concept papers to USIS Sanaa for its review and comment.

Deadline for Submission: All concept papers must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on June 6, 1997. Faxed documents will not be accepted. Documents postmarked June 6, but received at a later date will also not be accepted.

Review Process: USIA will review concept papers using as criteria the degree to which the applicant organization demonstrates:

Experience successfully managing an English teaching program;

Styles of management and communication relating to management of an overseas program;

Overseas experience of the organization and proposed personnel;

Ability to provide the necessary resources (human and financial) to assure the quality and self-sufficiency of the program.

The goals and benefits the applicant envisions for itself and the DETP upon entering into such an agreement with USIS Sanaa.

All accepted concept papers will be reviewed by a panel which may include the program office, geographic area office, and USIS Sanaa. Statements may also be reviewed by the Office of the General Counsel or by other Agency elements. The panel will determine those interested parties that should be recommended for further consideration by USIS Sanaa. E/AL will communicate all information regarding the concept papers and the panel's recommendations to USIS Sanaa. Final decisions regarding the concept papers will be communicated to the applicants by E/AL. USIA in cooperation with USIS Sanaa will negotiate a formal cooperative agreement with the chosen Administrative Institution.

FOR FURTHER INFORMATION, CONTACT: The English Language Programs Division, E/AL, Rm. 304, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone 202–619–5869; fax 202–401–1250; e-mail DANDERS@USIA.GOV Contact officer is Damon Anderson.

To download this announcement via internet: This announcement may be downloaded from USIA's web site at http://www.usia.gov/education/rfps. Please read all information before downloading.

Dated: April 29, 1997.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–11870 Filed 5–7–97; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 62, No. 89

Thursday, May 8, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. HB52–92–3–005]

York Haven Power Company, Safe Harbor Water Power Corporation, Pennsylvania Power & Light Company, Susquehanna Power Company, and PECO Energy Power Company; Notice of Information Settlement Meeting

Correction

In notice document 97–11541, appearing on page 24442, in the issue of Monday, May 5, 1997, the docket line should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

[Department of the Treasury Circular, Public Debt Series No. 1-93]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds

Correction

In proposed rule document 97–11582 beginning on page 24375 in the issue of Monday, May 5, 1997 make the following corrections:

1. On page 24375, third column, in the **ADDRESSES** section ''Washington D.C. 20249-0001'' should read ''Washington D.C. 20239-0001.''

2. On page 24375, third column, in the **FOR FURTHER INFORMATION CONTACT** section ''Ken Papj'' should read ''Ken Papaj''.

3. On page 24376, third column, 14th line, ''consistent'' should read ''inconsistent''.

BILLING CODE 1505-01-D

Federal Register

Thursday
May 8, 1997

Part II

Securities and Exchange Commission

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc.; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38545; File No. SR–NASD–97–28]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. (''NASD'') to Proposed Changes in the By-Laws of the NASD, NASD Regulation, Inc., The Nasdaq Stock Market, Inc., the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries, Membership Application Procedures, Disciplinary Proceedings, Other Proceedings, and Other Conforming Changes

April 24, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 18, 1997,[2] the National Association of Securities Dealers, Inc. (''NASD'') 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 self-regulatory organization. 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 NASD is filing a proposed rule change to: (1) The By-Laws of the NASD; (2) the By-Laws of NASD Regulation, Inc. (''NASD Regulation''); (3) the By-Laws of The Nasdaq Stock Market, Inc. (''Nasdaq''); (4) the Plan of Allocation and Delegation of Functions By NASD to Subsidiaries (''Delegation Plan''); (5) Rule 0120; (6) Rule IM–2210–4; (7) the Rule 1010 Series; (8) the Rule 8000 Series; and (9) the Rule 9000 Series.[3]

Attached as Exhibit 1 is the text of the proposed rule change. In (1) the By-Laws of the NASD; (2) the By-Laws of NASD Regulation; (3) the By-Laws of Nasdaq; (4) the Delegation Plan; (5) Rule 0120; (6) Rule IM–2210–4; and (7) the Rule 8000 Series, proposed new language is italicized; proposed deletions are in brackets. In the Rule 1010 Series and the Rule 9000 Series, the extensive nature of the proposed changes reduces the usefulness of a line-by-line analysis comparing the proposed new language with the proposed deleted language. If the proposed Rule 1010 Series and the proposed Rule 9000 Series are adopted, the Association proposes to rescind in full the current Rule 1010 Series and the current Rule 9000 Series, except the Rule 9700 Series and the Rule 9800 Series. The current Rule 9700 Series will remain in effect for a short period while Nasdaq seeks approval by the Commission to amend such rules, including their renumbering as Rule 4000 Series provisions.[4]

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 self-regulatory organization 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 self-regulatory organization 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

a. Introduction

The Association is proposing a comprehensive rule change to address three primary issues—how an entity or person becomes a member of the Association (''membership proceedings''); how the Association may discipline a member or a person associated with a member for misconduct; and, how NASD and NASD Regulation nominations and elections for certain board and committee positions are conducted. The proposed changes in the Association's membership proceedings are set forth in the proposed Rule 1010 Series. The proposed changes to the Association's array of proceedings to discipline a member or a person associated with a member are set forth in the proposed Rule 9000 Series. The proposed changes to the election procedures are set forth in the proposed NASD By-Laws, Article VII, and proposed NASD Regulation By-Laws, Articles VI and VIII.

Both the proposed Rule 1010 Series and the proposed Rule 9000 Series will effect many changes to the procedures now used. The proposed Rule 1010 Series provides that NASD Regulation staff, rather than a District Committee,[5] will make an initial decision on an application for membership. An Applicant may appeal a staff decision to the National Business Conduct Committee.[6] The National Business Conduct Committee decision is subject to discretionary review by both the NASD Regulation Board and the NASD Board.[7] The proposed rule change also sets forth a more detailed and comprehensive list of the documents and information that must be submitted with a membership application and sets forth more detailed, comprehensive, and objective standards to be used to determine whether an applicant should be admitted to membership. The proposed rule change also provides more procedural rights to applicants to ensure that applications are processed expeditiously, including limitations on the time within which the Association must issue membership decisions.

In the proposed Rule 9000 Series, definitions and certain rules of general applicability are set forth in the proposed Rule 9100 Series. Ordinary disciplinary proceedings are addressed in the proposed Rule 9200 Series, and appeals of these decisions are addressed in the proposed Rule 9300 Series.

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[1] 15 U.S.C. 78s(b)(1).

[2] On April 23, 1997, the Association filed a technical amendment to the proposed rule change. *See* letter from Alden S. Adkins, General Counsel, NASD Regulation, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1'').

[3] Because the proposed rule change includes a number of amendments to the corporate documents of the NASD, NASD Regulation and Nasdaq, as well as numerous proposed rules, the three corporations collectively will be referred to as the ''Association'' for the purpose of this rule filing.

[4] The proposed Rule 9500 Series will supersede the Rule 9600 Series. As part of the deletion of the current Rule 9600 Series, the current Rule 9630 Series (Expedited Remedial Proceedings) will be deleted. At a later date, however, the Association will propose a different approach for an expedited remedial proceeding.

[5] Terms that are defined in the proposed rule filing are capitalized in this discussion (*e.g.*, the term ''District Committee'' means a district committee elected pursuant to Article VIII of the NASD Regulation By-Laws). (Proposed NASD Regulation By-Laws, Art. I(j).)

[6] The term ''National Business Conduct Committee'' means the committee of the Board of Directors of NASD Regulation that may be authorized and directed to act for the Board of Directors of NASD Regulation in a manner consistent with the By-Laws of NASD Regulation, the Rules of the Association, and the Delegation Plan with respect to (1) An appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; and (6) such other proceedings or actions authorized by the Rules of the Association. (Proposed NASD Regulation By-Laws, Article IV, Section 4.14(h) and Proposed Rule 0120(m).)

[7] The term ''NASD Board'' means the Board of Governors of the NASD. (Proposed Rule 9120(r).) The term ''NASD Regulation Board'' means the Board of Directors of NASD Regulation. (Proposed Rule 9120(s).)

In the proposed Rule 9100 Series, a number of procedural enhancements have been added to such Rules. These enhancements include requirements for notice and service, a detailed rule prohibiting *ex parte* communications generally, a rule requiring that adjudicatory and prosecutorial-like functions remain separated, and a rule allowing the removal of counsel for misconduct during a proceeding.

In the proposed Rule 9200 Series, there are significant changes proposed in the way a disciplinary proceeding is investigated, a complaint is brought, and a decision is made. A disciplinary proceeding will be investigated by the staff of NASD Regulation, the complaint will be brought by the Department of Enforcement[8] rather than a District Committee or the Market Regulation Committee,[9] and the matter will be heard and decided by a Hearing Panel,[10] the chair of which is a Hearing Officer, a professional independent staff member of the Association.[11] The other two persons, defined as Panelists, who will constitute the Hearing Panel (or, in certain cases, an Extended Hearing Panel), are current members of a District Committee, or current or former members of the securities industry who have served on a disciplinary hearing panel, the National Business Conduct Committee, or one of the corporate boards.[12] In some cases, one of the two Panelists may be a current or former member of the Market Regulation Committee.[13] There are significant changes in the rights of Respondents to obtain evidence and for all Parties to resolve issues in pre-hearing conferences and by motion in order to streamline the hearing.[14]

Although that portion of the Rule 9300 Series concerning appeals and reviews has undergone significant changes, the appellate or review proceeding retains many of its former characteristics. Changes include the right of the Department of Enforcement of NASD Regulation to appeal a case and the right of a Party to cross-appeal.

Several other types of proceedings, which in general are more expedited than the ordinary disciplinary proceedings described above, are set forth in the proposed Rule 9400 Series and the proposed Rule 9500 Series.[15] These proceedings currently are described in the Rule 9500 Series and the Rule 9600 Series.

In addition, in order to present the Commission a unified body of rules, the Association is proposing changes to various corporate documents and Rules of the Association to conform them to the proposed Rule 1010 Series and proposed Rule 9000 Series. Thus, proposed rule changes are also submitted for the By-Laws of the NASD, NASD Regulation, and Nasdaq; the Delegation Plan; Rule 0120; Rule 0121; proposed Rule IM–2210–4; and the Rule 8000 Series.

The following is a comprehensive list of the parts of the proposed rule change:

1. Proposed changes to the By-Laws of the NASD, NASD Regulation, and Nasdaq;
2. Proposed changes to the Delegation Plan;
3. Proposed changes to Rule 0120 and Rule 0121;
4. Proposed Rule IM–2210–4;
5. Proposed changes to the Rule 1010 Series;
6. Proposed changes to the Rule 8000 Series; and
7. Proposed changes to the Rule 9000 Series.

(i) *Background for Proposed Changes to Membership Application Procedures and Rules Providing Procedures for Disciplinary Proceedings and Other Proceedings*

The Association's request for the proposed changes to disciplinary proceedings instituted against members and their associated persons and other proceedings in the Rule 9000 Series follows a series of events that compelled the Association to undertake a review of the entire Rule 9000 Series. At the same time, the Association was requested to

[8] The Commission notes that the NASD Regulation Board and the NASD Board will each have the authority to direct the Department of Enforcement to issue a complaint. (Proposed Rule 9211(b).)

[9] The term ''Market Regulation Committee'' means the committee of NASD Regulation designated to consider the federal securities laws and the rules and regulations adopted thereunder and various Rules of the Association and policies relating to:

(1) the quotations of securities;

(2) the execution of transactions;

(3) the reporting of transactions; and

(4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), the Nasdaq Stock Market Rules (Rule 4000 Series), other Nasdaq and NASD Market Rules (Rule 5000 Series), NASD Systems and Programs Rules (Rule 6000 Series), and Charges for Services and Equipment Rules (Rule 7000 Series). (Proposed Rule 9120(q).)

The Market Regulation Committee was formerly the Market Surveillance Committee of the NASD. As part of the reorganization, the committee was renamed the Market Regulation Committee. Pursuant to a resolution of the NASD Regulation Board dated May 8, 1996, NASD Regulation acknowledged responsibility for the Market Regulation Committee as a committee of NASD Regulation.

[10] A ''Hearing Panel'' is a decisional body issuing the ''trial-level'' decision in a disciplinary proceeding. It is composed of a Hearing Officer (as defined below) and two persons from the securities industry. They are referred to as ''Panelists'' (as defined below). (Proposed Rules 9120(o), 9231 and 9232.)

In some cases, an ''Extended Hearing Panel,'' rather than a ''Hearing Panel,'' will be the decisional body that issues the ''trial-level'' decision. (Proposed Rules 9120(i) and 9231(c).)

[11] The term ''Hearing Officer'' means an employee of NASD Regulation who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings brought against members and associated person. (Proposed Rule 9120(n).) The term ''Chief Hearing Officer'' means the Hearing Officer designated by the President of NASD Regulation to manage the Office of Hearing Officers, or his or her delegate. (Proposed Rule 9120(b).)

[12] In pertinent part, the term ''Panelist'' means a member of a Hearing Panel or an Extended Hearing Panel who is not a Hearing Officer. (Proposed Rule 9120(t).) A Panelist who serves on a Hearing Panel shall be associated with a member of the Association and shall be: ''(A) a current member of a District Committee; (B) a person who previously served on a disciplinary hearing panel; (C) a former member of the National Business Conduct Committee; (D) a person who previously served on a disciplinary subcommittee of the National Business Conduct Committee, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; or, (E) a person who previously was a Director, a member of the Nasdaq Board of Directors, or a Governor, but does not sit currently on any of the boards.'' (Proposed Rule 9231(b)(1) (A)–(E).) The group of persons eligible to serve as Panelists on an Extended Hearing Panel is substantially the same group, but also includes certain persons retired from the securities industry. (Proposed Rule 9231(c)(1) (A) through (E).)

However, if the complaint alleges at least one cause of action involving a violation of a statute or a rule over which the Market Regulation Committee has jurisdiction, the Chief Hearing Officer may select as a Panelist a current member of the Market Regulation Committee or a former member of the Market Regulation Committee who previously served on a disciplinary hearing panel. (Proposed Rule 9231(b)(2).) *See also* Proposed Rule 9231(c)(2), providing for a Market Regulation Committee Panelists to serve on an Extended Hearing Panel, which is substantially similar to proposed Rule 9231(b)(2).

[13] *See supra* note 9.

[14] Although a number of procedural enhancements are proposed to the Rule 9000 Series, the NASD explicitly recognizes that a Party may appear *pro se*. The Chief Hearing Officer and all other Hearing Officers are trained to apply the Rule 9000 Series flexibly to permit a Party to appear *pro se* without suffering a disadvantage due to a failure to follow all aspects of a procedural rule. Nevertheless, all Parties are expected to comply with all of the Rules. Those who do not, and request flexible treatment from a Hearing Officer, must establish that the requesting Party made a good faith effort to comply with the rule or rules in question.

[15] The proposed Rule 9400 Series and the Rule 9500 Series proceedings, for which the Association seeks temporary approval, are: (1) Proceedings for regulating the activities of a member experiencing financial or operational difficulties; (2) proceedings for approving or disapproving a change in business operations that will result in a change in exemptive status under SEC Rule 15c3–3; (3) proceedings for summary suspension of a member or persons associated with a member; (4) proceedings for the non-summary suspension, cancellation, or bar of a member or a person; and (5) proceedings for obtaining relief from the eligibility requirements of the NASD By-Laws and the Rules of the Association.

reexamine its membership application procedures.

On September 15, 1995, the NASD Board of Governors received a report from The NASD Select Committee (''Select Committee''), which the NASD had commissioned in 1994. *The Report of The NASD Select Committee on Structure and Governance To The NASD Board of Governors*, dated September 15, 1995 (''Select Committee Report''), was the culmination of nine months of exhaustive review of the operations of the NASD, and contained several recommendations regarding NASD's enforcement program and its disciplinary proceedings.[16]

The NASD Board approved the implementation of many of the recommendations of the Select Committee, as proposed or in augmented form. As is relevant to this rule filing, the NASD Board made the following determinations: [17]

1. The Association would amend its disciplinary procedures to appoint a Hearing Officer to preside over every contested disciplinary proceeding. (In contrast, the Select Committee had recommended that such persons be appointed for some cases.)

2. The Hearing Officer would exercise a key role during a disciplinary hearing. These responsibilities would include administering pre-hearing matters, including most motions, resolving procedural and evidentiary matters in a pre-hearing context, overseeing the settlement and discovery process prior to the commencement of a hearing, and guarding against *ex parte* communications in all matters. During a hearing, a Hearing Officer would chair the Hearing Panel, vote on all matters, rule on procedural and other legal matters, advise industry Panelists on relevant legal principles, and ensure the maintenance of an appropriate record. Following the hearing, the Hearing Officer would conduct legal research, review briefs, provide legal guidance to the volunteer Panelists, analyze the transcript and exhibits, and draft a decision.

3. The Office of Hearing Officers would be separate from the other departments and staff of NASD Regulation, accountable only to the President of NASD Regulation. In addition, the Office of Hearing Officers would be operated separately from the appellate and oversight staffs of NASD Regulation and NASD. In the start-up phase, all Hearing Officers would be in one location to ensure uniform training, on-site management, and their separation from ''prosecutorial staff'' located in various Association offices nationwide.

4. The NASD would adopt rules providing for the separation of functions so that persons working as ''prosecutorial staff'' in the Association would not participate in meetings with an Adjudicator regarding a proposed decision (without the other Party present) and eliminating the ''prosecutorial staff's'' current role as writer of the disciplinary decision. In addition, the Association would adopt a more formal, detailed rule prohibiting *ex parte* communications generally in disciplinary proceedings.

5. The Association's ''prosecutorial staff'' would have the right to appeal a case.

6. By rule, the Association would make available to respondents in a disciplinary proceeding non-privileged documents in the staff's possession that are directly relevant to the dispute and those that contain exculpatory evidence, and would be required to do so a ''reasonable'' time before a hearing, *i.e.*, more than five days before a hearing. Also, by rule, the Association would provide for a motions practice in a disciplinary proceeding and for sanctions for misconduct during the course of a disciplinary proceeding.

7. The Association would eliminate the burden on the National Business Conduct Committee by reducing the National Business Conduct Committee's review of uncontested settlement offers, acceptance, waiver, and consent letters and, for the purpose of determining whether to call a disciplinary proceeding for review subsequently, every disciplinary proceeding.

All of the above Board decisions have been addressed in this rule filing.

In addition, on August 8, 1996, the NASD and the Commission entered into a settlement (''SEC Settlement'').[18] Pursuant to the SEC Settlement, the NASD agreed to fourteen undertakings (''Undertakings''). Under the general terms of some of the Undertakings, the NASD became committed to review comprehensively and amend the Rule 9000 Series and the Rule 1010 Series. This rule filing primarily addresses Undertakings 3 through 5 and, to a lesser extent, Undertakings 1 and 6.[19] In the discussion following, the Association references those proposed rules that specifically incorporate the above proposed improvements and address the particular requirements of the Undertakings.

(ii) *Other Sources*

In addition to incorporating the requirements of the Undertakings, the

[16] The Select Committee recommended, among other things, that NASD allocate additional personnel and resources to enforcement, establish an Office of Hearing Officers, and hire professional Hearing Officers to serve as the chair of certain but not all Hearing Panels in disciplinary proceedings. The Select Committee also recommended that the NASD adopt a rule to prohibit *ex parte* contacts between the disciplinary Hearing Panels and Parties or their attorneys, expand the documentary discovery rights of respondents in NASD disciplinary proceedings to furnish respondents, at a reasonable time in advance of the initial hearing, with all non-privileged materials in the NASD's possession (including exculpatory evidence) directly relevant to the dispute, and provide, by rule, for a motions practice, and the power of a disciplinary Hearing Panel to sanction Parties or their counsel for frivolous practice or contumacious conduct. The Select Committee also recommended that the workload of the National Business Conduct Committee be reduced so that the National Business Conduct Committee could focus upon national enforcement policy issues and ensure uniformity in NASD membership application procedures. Select Committee Report, pp. C–25 through 26, V–1 through V–46, R–20 through R–25.

[17] ''Select Committee on Structure and Governance—Staff Implementation Plan,'' discussed November, 1995 (''Implementation Plan''). Other recommendations, such as one relating to the augmentation of the Association's resources to improve the disciplinary process, have been separately addressed.

[18] Securities Exchange Act Rel. No. 37538 (August 8, 1996), 62 S.E.C. Docket 1346, Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, *In the Matter of National Association of Securities Dealers, Inc.*, Administrative Proceeding File No. 3–9056.

[19] *Id.* Undertakings 1, 3, 4, 5, and 6 of the SEC Settlement require the Association:

1. To implement and maintain at least fifty percent independent public and non-industry membership in its Board of Governors, the Board(s) of Governors or Directors of all of its subsidiaries and affiliates that exercise or have delegated self-regulatory functions, and the following committees: the National Nominating Committee, the Trading/Quality of Markets Committee, the Arbitration Committee, the Market Surveillance Committee, the National Business Conduct Committee, the Management Compensation Committee, and all successors thereto.

3. To institute the participation of professional Hearing Officers (who shall be attorneys with appropriate experience and training) to preside over disciplinary proceedings.

4. To provide for the autonomy and independence of the regulatory staff of the NASD and its subsidiaries such that the staff, subject only to the supervision of the Board of Governors of the NASD and the Boards of Directors of NASDR and Nasdaq, and any successor thereto, (a) has sole discretion as to what matters to investigate and prosecute, (b) has sole discretion to handle regulatory matters such as approval of applications for membership and the conditions and limitations that may be placed thereon, (c) prepares rule proposals, rule interpretations and other policy matters with any consultations with interested NASD constituencies made in fair and evenhanded manner, and (d) is generally insulated from the commercial interests of its members and the Nasdaq market. Among other things, the District Business Conduct Committees and the Market Surveillance Committee shall not have any involvement in deciding whether or not to institute disciplinary proceedings, nor shall the District Committees, or any subcommittee thereof, have any involvement in the review or approval of applications for membership in the NASD. Subject to the foregoing, the regulatory staff of the NASDR engaged in the disciplinary process may, solely on their own initiative, inform themselves on matters of market or other securities industry expertise by consulting with representatives of member firms or committees of the NASD or its subsidiaries.

5. To promulgate and apply on a consistent basis uniform standards for regulatory and other access issues, such as admission to the NASD as a member firm, and conditions to becoming a market maker; and institute safeguards to ensure fair and evenhanded access to all services and facilities of the NASD.

6. To ensure the existence of a substantial, independent internal audit staff which reviews all aspects of the NASD (including the regulatory function, the disciplinary process and the Nasdaq stock market and its systems) and reports directly to an audit committee of the NASD Board of Governors which includes a majority of public and non-industry Governors and is chaired by a public Governor.

recommendations of the Select Committee, and the NASD Board determination in drafting the revisions to the proposed Rule 1010 Series, the proposed Rule 8000 Series, and the proposed Rule 9000 Series, the Association has looked to other sources for the proposed revisions. First, the Association reviewed and incorporated, where possible, provisions in the SEC Rules of Practice recently adopted by the Commission for Commission-initiated enforcement and disciplinary proceedings, and proceedings to review the disciplinary proceedings of self regulatory organizations.[20] Second, the Administrative Procedure Act (''APA''), 5 U.S.C. § 551 *et seq.*, also served as a source.[21] Third, the Federal Rules of Civil Procedure (''F.R.C.P.'') served as an important reference. Fourth, the Association looked to the model administrative rules of the Administrative Conference of the United States (Dec. 1993).[22]

(iii) *Rescission of Most Current Rules*

1. *Rescission of Current Rules.* The Association is proposing that if the proposed Rule 1010 Series (Proposed Rules 1010 through 1019) and the proposed Rule 9000 Series (Proposed Rules 9000 through 9536) are adopted, the current Rule 1010 Series and the current Rule 9000 Series (except the Rule 9700 through the Rule 9800 Series) be rescinded in full.

2. *Exception for Nasdaq-Related Rules.* In a separate rule filing, Nasdaq will propose to incorporate proceedings relating to Nasdaq in the Rule 4000 Series. In the interim, however, the Association is requesting that the current Rule 9700 Series remain in place. When Nasdaq submits the rule filing amending the current Rule 9700 Series, Nasdaq will request that the current Rule 9700 Series be rescinded.

(iv) *Transition Provision*

1. *Disciplinary Procedures And Related Proposed Rule Changes.* The Association proposes that the proposed rules relating to disciplinary proceedings (those governed by the proposed Rule 9100 Series, the proposed Rule 9200 Series, and the proposed Rule 9300 Series) generally become effective 30 days after the date of the **Federal Register** publication approving the new procedures, subject to the following schedule of transition.[23]

The Association proposes that the transition for disciplinary proceedings follow the implementation adopted by the Commission when the Commission adopted the revised Rules of Practice.[24] First, the Association proposes that the current Code of Procedure will apply to a disciplinary proceeding for which the complaint is served prior to the date of the **Federal Register** publication approving the proposed Rule 9000 Series. Thus, such a disciplinary proceeding will be completed pursuant to the current Code of Procedure. Second, the Association proposes to make the new disciplinary procedures set forth in the proposed Rule 9100 Series through the proposed Rule 9300 Series apply to a disciplinary proceeding for which the complaint is served on or after the date of the **Federal Register** publication approving the proposed Code of Procedure but before the effective date, but only if, within 30 days of the effective date, each Respondent in the proceeding submits a request in writing to the Chief Hearing Officer that the proceedings be conducted under the proposed Code of Procedure, as adopted. If each Respondent fails to make such a request, the disciplinary proceeding will proceed under the current Code of Procedure, as discussed above.

The rationale for this proposal is as follows:

a. *Retroactive Application of the Revised Code Would Create Significant Management and Logistical Problems.* As of March 31, 1997, there were approximately 400 formal disciplinary proceedings pending at various stages in the disciplinary process. The Association believes that retroactive application of the revised Code and the assignment of Hearing Officers to these cases immediately would create a significant management and logistical problem for the Office of Hearing Officers.[25]

Irrespective of their procedural posture, given the volume of cases that would be pending as of the effective date of the proposed Rule 9000 Series, the Association believes that assigning these cases to the Hearing Officers would cause serious case management problems. The Association further believes that assigning the pre-existing cases, along with the cases filed in due course after the Rule 9000 Series' effective date, would hinder the ability of the Hearing Officers to properly dispatch their responsibilities and duties within the time limits set in the Rule 9000 Series. For example, various deadlines in the proposed Rule 9000 Series likely could not be met if the Hearing Officer program were required to assume a backlog of more than 400 cases.

b. *Retroactive Application Causes Problems in Proceedings.* The revised Rule 9000 Series represents a substantial change from the existing rules governing disciplinary proceedings, and the scope of the proposed changes militates against retroactive application of the Rule 9000 Series. For example, the proposed Rule 9000 Series contemplates certain pre-hearing procedures and motions that are not present in the existing rules. Also, in many of the previously-filed proceedings, the proposed Rule 9000 Series' time limitations for document disclosure and pre-hearing motions or procedures already will have passed. The difficulty is further exacerbated if procedural rulings that are not consistent with the new Rule 9000 Series already have been made.

Further, if Hearing Officers were not *required* to apply either the new or old rules to the cases filed prior the effective date of the new Rule 9000 Series, the Hearing Officers would be required to develop and apply rules on an *ad hoc* basis to address the specific issues raised in each individual case. Finally, the Association believes that fairness dictates that Respondents be given notice in advance of the filing of a complaint of all procedural rules that will govern the authorization and issuance of the complaint and the adjudicative process.

2. *Membership Application Procedures.* Unlike disciplinary procedures, where NASD Regulation staff determines when and if to initiate a proceeding, applicants for membership decide when and if to file an application for membership, request a modification of an existing membership agreement, or request approval of a change in ownership, control, or operations. For this reason, the Association believes that the transitional issues with respect to member admission proceedings are less

[20] SEC Rules of Practice, codified at 60 FR 32738 (June 23, 1995), 17 CFR 201.100 *et seq.*

[21] 5 U.S.C. 551 *et seq.*

[22] Model Adjudication Rules, Administrative Conference of the United States (Dec. 1993) (''MAR'').

[23] As noted above, proposed changes to Rule 0120, Rule 0121, and the Rule 8000 Series, and proposed Rule IM–2210–4 would also be governed by this schedule of effectiveness and transition.

[24] *See* SEC Rules of Practice, *supra* note.

[25] Assuming that 50 percent of the 412 pending cases were to settle, involved defaults, or otherwise could be disposed of without the need for formal hearings, 206 active cases would be required to be assigned to six Hearing Officers who have been hired to date, a docket of 34 cases per Hearing Officer. Based on historical data and discussions with staff in district offices, the Association anticipates approximately 200 fully litigated cases per calendar year. These cases, of course, would need to be considered in addition to the pending cases.

complex and, therefore, it proposes that the new procedures apply to applications filed, modifications requested, or requests for approval of ownership or other changes initiated 30 days after the date of the **Federal Register** publication approving the new procedures. The 30 day period is intended to give applicants and staff the opportunity to make any final adjustments to the new procedures.

b. Proposed Changes to NASD, NASD Regulation, and NASDAQ By-Laws

The Association proposes to revise the By-Laws of the NASD, NASD Regulation, and Nasdaq to conform them to the Implementation Plan, the Undertakings, the Delegation Plan and the proposed changes to the Rules of the Association. Changes to punctuation and other minor, non-substantive changes are not described. The Association proposes to revise the NASD By-Laws in the following ways:

(i) *Proposed Changes to NASD By-Laws* [26]

Article I. Definitions

The Association proposes several amendments to Article I, which sets forth definitions for the NASD By-Laws. First, amendments to several existing definitions and new defined terms are proposed, but only to reflect drafting conventions adopted as a result of the reorganization of the NASD into three legal entities or other drafting conventions. Those definitions are: ''Board''; ''branch office''; ''day''; ''dealer''; ''Delegation Plan''; ''member''; ''municipal securities dealer''; ''NASD''; ''NASD Regulation''; ''NASD Regulation Board''; ''Nasdaq''; ''Nasdaq Board''; and ''person associated with a member'' or ''associated person of a member.'' (Proposed NASD By-Laws Article I (c), (d), (g), (h), (i), (q), (t), (u), (v), (w), (x), (y), and (cc).)

Second, the Association proposes to add the following definitions: ''district''; ''Industry Director''; ''Industry Governor'' or ''Industry committee member''; ''National Nominating Committee''; ''Non-Industry Director''; ''Non-Industry Governor'' or ''Non-Industry committee member''; ''Public Director''; ''Public Governor'' or ''Public committee member.'' (Proposed NASD By-Laws Article I (j), (n), (o), (z), (aa), (bb), (dd) and (ee).) All of these terms, except ''district,'' are currently defined or described in the Delegation Plan.[27] The Association proposes to add these definitions to the NASD By-Laws (and where applicable, to the NASD Regulation and Nasdaq By-Laws) because the Association proposes to move the related, substantive provisions of the Delegation Plan to the By-Laws of the appropriate corporate entity.

Third, the Association proposes to delete the definition ''rules of the Corporation'' (current Article I(v)) to avoid confusion with the more commonly used, but differently defined term, ''Rules of the Association.'' The term ''rules of the Corporation'' currently is used to refer collectively to the NASD Certificate of Incorporation, the NASD By-Laws, and the Rules of the Association. Given the restructuring of the NASD into three legal entities, such a collective term for all of the corporate documents of the Association would not be useful. Thus, under the proposed rule change, where a particular provision must be consistent with a particular corporate document, that document is specified. Similarly, the Association also proposes to delete the definitions of ''Boards'' and ''Corporations'' and instead refer to each corporate entity specifically where intended (current Article I (d) and (i)).

Fourth, the Association proposes to amend the definition of the term ''Rules of the Association'' to conform it to proposed Rule 0120, which defines the term to include the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board of Governors pursuant to the NASD By-Laws.

Finally, the Association proposes to delete the cross-reference in the introductory sentence of Article I to the ''rules of the Corporation.'' An appropriate cross-reference from the Rules of the Association to the NASD By-Laws is proposed in Rule 0121.

Article II. Offices

The Association proposes to add a new Article II that states the location of the registered corporate office of the NASD. This change makes the NASD By-Laws consistent with the NASD Regulation and Nasdaq By-Laws, which both include such a provision.

Article III. Qualifications of Members and Associated Persons

Current Article II, Qualifications of Members and Associated Persons, which addresses qualifications of members and associated persons, is renumbered as proposed Article III. The Association proposes to conform Section 3, which addresses ineligibility of certain persons for membership or association, to the proposed Rule 9530 Series, which sets forth rules for the Association's eligibility proceedings. Specifically, the Association proposes to amend Section 3(d) to clarify that *members* may use eligibility proceedings to obtain relief from the Association's eligibility requirements, *e.g.*, to resolve a statutory disqualification problem. As written, Section 3(d) could be read to suggest that a broker or dealer seeking admission to the Association could use such proceedings to obtain relief from eligibility requirements as a means of gaining admission to the Association. That is not the Association's practice or the provision's intent, and Section 3(d) is amended to remove this potential ambiguity.

The Association proposes to delete Section 3(d)(2), which addresses the status of members or persons engaged in eligibility proceedings, because that subject is addressed in the proposed Rule 9530 Series. (The Association seeks temporary approval of the proposed Rule 9400–9500 Rules Series, including the proposed Rule 9530 Series.) This change does not result in a substantive change in the Association's practice. Specifically, if a person is already associated with a member at the time a statutory disqualification is discovered, the person may remain associated with the member until final action is taken by the Association under the proposed Rule 9500 Series. If the person is a prospective employee, the person may not become associated with the member until the Association takes final action under the proposed Rule 9530 Series.

The Association proposes to add a new Section 3(g) to clarify that the Board may delegate its authority under Section 3 in a manner not inconsistent with the Delegation Plan.

Finally, the Association proposes to amend Section 4(h) to conform it to the Act.

Article IV. Membership

Current Article III, Membership, is renumbered as proposed Article IV. The Association proposes to conform Section 7 to changes in the proposed Rule 1010 Series, which sets forth procedures for membership applications and changes in a member's operations.

Article V. Registered Representatives and Associated Persons

Current Article IV, Registered Representatives and Associated Persons, is renumbered as proposed Article V.

[26] All changes proposed to the NASD By-Laws are changes to the NASD By-Laws temporarily approved by the Commission on November 15, 1996. *See* Securities Exchange Act Rel. No. 37956 (November 15, 1996), 61 FR 59265 (November 21, 1996).

[27] *See* Delegation Plan, I.A. and I.C.

Article VI. Dues, Assessments, and Other Charges

Current Article V, Dues, Assessments, and Other Charges, is renumbered as proposed Article VI. The Association proposes to add a new Section 5 that states that the NASD may delegate its authority regarding dues, assessments, and other charges in a manner not inconsistent with the Delegation Plan.

Article VII. Board of Governors

Current Article VI, Board of Governors, is renumbered as proposed Article VII. The Association proposes to amend Section 1(c) to clarify the Board's authority to delegate its powers. Specifically, the Association proposes to amend Section 1(c) to provide that to the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and the By-Laws, the NASD may delegate any power of the NASD or the Board to a committee appointed pursuant to proposed Article IX, Section 1, the NASD Regulation Board, the Nasdaq Board, or NASD staff in a manner not inconsistent with the Delegation Plan. The Association proposes to add parallel provisions to the NASD Regulation By-Laws (Proposed Article IV, Section 4.1) and the Nasdaq By-Laws (Proposed Article IV, Section 4.1).

The Association proposes to amend Section 2. Section 2 authorizes the Board to cancel or suspend the membership of a member or suspend the association of a person associated with a member for failure to provide requested information. The proposed amendment provides for reinstatement pursuant to the Rules of the Association. (Proposed Rule 8220.) The Association also proposes to delete the provision authorizing delegation to the Chief Executive Officer and replace it with a delegation provision consistent with other provisions set forth in the proposed NASD By-Laws. Specifically, the Association proposes that the Board be permitted to delegate its authority under this Section in a manner not inconsistent with the Delegation Plan and otherwise in accordance with the Rules of the Association.

The Association proposes to amend Section 4, which addresses the composition and qualifications of the Board, by adding provisions concerning the number of governors and the ratio of Industry, Non-Industry, and Public Governors that are currently set forth in the Delegation Plan.[28]

The Association proposes to add a new Section 6, which addresses the disqualification of a Board member. Proposed Section 6 requires a Governor to immediately resign or be automatically removed from office if the Board determines that: (a) The Governor no longer satisfies the classification (Industry, Non-Industry or Public Governor) for which the Governor was elected; (b) failure to remove the Governor would violate the compositional requirements of the Board set forth in proposed Section 4; and (c) the Governor has a remaining term of office of more than six months. Proposed Section 6 is intended to replace a provision currently in the Delegation Plan that provides for ''automatic removal'' if a Governor no longer satisfies the classification for which he or she was elected, without describing any process for such removal.[29] The Association proposes this rule change to avoid any potential for the Board to take an *ultra vires* action in the event that a Governor failed to notify the Board promptly of a change in his or her classification and continued to sit on the Board and cast votes before such removal took place.

Current Section 6, which addresses the filling of vacancies on the Board, is renumbered as proposed Section 7. The Association proposes to move the current provisions of the Delegation Plan that address the filling of vacancies to this Section and to provide further that if the remaining term of office of the governorship to be filled is more than one year, then the replacement Governor must stand for election in the next annual election.[30]

Current Section 7, which describes nomination and election procedures, is expanded and renumbered as proposed Sections 9 through 14. Proposed Section 9 sets forth the powers of the National Nominating Committee. The National Nominating Committee nominates Industry, Non-Industry, and Public Governors for each vacant or new Governor position on the NASD Board and Industry, Non-Industry, and Public Directors for each vacant or new position on the NASD Regulation Board and the Nasdaq Board.[31] Proposed Section 9 also includes and clarifies the compositional requirements for the National Nominating Committee, which are currently set forth in the Delegation Plan.[32] Finally, Proposed Section 9 includes a new provision that requires the Secretary of the NASD to collect from each nominee for Governor and each nominee for Director of the NASD Regulation Board or Nasdaq Board such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, or Public Governor or Director. The Association proposes that the Secretary certify to the National Nominating Committee each nominee's classification to ensure that the compositional requirements of each Board are met.

Proposed Section 10 largely parallels current Section 7(c) and adds provisions regarding contested elections currently located in the Delegation Plan. In addition to clarifying the procedures for a contested election, the Association also proposes to change the number of members that must sign a petition to support adding a candidate to the ballot for NASD Board elections. Currently, a person seeking to be added to a ballot must obtain the support of two percent of the members of the NASD. The Association proposes to increase the level to three percent of the members, one-half of which must have their principal place of business outside of the district where the person who wishes to contest the election is employed. As is currently the case, a petition may only be signed by a member's Executive Representative. Proposed Section 10 also transfers authority to certify the additional candidate from the National Nominating Committee to the Secretary. Because the Secretary maintains the records of Executive Representatives and, under the proposed rule change would be charged with reviewing information regarding the classification (Industry, Non-Industry, or Public) for each governorship, the Association believes that it would be more efficient for the Secretary to exercise this authority.

Proposed Sections 11 and 12 are new provisions that parallel new provisions added to the NASD Regulation and Nasdaq By-Laws. Proposed Section 11 prohibits the NASD, the Board, the National Nominating Committee, other committees, and NASD staff from taking any official position regarding a contested nomination or election under the proposed NASD or NASD Regulation By-Laws. Proposed Section 11 permits Board and committee members to communicate their views with respect to a candidate in a contested election only if the Board or committee member acts solely in his or individual capacity and disclaims any intention to communicate in any official capacity. Administrative support to the candidates in a contested NASD election is limited to two mailings; any other administrative support in any

[28] *See* Delegation Plan, I.A. and I.C.

[29] *See* Delegation Plan, I.C.5.b.

[30] *See* Delegation Plan, I.C.5.

[31] *See* Delegation Plan, I.C.2.b.

[32] *See* Delegation Plan, I.C.2.b.(1).

NASD or NASD Regulation contested election or nomination is prohibited.

Proposed Section 13 is largely parallel to current Section 7(a), with conforming amendments to proposed Sections 9 through 12.

Proposed Section 14 is a new procedure that requires each Governor to update the information submitted to the NASD Secretary under proposed Section 9(e) regarding his or her classification as an Industry, Non-Industry, or Public Governor at least annually and upon request of the Secretary and to report immediately to the Secretary any change in such classification. Parallel provisions are proposed for the NASD Regulation and Nasdaq By-Laws. These submissions and reports will help the Association ensure that the compositional requirements of the Board are maintained.

The Association proposes to amend current Section 8, which address meetings, quorums, and voting of the Board, to provide that a quorum shall consist of a majority of the Board, including not less than 50 percent of the Non-Industry Governors. This proposed change would ensure that Industry Governors alone could not constitute or dominate a quorum of the Board, and thereby thwart the balanced compositional requirements of the Board under proposed Section 4. Current Section 8 is not renumbered.

Article VIII. Officers, Agents, And Employees

Current Article VII, Officers, Agents, and Employees, is renumbered as proposed Article VIII. The Association proposes to amend Section 1 to require that the Board elect a Secretary. Under current Section 1, the Board is authorized, but not required, to do so. Given the number of responsibilities assigned to the Secretary under the proposed By-Laws and the Board's practice of always electing a person to such position, the Association proposes to require that a Secretary be elected.

The Association proposes to amend Section 3 to provide that agents and employees shall be under the supervision and control of the officers, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board. Generally, agents and employees are under the supervision and control of the officers, but the Board may wish in certain circumstances to retain control over an employee or agent, e.g., as in Section 4, when the Board determines that it wishes to retain counsel.

The Association proposes to move current Section 5, which provides for compensation of Board and committee members, to its own Article, proposed Article X, Compensation of Board and Committee Members.

The Association proposes to add new Sections 5, 6, and 7 to this Article to conform it to proposed Article 7 of the NASD Regulation By-Laws and proposed Article 6 of the Nasdaq By-Laws. Proposed Section 5 permits the Board to delegate the duties and powers of any officer to any other officer. Proposed Section 6 provides for the resignation and removal of officers. Proposed Section 7 permits the NASD to secure the fidelity of its officers, agents, and employees by bond or otherwise.

Article IX. Committees

Current Article VIII, Committees, which addresses the formation and powers of committees, is renumbered as proposed Article IX. The Association proposes to amend Section 1 to cross-reference proposed Article VII, Section 1(c), which limits the Board's authority to delegate its powers and authority.

The Association proposes to add a new Section 2, which is designed to help the Association maintain the compositional requirements of certain committees. Undertakings 1 and 6 under the SEC Settlement require certain committees [33] to have a particular balance of Industry, Non-Industry, and Public committee members. For committees consisting solely of one or more Governors or one or more Directors, the compositional requirements are set forth in the By-Laws of the appropriate corporation; for committees that have members other than Governors or Directors, the compositional requirements are set forth in the Delegation Plan.[34] To help ensure that compositional requirements are maintained for committees appointed by the NASD Board, proposed Section 2 authorizes the Secretary to collect from each prospective member of a committee that must be balanced such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary must certify to the Board each prospective committee member's classification. Each committee member must update the information submitted at least annually and upon request of the Secretary of the NASD, and shall report immediately to the Secretary any change in such classification. Parallel provisions are set forth in proposed Article 4, Section 4.14(i) of the NASD Regulation By-Laws and proposed Article 4, Section 4.14(g) of the Nasdaq By-Laws.

Current Section 2, which addresses removal of a committee member, is renumbered as proposed Section 3 and amended to clarify that a committee member can only be removed by majority vote of the whole Board.

The Association proposes to add new sections to authorize the appointment of an Executive Committee and to require, in keeping with Undertaking 6, the appointment of an Audit Committee. Proposed Section 4 authorizes the NASD Board to appoint an Executive Committee. Proposed Section 4 requires the Chief Executive Officer of the NASD to be a member of the Executive Committee and requires that the remaining members reflect the balance of Industry and Non-Industry Governors on the Board. Proposed Section 5 contains the provisions relating to the Audit Committee currently found in the Delegation Plan.[35]

Finally, the resolution concerning interpretations and explanations is deleted because the NASD Board intends to rescind it. The resolution no longer conforms to Association practice and is contrary to Undertaking 4.

Article X. Compensation of Board and Committee Members

As noted previously, current Article VII, Section 5, which addresses compensation of Board and committee members, is renumbered as proposed Article X, Compensation of Board and Committee Members.

Article XI. Rules

Current Article IX, Rules, which authorizes the NASD to adopt rules, is renumbered as proposed Article XI. No substantive change is proposed.

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[33] Undertaking 1 sets forth compositional requirements for ''the National Nominating Committee, the Trading/Quality of Markets Committee, the Arbitration Committee, the Market Surveillance Committee, the National Business Conduct Committee, the Management Compensation Committee, and all successors thereto.'' Undertaking 6 sets forth compositional requirements for an audit committee. The current names of such committees are the National Nominating Committee, the Quality of Markets Committee, the National Arbitration and Mediation Committee, the Market Regulation Committee, the National Business Conduct Committee, the Management Compensation Committee, and the Audit Committee. *See supra* note 19.

[34] *See* Delegation Plan, I.C.2.b.(1), I.D.2., and I.E.2. The sole exception is the Management Compensation Committee, a committee of the NASD Board. The Management Compensation Committee's compositional requirements are set forth in the Delegation Plan.

[35] *See* Delegation Plan, I.D.

Article XII. Disciplinary Proceedings

Current Article X, Disciplinary Proceedings, which authorizes disciplinary proceedings, is renumbered as proposed Article XII. No substantive change is proposed.

Article XIII. Powers of Board to Impose Sanctions

Current Article XI, Powers of Board to Prescribe Sanctions, which authorizes the Board to impose sanctions, is renumbered as proposed Article XIII. The Association proposes to amend Section 1(e) and add a new Section (2) to clarify that any delegation under the proposed Article must be in conformity with the Delegation Plan.

Article XIV. Uniform Practice Code

Current Article XII, Uniform Practice Code, which authorizes the Board to adopt a Uniform Practice Code, is renumbered as proposed Article XIV. The Association proposes to amend Section 2 to provide that the Board may delegate its authority with respect to administering the Code to the NASD Regulation Board and Nasdaq Board in accordance with the Delegation Plan.

Article XV. Limitation of Powers

Current Article XIII, Limitation of Powers, which sets forth limitations on the Board's powers, is renumbered as proposed Article XV. The Association proposes to rescind the resolution that follows current Article XIII, Section 2, which provides for the use of the NASD's name by members, and move the provisions of the resolution to proposed IM–2210–4.

The Association proposes to amend Section 4, which addresses conflicts of interest. The Association proposes to amend Section 4 by redesignating it as Section 4(a) and therein prohibiting any Governor or committee member from directly or indirectly participating in any adjudication of the interests of any party if the Governor or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. Proposed Section 4(a) further requires the Governor or committee member to recuse himself or herself or be disqualified in accordance with the Rules of the Association (*e.g.*, Rule 9160). Current Section 4 simply references the Rules of the Association; current Rule 9131 provides for disqualification of the Governor or committee member if a matter substantially affects his or her interests or the interests of any person in whom he or she is directly or indirectly interested. For a more detailed discussion of the conflict standard, *see* Part h, Section (xiii) of this rule filing.

In addition, the Association proposes to add a new Section 4(b) to address conflicts of interests in non-adjudicatory matters in a manner consistent with the By-Laws for the NASD Regulation Board and the Nasdaq Board. Proposed Section 4(b) provides that no contract or transaction between the NASD and a Governor or officer, or between the NASD and any other entity in which a Governor or officers is a director or officer, or has a financial interest, shall be void or voidable solely for this reason if: (i) The material facts pertaining to the Governor's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Governors. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction.

Finally, Section 6, which limited the Association rulemaking authority over government securities activities, is deleted to conform the By-Laws to changes previously made to the Association's authority over the government securities activities of its members.

Article XVI. Procedure for Adopting Amendments to By-Laws

Current Article XIV, Procedure for Adopting Amendments to By-Laws, is renumbered as proposed Article XVI.

In proposed Article XVI, the Association proposes to provide more persons with the ability to propose an amendment to the NASD By-Laws. Currently, a Governor, a district committee, or 25 members may propose amendments to the By-Laws. Proposed Article XVI permits a committee appointed by the Board, the NASD Regulation Board of Directors, or the Nasdaq Board of Directors, by resolution, to propose amendments to the NASD By-Laws. In addition, proposed Article XVI permits the Chief Executive Officer of the NASD, the President of NASD Regulation, and the President of Nasdaq to propose amendments. The Association proposes to permit the NASD Regulation and Nasdaq Boards to propose changes because much of their authority under the Delegation Plan derives from the NASD By-Laws. The Association proposes to authorize the most senior officer of each corporate entity to propose changes to further the purpose of Undertaking 4, which requires the Association to provide the staff with autonomy and independence in preparing rule proposals, many of which are authorized or affected by the NASD By-Laws. Finally, the Association proposes to delete authority for the district committees to propose changes to the NASD By-Laws because the Association believes that under the new corporate structure, proposals by the district committees should be presented to the NASD Regulation Board, which in turn should determine what proposals are presented to the NASD Board.

The Association files any change to the By-Laws or Certificates of Incorporation of the NASD, NASD Regulation, or Nasdaq that constitute a proposed rule change under the Act with the Commission.

Article XVII. Corporate Seal

Current Article XV, Corporate Seal, is renumbered as proposed Article XVII. There are no substantive changes to proposed Article XVII.

Article XVIII. Checks

Current Article XVI, Checks, is renumbered as proposed Article XVIII. There are no substantive changes to proposed Article XVIII.

Article XIX. Annual Financial Statement

Current Article XVII, Annual Financial Statement, is renumbered as proposed Article XIX. There are no substantive changes to proposed Article XIX.

(ii) *Proposed Changes to NASD Regulation By-Laws*

NASD Regulation proposes to amend the By-Laws of NASD Regulation as follows:

Description of Proposed Rule Change

NASD Regulation adopted its current By-Laws on July 19, 1996. These By-Laws were drafted to comply with the requirements of Delaware law and have not previously been filed with the Commission. The Association proposes to amend the NASD Regulation By-Laws in the manner described previously in the introduction to Section II. In addition, the Association proposes to explicitly recognize the NASD as the sole stockholder of NASD Regulation capital stock and add detailed

procedures for regional nominations and district elections. Significant changes to the NASD Regulation By-Laws are described below. Minor, non-substantive changes and changes to reflect drafting conventions are not described.

Article I. Definitions

First, a new Article I, entitled ''Definitions,'' is proposed. Current Article I is renumbered as proposed Article II.

The Association proposes that the By-Laws for each corporate entity have a free-standing set of definitions. Therefore, the Association proposes to add definitions for the following terms, which conform to the definitions in proposed Article I of the NASD By-Laws: ''Delegation Plan''; ''Executive Representative''; ''Industry Director'' or ''Industry committee member''; ''NASD Regulation''; ''National Nominating Committee''; ''Non-Industry Director'' or ''Non-Industry committee member''; and ''Public Director'' or ''Public committee member.'' (Proposed Section 1.1 (h), (o), (q), (u), (v), (w), and (x).)

The Association proposes to include the following definitions only in the NASD Regulation By-Laws: ''District Committee''; ''District Director''; ''District Nominating Committee''; ''district office''; ''Independent Agent''; and ''Regional Nominating Committee.'' These terms relate to the election procedures set forth in proposed Article VI and VIII, and therefore are not used in the proposed NASD and Nasdaq By-Laws.

In addition, the Association proposes to add the following definitions for clarity and to conform to the drafting conventions adopted generally, but which do not result in any substantive change: ''Board''; ''day''; ''Delaware law''; ''Director''; ''NASD''; ''NASD member''; and ''Rules of the Association'' or ''Rules.'' (Proposed Section 1.1 (b), (e), (g), (i), (r), (t), and (z).)

Article II. Offices

Current Article I, Offices, is renumbered as proposed Article II. Sections 1.1 and 1.2 are renumbered as Sections 2.1 and 2.2. There are no substantive changes in proposed Article II.

Article III. Meetings of Stockholders

Current Article II, Meetings of Stockholders, is renumbered as proposed Article III. Current Article II sets forth general provisions for meetings of stockholders consistent with Delaware law. In proposed Article III, in recognition of the fact that NASD Regulation has only one stockholder, the NASD, the Association proposes to delete all of the general provisions regarding meetings of stockholders and retain only the provision on which NASD Regulation generally relies, namely obtaining the stockholder's written consent for any action that is required or permitted to be taken at a stockholder meeting. Thus, Sections 2.1 through 2.6 are deleted, and Section 2.7 is renumbered as 3.1.

Article IV. Board of Directors

Current Article III, Board of Directors, is renumbered as proposed Article IV. Sections 3.1 through 3.7 are renumbered as Section 4.1 through 4.7. Proposed Section 4.1 sets forth the general powers of the Board. The Association proposes to conform the Board's authority to delegate its powers to the delegation authority set forth in proposed Article VII, Section 1(c) of the NASD By-Laws, *i.e.*, to the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and the By-Laws, the Board may delegate any of its powers to a committee appointed under proposed Section 4.14 or to NASD Regulation staff in a manner not inconsistent with the Delegation Plan.

The Association proposes to amend Sections 4.2 and 4.3, Number of Directors and Qualifications, to set forth the compositional requirements and discussions of the classifications of Directors (Industry, Non-Industry, and Public Directors) of the Board currently found in the Delegation Plan. Proposed Section 4.3(b) is a new provision requiring the Board to elect a Chair and Vice Chair from among its members. Proposed Section 4.3(c) is a new provision requiring Directors to provide the Secretary of the NASD with updated information regarding the Director's classification at least annually and upon request and to report any change in the classification to the NASD Secretary immediately. This provision is parallel to proposed Article VII, Section 14 of the NASD By-Laws.

Proposed Section 4.4(a), which provides for the election of Directors, is amended to reflect the NASD's role as sole stockholder. Proposed Section 4.4(b) describes briefly the roles of the National Nominating Committee and the Regional Nominating Committee in the election of NASD Regulation Directors. As described in proposed Article VII, Section 9 of the NASD By-Laws, the National Nominating Committee is appointed by the NASD Board to nominate Governors for the NASD Board and Directors for the NASD Regulation and Nasdaq Boards. NASD Regulation also has a distinctive nominating process for those Industry Directors who represent a particular region. The regional nominating process culminates in the presentation of a candidate to the National Nominating Committee, which, as the final decision maker for all nominations, may accept or reject such candidate. The NASD Board, in turn, may elect or reject the candidates nominated by the National Nominating Committee. The regional nominating process is described in proposed Article VI of the NASD Regulation By-Laws.

Proposed Section 4.5 includes new provisions specifying how the terms of office of Director shall expire so that, in general, one-third of the Board is elected each year.

Proposed Section 4.7 clarifies that a Director may be removed from office only by a majority vote of the NASD Board.

Proposed Section 4.8, Disqualification, and Proposed Section 4.9, Filling of Vacancies, are new. Current Sections 3.8 through 3.11 (Quorum and Voting, Regulation, Meetings, Notice of Meetings, respectively) are renumbered as proposed Sections 4.10 through 4.13. Current Section 3.12, Conflicts of Interest, is renumbered as proposed Section 4.15. Current Section 3.13, Committees of the Board of Directors, is renumbered as proposed Section 4.14 and retitled ''Committees.'' Current Section 3.12, Action Without Meeting, is renumbered as proposed Section 4.16.

Proposed Sections 4.8, 4.9, 4.10, and 4.15, which set forth provisions for disqualification, filling of vacancies, quorums and conflicts of interest, are designed to parallel proposed Article VII, Sections 6 through 8, and proposed Article XV, Section 4 of the NASD By-Laws.[36]

There are no substantive changes in proposed Section 4.11, Regulation; proposed Section 4.12, Meetings; or proposed Section 4.16, Action Without Meeting.

In proposed Section 4.13, the Association proposes to increase the amount of time required for mail notice of a meeting from two to seven days, to clarify that any of the permissible forms of notice described may be used for any meeting of the Board, and to add a

[36] One difference is noteworthy in the conflicts of interest provision. The proposed By-Laws for NASD Regulation and Nasdaq provide that a transaction also is not void or voidable if the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder, *i.e.*, the NASD, and the contract or transaction is approved in good faith by vote of the stockholder. (Proposed NASD Regulation and Nasdaq By-Laws Article IV, Section 4.15.)

subsection that provides that any meeting of the Board is a legal meeting without any prior notice if all Directors are present.

Proposed Section 4.14 (current Section 3.13 as renumbered) sets forth new provisions regarding committees. Proposed Section 4.14(a) authorizes the Board to appoint committees. Proposed Section 4.14(b) describes how the Board may delegate to such committees. With respect to functions and responsibilities set forth in the Delegation Plan, the Board may delegate its authority to any duly appointed committee. Any action by such committee is subject to review, ratification, or rejection by the Board. In addition, such delegations must be in conformance with applicable law, the Restated Certificate of Incorporation, these By-Laws, and the Delegation Plan. These limitations previously were set forth in the Delegation Plan. Proposed Section 4.14(b) further clarifies that, with respect to other matters, the Board may delegate its powers and authority to act on behalf of the Board in managing the business and affairs of NASD Regulation only to committees consisting solely of one or more Directors, and that any such delegation must be not inconsistent with the Delegation Plan.

Proposed Section 4.14(f), like proposed Article IX of the NASD By-Laws, authorizes the NASD Regulation Board to appoint specific committees, including an Executive Committee, a Finance Committee, and a National Business Conduct Committee, and specifies their compositional requirements. Some of the provisions regarding the National Business Conduct Committee currently are set forth in the Delegation Plan.[37]

Proposed Section 4.15, like proposed Article XV, Section 4 of the NASD By-Laws, sets standards of conduct for Directors with regard to conflicts of interest. Proposed Section 4.15(b) addresses conflicts of interests in non-adjudicatory matters in a manner consistent with the By-Laws for the NASD Board and the Nasdaq Board. Proposed Section 4.15 provides that no contract or transaction between NASD Regulation and a Director or officer, or between NASD Regulation and any other entity in which a Director or officer is a director or officer, or has a financial interest, shall be void or voidable solely for this reason if: (i) The material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction.

Article V. Compensation

Proposed Article V, Compensation, is a new Article that parallels proposed Article X of the NASD By-Laws.

Article VI. Regional Nominating Committees

The Association proposes to add a new Article VI, Regional Nominating Committees, to the NASD Regulation By-Laws. The procedures for regional nominations are currently set forth in the Delegation Plan [38] and in NASD Regulation Board resolutions. Proposed Article VI combines and expands on those procedures.

As noted previously, Industry Directors who serve on the NASD Regulation Board represent a region designated by the Board. These Directors are initially nominated by a Regional Nominating Committee. Each Regional Nominating Committee presents a nominee to the National Nominating Committee to represent such region on the Board of Directors. The Regional Nominating Committee acts essentially in an advisory capacity because only the National Nominating Committee may formally nominate to the NASD Board a candidate for Director of the NASD Regulation Board. The NASD Board, in turn, may elect or reject the candidates nominated by the National Nominating Committee.

Proposed Article VI sets forth the following procedures for the regional nominating process. As previously noted, the Board designates each region. Each region has a Regional Nominating Committee. The Regional Nominating Committee is composed of two members from each District Committee in the region, who are selected by their District Nominating Committee. (*See* discussion of proposed NASD Regulation By-Laws Article VIII for a description of how District Committee and District Nominating Committee members are elected.) When the term of office of an Industry Director representing a region is due to expire, the Secretary of NASD Regulation notifies the appropriate Regional Nominating Committee, which initiates the regional nominating process.

The Regional Nominating Committee receives from the Secretary of NASD Regulation a description of the firms eligible to vote in the Districts. Firms eligible to vote are those that either are headquartered in the region or have a branch office in the region. In making nominations, the Regional Nominating Committee seeks to ensure appropriate and fair representation of the classes and types of firms eligible to vote in the region.

Currently, corporate resolutions authorize the Regional Nominating Committee to nominate one candidate for the consideration of the NASD membership in the region. The Association proposes to authorize the Regional Nominating Committee to nominate more than one candidate so that the NASD membership in the region may vote on a nominee to present to the National Nominating Committee. (This process would work in the same manner as a contested nomination, which is described below.)

Once the Regional Nominating Committee selects a nominee (or nominees), it sends notice of its nomination to the Executive Representative of each NASD member eligible to vote. The Executive Representative is the officer or employee of the member who casts votes for the member in all nominations and elections. If any person not nominated wishes to contest a nomination, he or she sends notice of intent to contest to the Regional Nominating Committee or the Secretary of NASD Regulation within a specified period. Such person then must submit within a specified period a written petition signed by at least ten percent of the members eligible to vote in the region supporting such person's candidacy. If support of ten percent of the membership is not obtained within the requisite time, and if the Nominating Committee has nominated only one candidate, then the nominee of the Regional Nominating Committee is presented to the National Nominating Committee.

[37] *See* Delegation Plan II.D.

[38] *See* Delegation Plan II.B.

If the Nominating Committee nominates more than one candidate, or if a person who is not nominated obtains the necessary support, then contested nomination procedures apply. Under these procedures, the Association pays for two mailings of nomination literature for each candidate, and the members of all NASD, Nasdaq, and NASD Regulation Boards and committees, and NASD, Nasdaq, and NASD Regulation staff, are prohibited from expressing views on the nomination. However, members of the Boards and committees may express views if they make it clear they are acting in their individual capacities and disclaim any intention to communicate in an official capacity. A ballot is sent to Executive Representatives of the firms eligible to vote, and specified procedures, including the use of an independent agent to qualify returned ballots and count votes, are then followed to determine the outcome of the nomination. If the National Nominating Committee or the NASD Board rejects a nominee of a Regional Nominating Committee, the Regional Nominating Committee goes through the regional election procedures again and submits another nominee to the National Nominating Committee.

Article VII. Officers, Agents and Employees

Former Article IV, Officers, Agents and Employees, is set forth as proposed Article VII. Former Sections 4.1, 4.3, 4.4, and 4.5 were renumbered, respectively, as 7.1, 7.4, 7.5, and 7.6. Changes to these sections were made only as necessary to conform to the proposed definitions in proposed Article I and other drafting conventions. The Association proposes to add a new Section 7.2, Absence of the President, to provide a standard operational mechanism in the event of the President's inability to act, absence, or a vacancy in the position, in conformity with proposed Article 8, Section 2 of the NASD By-Laws. In proposed Section 7.3, the Association proposes a conforming change to clarify supervision and control of agents and employees. (Proposed NASD By-Laws Article VIII, Section 3, and Proposed Nasdaq By-Laws Article VI, Section 6.3.)

Article VIII. District Committees and District Nominating Committees

Proposed Article VIII, District Committees and District Nominating Committees, is a new Article. Proposed Article VIII authorizes the Board to designate districts and sets forth procedures for the members within each district to elect a District Committee and a District Nominating Committee. The language of proposed Article VIII is drawn from former Article VIII of the NASD By-Laws, which authorized the NASD Board to form such committees. Proposed Article VIII is drafted to conform to the Undertakings. Specifically, under Proposed Article VIII, Section 8.2, the role of the District Committee members is limited to serving as panelists in disciplinary proceedings in accordance with the Rule 9200 Series, recommending policy and rule changes to the NASD Regulation Board, and selecting members of the Regional Nominating Committees in a manner consistent with the proposed NASD Regulation By-Laws. (Proposed NASD Regulation By-Laws Article VI.)

Election procedures for District Committees and District Nominating Committees currently are set forth in corporate resolutions. The Association proposes to add these procedures, with further clarifications and detail, to the By-Laws in proposed Article VIII. The procedures conform to the nomination procedures in proposed Article VI.

Proposed Article VIII sets forth the following procedures for district elections. In May of each year, each District Nominating Committee solicits candidates to fill the vacancies anticipated to occur on its District Committees as well as candidates to serve on the following year's District Nominating Committee. (District Nominating Committee members serve a one-year term, while District Committee members serve a three-year term.) The District Nominating Committee receives from the Secretary of NASD Regulation a description of the firms eligible to vote in the district. Firms eligible to vote are those that either are headquartered in the district or have a branch office in the district. In making nominations, the District Nominating Committee seeks to ensure appropriate and fair representation of the classes and types of firms eligible to vote in the district.

Current corporate resolutions authorize the District Nominating Committee to nominate one candidate for each vacancy. The Association proposes to authorize the District Nominating Committee to nominate more than one candidate per vacancy. (This process would trigger contested election procedures, which work like the contested nomination procedures described above.)

Once the District Nominating Committee selects its nominees, it sends notice of its slate to the District Committee and the Executive Representative of each firm eligible to vote. If any person not nominated wishes to contest an election, he or she sends notice of intent to contest to the District Director or the Secretary of NASD Regulation within a specified period. Such person then must submit within a specified period a written petition evidencing support for such contest by at least ten percent of the members eligible to vote in the district. If the person does not obtain ten percent support for a contest within the requisite period, or if the District Nominating Committee has not nominated more candidates than there are vacancies, then nominees of the District Nominating Committee are deemed elected, and the election process is finished.

If the District Nominating Committee nominates more candidates than there are vacancies, or if a person obtains the necessary support for a contest, then contested election procedures apply. These procedures conform to the procedures for contested regional nominations. *See* discussion of Proposed NASD Regulation By-Laws, Article VI. The candidates for District Committee membership receiving the largest number of votes cast in the district for that office are declared elected such that the number of candidates declared elected equals the number of vacancies on the District Committee. The candidates for District Nominating Committee membership receiving the largest number of votes cast in the district for that office are declared elected such that the number of candidates declared elected equals the number of vacancies on the District Nominating Committee.

Article IX. Indemnification

Current Article V, Indemnification, is renumbered as proposed Article IX. Sections 5.1 through 5.5 are combined, amended, and renumbered as proposed Section 9.1, and current Section 5.6 is renumbered as proposed Section 9.2. The Association proposes to make the indemnification policies for all three corporate entities identical. Therefore, proposed Sections 9.1 and 9.2 conform to proposed Article VII, Sections 7.1 and 7.2 of Nasdaq By-Laws and the provisions for indemnification in the NASD's Restated Certificate of Incorporation.

NASD Regulation By-Laws provide for the indemnification of and advancement of expenses to persons named or threatened to be named as a party to any civil, administrative, or investigative proceeding because such person is or was a Director, officer, employee, or agent of the corporation. The By-Laws also provide that: (1) The right of indemnification is not exclusive

of any other right the person may have; (2) the amount of indemnification is reduced by the amount the indemnified person collects from another source; and (3) NASD Regulation has the power to purchase and maintain indemnification insurance.

The Association proposes to modify NASD Regulation's By-Laws to make indemnification and advancement of expenses to agents discretionary with the Board rather than mandatory, in order to permit the Board to determine whether indemnification is appropriate under the particular circumstances. Indemnification of non-officer employees remains the presumption. However, the Association proposes to authorize the Board to refuse to advance expenses to an employee if: (1) The employee (i) acted in bad faith, or (ii) did not act in a manner that the employee believed to be in or not opposed to the best interests of NASD Regulation; (2) with respect to a criminal matter, the employee believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) the employee breached his or her duty to NASD Regulation. Finally, the Association proposes to add a provision requiring NASD Regulation, in response to a written claim for indemnification or advancement, to make such payment within 60 days of the claim.

While it is a common corporate practice to provide for discretionary indemnification of employees (as well as agents), NASD Regulation believes that it is essential that employees have confidence that they will be indemnified in the event they are named in any proceeding resulting from actions taken in good faith. At the same time, NASD Regulation believes it is essential that the Board have the opportunity to evaluate and deny advancement of expenses if it determines the action was not taken in good faith or if the person had reason to believe the action was illegal or breached a duty to the corporation.

Article X. Capital Stock

Current Article VI, Capital Stock, is renumbered as proposed Article X. The Association proposes to add a new Section 10.1, recognizing the NASD's status as sole stockholder. Current Sections 6.1 through 6.7 are renumbered as proposed Section 10.2 through 10.8. The Association proposes certain changes only to conform the proposed Article to the drafting conventions and stylistic changes incorporated generally in the NASD By-Laws, the NASD Regulation By-Laws, and the Nasdaq By-Laws. There are no substantive changes to proposed Article X. In proposed Section 10.8, the Association proposes to delete detailed provisions of Delaware law for the fixing of record dates, which are more useful to corporations with more than one stockholder, and instead provide that a record date may be fixed in accordance with Delaware law.

Article XI. Miscellaneous Provisions

Current Article VII, Miscellaneous Provisions, is renumbered as proposed Article XI. There are no substantive changes in proposed Article XI. Current Sections 7.1, 7.2, 7.3, 7.4, and 7.5 are proposed to be renumbered, respectively, as Sections 11.1, 11.2, 11.3., 11.4, and 11.5.

Article XII. Amendments; Emergency By-Laws

Current Article VIII, Amendments; Emergency By-Laws, is renumbered as proposed Article XII. There are no substantive changes in Article XII. Current Sections 8.1, 8.2, and 8.3 are proposed to be renumbered, respectively, as Sections 12.1,12.2, and 12.3.

(iii) *Proposed Changes to Nasdaq By-Laws*

Nasdaq adopted its current By-Laws on October 27, 1993. These By-Laws were drafted to comply with the requirements of Delaware law and to include more detailed provisions describing the powers of the Board and the corporation's officers, employees, and agents. Nasdaq's By-Laws have not previously been filed with the Commission. The Association proposes to amend the Nasdaq By-Laws to conform them to the proposed NASD and NASD Regulation By-Laws, where appropriate, and to certain other changes proposed for the Rules of the Association. Significant changes to Nasdaq's By-Laws are described below. Minor, non-substantive changes and changes to reflect drafting conventions are not described.

Article I. Definitions

The Association proposes to add a new Article I, Definitions. As noted previously, the Association proposes that the By-Laws for each corporate entity have a free-standing set of definitions. Therefore, the Association proposes to add the following definitions, which conform to definitions proposed for inclusion in the NASD and NASD Regulation By-Laws: ''Act''; ''Board''; ''broker''; ''Commission''; ''day''; ''dealer''; ''Delaware law''; ''Delegation Plan''; ''Director''; ''Industry Director'' or ''Industry committee member''; ''NASD''; ''NASD Board''; ''NASD Regulation''; ''Nasdaq''; ''National Nominating Committee''; ''Non-Industry Director'' or ''Non-Industry committee member''; ''Public Director'' or ''Public committee member''; and ''Rules of the Association'' or ''Rules.''

Article II. Offices

Current Article I, Offices, is renumbered as proposed Article II, and the Sections are renumbered accordingly.

Article III. Meetings of Stockholders

Current Article II, Meetings of Stockholders, is renumbered as proposed Article III and conformed to the changes in proposed Article III of the NASD Regulation By-Laws.

Article IV. Board of Directors

Current Article III, Board of Directors, is renumbered as proposed Article IV. The changes in proposed Article IV are designed to conform it, as appropriate, to proposed Article IV of the NASD Regulation By-Laws, with the following exceptions. First, the number, qualifications, and election of the Directors reflects the current provisions of the Delegation Plan. *See* Delegation Plan III.B and Proposed Nasdaq By-Laws Sections 4.2 through 4.4. Second, like the NASD Regulation Board, the Nasdaq Board is divided into three classes, except that the terms of office of the Directors of Nasdaq Board are set to expire beginning in 1998, rather than 1997. Third, proposed Section 4.14 concerning Committees, largely parallels the same provision in the NASD Regulation By-Laws, except the Nasdaq By-Laws authorize only one specific committee, an Executive Committee. (Other provisions concerning Nasdaq committees remain in proposed Section III.D. of the Delegation Plan.)

Fourth, Proposed Section 4.15, like proposed Article XV, Section 4 of the NASD By-Laws, sets standards of conduct for Directors with regard to conflicts of interest. Proposed Section 4.15(b) addresses conflicts of interests in non-adjudicatory matters in a manner consistent with the By-Laws for the NASD Board and the NASD Regulation Board. Proposed Section 4.15 provides that no contract or transaction between Nasdaq and a Director or officer, or between Nasdaq and any other entity in which a Director or officer is a director or officer, or has a financial interest, shall be void or voidable solely for this reason if: (i) The material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are

known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction.

In addition, in proposed Section 4.15(a), Conflicts of Interest; Contracts and Transactions Involving Directors, there is no cross-reference to the Rules of the Association because the present Nasdaq rules do not include particular disqualification standard for Nasdaq proceedings as has been included in the proposed Rule 9160 Series for NASD Regulation disciplinary proceedings. Finally, proposed Section 4.17, Communication of Views Regarding NASD or NASD Regulation Elections or Nomination, holds Nasdaq and its Board, committee, and staff to the same standards proposed for NASD and NASD Regulation with respect to contested elections or nominations. (Proposed NASD By-Laws Article VII, Sections 11 and 12, and Proposed NASD Regulation By-Laws Article VI, Sections 6.14 and 6.19, and Article VIII, Sections 8.21 and 8.26.)

Article V. Compensation

Article V, Compensation, is a new Article that conforms with proposed Article X of the NASD By-Laws and proposed Article V of the NASD Regulation By-Laws.

Article VI. Officers, Agents and Employees

Current Article IV, Officers, Agents and Employees, is renumbered as proposed Article VI, and the Sections are renumbered accordingly. Only one substantive change is proposed. Proposed Section 6.3 (current Section 4.3), Subordinate Officers, Agents, or Employees, includes a provision that clarifies that agents and employees of Nasdaq are under the supervision and control of the officers of Nasdaq, unless the Nasdaq Board, by resolution, provides that an agent or employee shall be under its supervision and control. (Proposed NASD By-Laws Article VIII, Section 3 and Proposed NASD Regulation By-Laws Article VII, Section 7.3.)

Article VII. Indemnification

Current Article V, Indemnification, is renumbered as proposed Article VII, and the Sections are renumbered accordingly. Proposed Article VII conforms to the provisions for indemnification in the NASD's Restated Certificate of Incorporation and proposed Article IX of the NASD Regulation By-Laws. As noted above, the Association proposes to make the indemnification policies for all three corporate entities identical.

Current Article V provides for the mandatory indemnification of persons made or threatened to be made a party to any civil, administrative, or investigative proceeding by reason of the fact that he or she was a director or officer of the corporation. Advancement of expenses, and the indemnification of employees and agents, is discretionary. Current Article V also provides that (1) the right of indemnification is not exclusive of any other right the person may have; (2) the amount of indemnification is reduced by the amount an indemnified person collects from another source; and (3) Nasdaq has the power to purchase and maintain indemnification insurance.

The Association proposes to modify current Article V in the same manner and for the same reasons set forth in the discussion of proposed Article IX of the NASD Regulation By-Laws.

Article VIII. Capital Stock

Current Article VI, Capital Stock, is renumbered as proposed Article VIII. The Association proposes changes to conform to those set forth for proposed Article X of the NASD Regulation By-Laws.

Article IX. Miscellaneous Provisions

Current Article VII, Miscellaneous Provisions, is renumbered as proposed Article IX, and the Sections are renumbered accordingly. There are no substantive changes.

Article X. Amendments; Emergency By-Laws

Current Article VIII, Amendments; Emergency By-Laws, is renumbered as proposed Article X, and the Sections are renumbered accordingly. There are no substantive changes.

c. Proposed Changes to the Delegation Plan and Restated Certificates of Incorporation

The Association proposes to amend the Delegation Plan to delete provisions added to the By-Laws of the NASD, NASD Regulation, and Nasdaq. Specifically, in Section I.A., the definitions of Industry, Non-Industry, and Public Governors, Directors, and committee members are deleted and instead cross-reference the By-Laws of the NASD, NASD Regulation, and Nasdaq, where the Association proposes to define such terms. (Proposed NASD By-Laws Article I; Proposed NASD Regulation By-Laws Article I; and Proposed Nasdaq By-Laws Article I.)

Similarly, the Association proposes to delete Section I.C., I.D., II.B., III.B., and parts of II.D. and III.D., which address the composition of the Boards, elections, terms of office, vacancies, disqualification due to change in classification, and the composition and authority of certain committees because the Association proposes to include these provisions in the appropriate By-Laws. (Proposed NASD By-Laws Article VII, Sections 4, 5, 6, 7, 9, and 10; Proposed NASD Regulation By-Laws Article IV, Sections 4.2, 4.3, 4.4, 4.5, 4.8, 4.9 and 4.14; and Proposed Nasdaq By-Laws Article IV, Sections 4.2., 4.3, 4.4, 4.5, 4.8, 4.9 and 4.14.) With respect to committees, the Association proposes to include in the appropriate By-Laws or in the Delegation Plan the compositional requirements for specified committees as provided in the Undertakings. Generally, if the committee consists solely of Directors or Governors, the Association proposes to include provisions describing the committee's powers and compositional requirements in the appropriate corporate By-Laws. If the committee consists of Directors or Governors as well as other members, the Association proposes to include provisions describing the committee's powers and compositional requirements in the Delegation Plan. Thus, the Association proposes to add provisions regarding the powers and composition of the Market Regulation Committee and the National Arbitration and Mediation Committee as proposed Section II.C. of the Delegation Plan.

The Association proposes to amend Section II.A.1.f. to specify that NASD Regulation will establish procedures to consider requests by members, associated person, and members of the public that NASD Regulation initiate formal disciplinary action. This provision is discussed below in

connection with the discussion of the proposed deletion of current Rule 8120.

The Association proposes to amend Section II.C., which sets forth certain NASD Regulation Board review procedures, by deleting specific procedures that are set forth in the proposed Rule 9000 Series. Instead, the Rules of the Association are cross-referenced.

Finally, the Association proposes to clarify that both NASD Regulation and Nasdaq are responsible for operating Stockwatch. Therefore, new Sections II.A.1.t. and III.A.1.o. are added and the Section pertaining to Stockwatch is renumbered as Section IV of the Delegation Plan.

The Association also proposes to amend the Certificates of Incorporation for the NASD, NASD Regulation, and Nasdaq. This is the first time the Association has filed the Certificates of Incorporation for NASD Regulation and Nasdaq with the Commission. The Association proposes to revise the three Certificates to conform them to the proposed changes to the By-Laws of the three corporations and other proposed rule changes and to make the Certificates more consistent with one another. No substantive changes are intended.

d. Proposed Changes to Rules 0120 and 0121

The Association proposes to add four new definitions to Rule 0120, which provides definitions of general applicability, and amend one definition. The four definitions that the Association proposes to add are: ''NASD,'' ''NASD Regulation,'' ''Nasdaq,'' and ''National Business Conduct Committee.'' NASD, NASD Regulation, and Nasdaq are the same terms defined in the By-Laws of the NASD, NASD Regulation, and Nasdaq. The Association proposes to define these terms in Rule 0120, to aid a person reading the Rules of the Association and any future drafter of a Rule. The Association proposes to add the term ''National Business Conduct Committee'' to avoid duplicating the definition in several proposed Rule Series and to aid the reader. The term is defined in the current Rule 9120 and used in other series of the Rules (*e.g.*, the Rule 1010 Series).

The Association intends to amend one currently defined term, ''Rules,'' to '''Rules'' or ''Rules of the Association','' and to clarify the definition. The new definition clarifies that the terms ''Rules'' and ''Rules of the Association'' are synonymous and that the definition includes any Rule set forth as a numbered Rule in the NASD Manual.

Finally, paragraph (j) is relettered as proposed paragraph (n), paragraph (k) is relettered as proposed paragraph (o), paragraph (l) is relettered as proposed paragraph (p), and paragraph (m) is relettered as proposed paragraph (q).

The Association proposes to amend current Rule 0121 to clarify that the definitions in the NASD By-Laws apply unless a Rule indicates otherwise.

e. Proposed IM–2210–4

The Association proposes to add IM–2210–4 as a filed interpretation of Rule 2210. IM–2210–4 is based on a resolution of the NASD Board of Directors that currently is included in Article XVI, Section 2 of the NASD By-Laws, which concerns the use of the Association's name by members. Because the Association will no longer include corporate resolutions with the By-Laws, the Association proposes to convert the resolution into interpretive material for Rule 2210, which addresses members' communications with the public. In addition, the language of the resolution is clarified and reorganized to make it easier to read and understand.

f. Proposed Changes to the Membership Application Procedures in the Rule 1010 Series

The Rule 1010 Series sets forth procedures for processing membership applications. The Rule 1010 Series is revised to reflect the recommendations of the Implementation Plan and to comply with Undertakings 4 and 5. The Implementation Plan recommended that the NASD strive to bring about greater national uniformity and coordination in the membership application process and lighten the National Business Conduct Committee's workload in order to allow the National Business Conduct Committee to assist in providing such uniformity. Undertaking 4 requires the NASD to ''provide for the autonomy and independence of the regulatory staff * * * such that the staff, subject only to the supervision of the Board of Governors of the NASD and the Board of Directors of NASDR * * * has sole discretion to handle the approval of applications for membership.'' Undertaking 4 also requires that the District Business Conduct Committees no longer be involved in reviewing or approving membership applications. Undertaking 5 requires that the Association ''promulgate and apply on a consistent basis uniform standards for regulatory and other access issues, such as admission to the NASD as a member firm, and conditions to becoming a market maker; and institute safeguards to ensure fair and evenhanded access to all services and facilities of the NASD.''

(i) *Current Rules*

Under the current Rule 1010 Series, a prospective member files a membership application with the district office in the district in which it intends to have its principal place of business. A Subcommittee is designated by the District Committee to render a determination on the application. Current Rule 1011 specifies a short list of documents and information to be provided with the application and generally permits the district office to request any other relevant information or documents. If the applicant fails to respond to a request for information by the district office or responds to such a request in a materially inadequate manner, the Rule provides that the application terminates, unless the Subcommittee determines otherwise.

Before an applicant is admitted to membership, current Rule 1011 requires that the applicant participate in a pre-membership interview. The Association has one year from the date of application to complete the pre-membership interview process. During the pre-membership interview, there is a review of the applicant's: (1) Business plan; (2) capital arrangements; (3) proposed record keeping system; (4) proposed internal procedures; (5) familiarity with Rules of the Association and federal securities laws; and (6) capability to properly conduct the type of business intended in view of (a) The number, experience, and qualifications of persons to be associated with the applicant at the time of its admission to membership, (b) the applicant's planned facilities, (c) arrangements with banks and clearings corporations, (d) supervisory personnel, methods, and procedures, and (e) other factors relevant to the scope and operation of the applicant's business. The applicant is required to demonstrate ''the appropriateness of its admission to membership in the Association to conduct the type of business intended in the manner specified in its submission.''

Within 30 days after the pre-membership interview or the receipt of any additional documents requested, whichever is later, the Subcommittee notifies the applicant whether its application is granted, denied, or granted subject to restrictions on its business activities. If restrictions are imposed at this stage or after appeal or review under Rule 1012, the applicant must execute a written agreement to abide by any restrictions imposed and to obtain the Association's approval before modifying its business activities in any way inconsistent with the agreement.

Under current Rule 1012, the applicant may request that the full District Committee review the Subcommittee's determination. The applicant may request a hearing before a separate Hearing Subcommittee of the District Committee. No member of the Subcommittee that rendered the initial determination on the application may participate in the determination of the District Committee. After review, the District Committee determines whether the application should be granted, denied, or granted subject to restrictions.

The applicant may appeal the full District Committee's decision to the National Business Conduct Committee, or the National Business Conduct Committee on its own motion may call the decision for review. The applicant has the right to appear before the National Business Conduct Committee and may supplement the record; the National Business Conduct Committee may require the applicant to appear and provide additional information. Unless the NASD Board calls the membership application proceeding for discretionary review, the National Business Conduct Committee notifies the applicant whether its application is granted, denied, or granted subject to restrictions, and the National Business Conduct Committee's action constitutes final action of the Association. The applicant may apply for review by the Commission.

A Governor of the NASD Board may call a determination of the National Business Conduct Committee on a membership application for review. The NASD Board may affirm, modify, or reverse the National Business Conduct Committee's determination, and the Board's determination constitutes final action of the Association. The applicant may apply for review by the Commission.

Under current Rule 1013, a member may request that the Association remove or modify any restrictions imposed on its business activities as a result of the membership admission process. The request must be filed in writing and reviewed by a Subcommittee of the District Committee of the district in which the member currently has its principal place of business. The member must demonstrate that such action is appropriate in light of the criteria in current Rule 1013. The Subcommittee considers the circumstances that gave rise to the imposition of the restrictions, the operations of the member since the imposition of the restrictions, and any new evidence submitted in connection with the request. The District Committee, the National Business Conduct Committee, and the NASD Board may review a modification of restrictions approved by the Subcommittee pursuant to the procedures for reviewing a membership application under current Rule 1012. If the Subcommittee denies a request to remove or modify restrictions, the member may file a request for review with the District Committee. The District Committee's determination is subject to appeal or review pursuant to current Rule 1012.

Under current Rule 1014, if the ownership or control of a member changes, the Association may condition continuance in membership on prompt compliance with the pre-membership procedures contained in current Rules 1011 through 1015.

Under current Rule 1015, a member must notify the Association of certain mergers, acquisitions, or other changes in equity ownership or partnership capital within 10 business days after the event.

(ii) *Proposed New Rules*

The proposed rule change substantially alters current membership procedures. First, consistent with Undertaking 4, the proposed rule change shifts the authority to render an initial decision on a membership application from the District Committees to the Department of Member Regulation (''Department'') of NASD Regulation. Second, consistent with Undertaking 5, the proposed rule change sets forth in greater detail the information that must be submitted with a membership application, sets forth more detailed and objective standards for rendering a decision on a membership application, and requires that any restrictions placed on an Applicant's business activities be specifically related to a particular standard and that the rationale for such restrictions be clearly articulated. Third, the proposed rule change sets forth additional details about membership application procedures and generally provides more procedural rights to Applicants, including time limits by which the Department, and if applicable, the National Business Conduct Committee, the NASD Regulation Board, and the NASD Board must issue a decision. Finally, various other time limits are imposed throughout the admission process to ensure that applications are acted on promptly. These changes will help bring about greater national uniformity and coordination in the membership application process and more even-handed access to the facilities of the NASD.

Proposed Rule 1011 sets forth definitions for the proposed Rule 1010 Series. The terms ''Applicant,'' ''Associated Person,'' ''Department,'' ''Director,'' ''district,'' ''district office,'' ''Governor,'' ''Interested Association Staff,'' ''sales practice violations,'' and ''Subcommittee'' are defined.

Proposed Rule 1012 sets forth general procedural provisions for service of notices and decisions by the Association and filings by an Applicant, prohibitions on *ex parte* communications with Applicants or Interested Association staff, recusals or disqualifications of NASD and NASD Regulation Board members and National Business Conduct Committee members, computations of time, and recording of events in the Association's membership application docket.

Proposed Rule 1013 sets forth procedures for filing a membership application and conducting a membership interview.[39] Applicants must file membership applications with the Membership Department,[40] which will transmit the application for processing to Department staff at the district office in the district in which the Applicant has or intends to have its principal place of business. Proposed Rule 1013(a) sets forth a detailed list of items that must be submitted with a membership application. Newly specified items include a more detailed business plan; evidence of all required registrations and licenses and copies of the most recent Forms U–4 and U–5 for each Associated Person; documentation of disciplinary history and certain regulatory, civil, and criminal actions, arbitrations, and customer complaints for the Applicant and its Associated Persons; a written acknowledgment that heightened supervisory procedures may be required for certain Associated Persons; copies of proposed or final contracts with banks, clearing entities, and service bureaus; a description of the nature and source of Applicant's capital; a description of financial controls; a more detailed description of the Applicant's supervisory system and

[39] The Association proposes to discontinue the use of the term ''pre-membership interview'' and instead use the term ''membership interview.'' Under the proposed rule change, interviews are required before an Applicant may become a member and may be required after an Applicant becomes a member in order to remove or modify a restriction under proposed Rule 1018 or to review a change in ownership or operations under proposed Rule 1019. Thus, interviews will occur before and may occur after admittance to membership.

[40] The Membership Department is located in the Association's Rockville offices and performs certain administrative functions for all membership applications. It is distinct from the Department of Member Regulation.

personnel; a description of the proposed recordkeeping system; and a copy of the Applicant's written training plan.

Proposed Rule 1013 adds a new provision requiring the Department to determine if the application is complete within 30 days after receipt of the application. If the application is not complete, the Department may request additional information and documents, and may continue to make such requests at any time during the membership application process. Unless the Applicant and the Department agree otherwise, additional documents or information must be provided within 60 days after the initial request and 30 days after any subsequent request. Proposed Rule 1013(b) provides that an application for membership lapses if the Applicant fails to respond fully to requests for information or fails to appear at a membership interview, absent a showing of good cause by the Applicant.

Proposed Rule 1013(c) describes the membership interview process. The Department must conduct a membership interview before it issues a decision on an application for admission. The Applicant is notified of the interview by facsimile or commercial courier at least seven days before the interview. Unless the Department directs otherwise for good cause shown, a membership interview must be scheduled to occur within 90 days after receipt of the application or within 60 days after the receipt of all requested documents and information, whichever is later. During the membership interview, the Department reviews the standards for admission with the Applicant's representatives and informs them of any preliminary determinations as to whether the Applicant meets such standards. If the Department intends to rely on information not submitted by the Applicant, such information is provided to the Applicant.

Proposed Rule 1014 provides that after considering the application, membership interview, other information and documents, the public interest, and the protection of investors, the Department must determine whether the Applicant meets the specified standards. For standards relating to capital, supervision, and capability of complying with applicable law, the proposed rule change sets forth specific criteria that the Department may consider in determining whether the Applicant meets the standard. Other standards address the completeness and accuracy of the application and supporting documents; possession of all required licenses and registrations; establishment of necessary relationship with banks, clearing corporations, and service bureaus; plans to obtain necessary facilities; financial controls; compliance, supervisory, operational, and internal control practices and standards; recordkeeping; and training. In addition, the Association must not possess any information indicating that the Applicant may circumvent, evade, or otherwise avoid compliance with the federal securities laws or the Rules of the Association, and the application and supporting documents must otherwise be consistent with the federal securities laws and the Rules of the Association.

If an Applicant meets each of the standards, the Department grants the application for membership. If an Applicant fails in whole or part to meet one or more of the standards, the Department may deny the application or grant it subject to restrictions designed to address specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concerns based on the standards in proposed Rule 1014.

Under the proposed rule change, if the Department grants an application, with or without restriction, the Applicant's approval for membership is contingent upon the Applicant's submission of a membership agreement to engage only in the business set forth in its business plan and the membership agreement; abide by any restriction specified in the Department's written decision; obtain the Department's prior approval of the removal or modification of such restriction under proposed Rule 1018; and notify and obtain the Department's approval of a change in ownership or control or a material change in business operations under proposed Rule 1019. The execution of this membership agreement does not affect the Applicant's right to request a review of the Department's decision under proposed Rule 1015.

Under subparagraph (d) of Rule 1014, if the Department denies an application, the decision must explain the reason for the denial and reference the applicable standard that is not met. If the Department grants the application subject to restrictions, the decision must explain the reason for each restriction, referencing the applicable standard that is not met and identifying the specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern that the restriction is designed to address and the manner in which the restriction is reasonably designed to address the concern.

The Department must issue a written decision within 30 days after the conclusion of the membership interview or after the submission of additional information or documents, whichever is later. The proposed rule change also provides a new remedy if the Department fails to act promptly on an application. If the Department fails to issue a written decision within 180 days after receipt of an application, or such later date as the Department and the Applicant agree, the Applicant may request that the NASD Board direct the Department to issue the decision immediately or show good cause for an extension. If the Department shows good cause, the 180 day time limit may be extended by not more than 90 days.

Under proposed Rule 1015, the Applicant may request that the National Business Conduct Committee review the decision of the Department by filing a written request within 25 days after service of the Department's decision. As under current Rule 1012, upon submission of the membership agreement, an Applicant may begin operating subject to the terms of such agreement while the review is pending.[41]

If the Applicant requests a review, the National Business Conduct Committee appoints a Subcommittee to participate in the review. The Subcommittee is composed of two or more members. At least one member must be a current member of the National Business Conduct Committee; the remaining member or members may be current or past members of the NASD Regulation Board or past members of the NASD Board. The Applicant may request a hearing before the Subcommittee, or the Subcommittee may direct that a hearing be held. After the Subcommittee completes its review, the Subcommittee transmits a recommended decision in writing to the National Business Conduct Committee and to the other Directors of the NASD Regulation Board not later than 60 days after the date of the membership hearing, and not later than seven days before the National Business Conduct Committee meeting at which the proceeding will be considered.

After considering all matters presented in the review and the Subcommittee's recommended decision, the National Business Conduct Committee may affirm, modify, or reverse the Department's decision or remand the proceeding with instructions. The National Business

[41] The Commission notes that only an Applicant who has been approved, but subject to a restriction, may begin operating subject to the terms of its membership agreement while its review is pending. An Applicant who has not been disapproved may not begin operating.

Conduct Committee prepares a proposed written decision that describes the Department's decision and rationale, describes the principal issues raised in the review, summarizes the evidence on each issue, and states the National Business Conduct Committee's disposition of the proceeding and the rationale therefor, referencing the applicable standards in proposed Rule 1014. A Director of the NASD Regulation Board or a Governor of the NASD Board may call the National Business Conduct Committee's proposed written decision for review in the sequence and within the time limits set forth in proposed Rule 1016, as described below.

If the National Business Conduct Committee's proposed written decision is not called for review by either Board, the National Business Conduct Committee's proposed written decision becomes the final written decision. The Applicant is notified that the call for review period has expired and that the National Business Conduct Committee is required to serve its final written decision within 15 days. If the National Business Conduct Committee does not serve its final written decision within 15 days, the Applicant may request that the NASD Board direct the National Business Conduct Committee to serve its decision immediately or show good cause for an extension of time. If the National Business Conduct Committee shows good cause, the NASD Board may extend the 15 day limit by an additional 15 days.

Proposed Rule 1016 sets forth procedures for the NASD Regulation Board to call the National Business Conduct Committee's proposed written decision for review and for the NASD Board to call a proposed written decision of the National Business Conduct Committee or the NASD Regulation Board for review. The call for review process begins with the mailing of the Subcommittee's recommended decision to the National Business Conduct Committee and to the other Directors at least seven days in advance of the National Business Conduct Committee meeting at which the National Business Conduct Committee will consider and act upon the recommended decision. The National Business Conduct Committee then holds its meeting and acts on the Subcommittee's recommended decision. Under current practices, the NASD Regulation Board meets on the day after the National Business Conduct Committee meeting. At this Board meeting, each Director receives a summary (not the full written text) of the National Business Conduct Committee's proposed decision, including any changes the National Business Conduct Committee made to the Subcommittee's recommended decision. Based upon the Subcommittee's recommended decision (which Directors will have had at least seven days to review) and the summary of the National Business Conduct Committee's proposed decision, any Director may call the National Business Conduct Committee's proposed decision for review.

After the Board meeting, Directors get a second opportunity to call a proposed National Business Conduct Committee decision for review when they receive the full written text and the summary of the National Business Conduct Committee's proposed decision, which incorporate any changes from the Subcommittee's recommended decision. A Director may call the National Business Conduct Committee's proposed written decision for review by the full Board not later than seven days after the date on which the Director receives the decision. Thus, in most cases a Director will have at least 14 days to consider whether to call a proceeding for review—seven days before the Board meeting and at least seven days after the Board meeting. (The Board, by a unanimous vote, may shorten the seven-day period following the Board meeting, or by majority vote, may lengthen the seven-day period following the Board meeting.) If a Director calls the National Business Conduct Committee's proposed written decision for review, the review is conducted at the next Board meeting. The NASD Regulation Board may affirm, modify, or reverse the National Business Conduct Committee's proposed written decision or remand the proceeding with instructions. The NASD Regulation Board prepares a proposed written decision that describes the Department's decision and rationale, describes the principal issues raised in the review, summarizes the evidence on each issue, and states the NASD Regulation Board's disposition of the proceeding and the rationale therefor, referencing the applicable standards in proposed Rule 1014. The NASD Regulation Board transmits its proposed written decision to the Governors of the NASD Board.

If a Governor does not call the NASD Regulation Board's proposed written decision for review within the time prescribed, the NASD Regulation Board's proposed written decision becomes the final written decision. The Applicant is notified that the call for review period has expired and that the NASD Regulation Board is required to serve its final written decision within 15 days. If the decision is not served within such time, the Applicant may request that the NASD Board direct the NASD Regulation Board to serve its final written decision immediately or show good cause for an extension of time. If the NASD Regulation Board shows good cause, the NASD Board may extend the 15 day limit by an additional 15 days.

The process for review by the NASD operates similarly to that described above. A Governor of the NASD Board may call the NASD Regulation Board's proposed written decision for review not later than the next NASD Board meeting that is at least seven days after the date on which the Governor receives the decision. (The Board, by a unanimous vote, may shorten the seven-day period, or by majority vote, may lengthen the seven-day period.) If a Governor calls the NASD Regulation Board's proposed written decision for review, the review is conducted at the following Board meeting. The NASD Board may affirm, modify, or reverse the NASD Regulation Board's proposed written decision or remand the proceeding with instructions. The NASD Board prepares a final written decision that describes the Department's decision and rationale, describes the principal issues raised in the review, summarizes the evidence on each issue, and states the NASD Board's disposition of the proceeding and the rationale therefor, referencing the applicable standards in proposed Rule 1014. The NASD Board must serve its final written decision within 15 days after the meeting at which it conducted its review.

Alternatively, if a Director of the NASD Regulation Board does not call the National Business Conduct Committee's proposed written decision for review within the time prescribed, the NASD Board may call such decision for review. Upon the expiration of the NASD Regulation Board's call for review period, the National Business Conduct Committee's proposed written decision is transmitted to the Governors of the NASD Board. A Governor may call the National Business Conduct Committee's proposed written decision for review not later than the next Board meeting that is at least seven days after the Governor receives the decision. (The Board, by a unanimous vote, may shorten the seven-day period, or by majority vote, may lengthen the seven-day period.) If a Governor calls the National Business Conduct Committee's proposed written decision for review, the review is conducted at the following NASD Board meeting. The NASD Board may affirm, modify, or reverse the

National Business Conduct Committee's proposed written decision or remand the proceeding with instructions. The NASD must serve its final written decision within 15 days after the meeting at which it conducted its review. The final written decision contains the same elements described in the preceding paragraph.

Under proposed Rule 1017, as under current Rule 1012(h), a decision by the National Business Conduct Committee, NASD Regulation Board, or the NASD Board that constitutes final action of the Association may be appealed to the Commission.

Under proposed Rule 1018, a member may submit an application to remove or modify a restriction on its business activities by submitting a written application to the Department at the district office in the district in which the member's principal place of business is located. The application must present facts showing that the circumstances that gave rise to the restriction have changed and state with specificity why the restriction should be modified or removed in light of the membership application standards in proposed Rule 1014 and the articulated rationale for the imposition of the restriction. The Department has 30 days to determine whether an application is complete and, if not, the Department may request that the Applicant submit additional information or documents. The Department also may request that the Applicant participate in a membership interview. The Department issues its written decision after considering whether maintenance of the restriction is appropriate in light of the standards set forth in proposed Rule 1014, the circumstances that gave rise to the imposition of the restrictions, the Applicant's operations since the restrictions were imposed, any change in ownership or control or supervisors and principals, and any new evidence submitted in connection with the application. (Proposed Rule 1018(b)(1).) The Applicant may file a written request for review of the Department's decision by the National Business Conduct Committee. The procedures set forth in proposed Rules 1015 and 1016 apply to such a request. In addition, a new provision is added requiring the Department of Member Regulation to modify or remove restrictions on its own initiative if that Department determines that such action is appropriate in light of the circumstances described above.

Current Rule 1015 requires a member to notify the Association of certain changes in ownership and control within 10 days after the event. In contrast, proposed Rule 1019 requires members to notify the Association at least 30 days prior to the occurrence of certain changes in ownership, control, or operations and obtain approval of such changes prior to their effectiveness. The changes specified in proposed Rule 1019 include a merger with or acquisition of another member, an acquisition of substantially all assets of the member, a change in the equity ownership or partnership capital of a member that results in one person or entity controlling 25 percent or more of the equity or partnership capital, and a material change in a member's business operations. The Department must review such a change before it takes effect and may maintain existing restrictions on the member's business activities and place new interim restrictions on the member based on the standards in proposed Rule 1014, pending final Department action. The Department may condition continued membership on the submission of information and the participation in a membership interview pursuant to proposed Rule 1013 and on prompt compliance with the standards and requirements in proposed Rule 1014, in which case all procedural protections under the proposed Rule 1010 Series apply, including the time limits imposed on the issuance of a decision.

As discussed above, the Association proposes that the proposed Rule 1010 Series become effective 30 days after approval by the Commission.

g. Proposed Changes to the Rule 8000 Series

The Association proposes to amend the Rule 8000 Series to reflect proposed rule changes to the Rule 9000 Series and to clarify and reorganize certain provisions in order to make them easier to read and understand.

Rule 8110, which requires members to keep certain NASD corporate documents, rules, and interpretations in their branch offices, is revised to require members to keep a current copy of the NASD Manual in their main and branch offices. The NASD Manual will contain the corporate documents for the NASD, NASD Regulation, and Nasdaq as well as the Rules of the Association and interpretations.

Current Rules 8120, 8130, and 8140 concern the initiation of disciplinary proceedings. Current Rule 8120 allows any person who believes he or she has been aggrieved by any act of any member or associated person to institute a formal disciplinary proceeding. In view of the enhancements to the disciplinary process being proposed (including the change to staff-initiated disciplinary proceedings), enhancements to the arbitration process, and the institution of an expanded and independent NASD internal review function (including an Ombudsman Office), the Association believes it is no longer necessary to give ''aggrieved persons'' the right to invoke Association processes to institute formal disciplinary actions. The Association also believes that the availability of such a procedure to ''aggrieved persons,'' who may include members and associated persons seeking to advance competitive or pecuniary interests, as well as to members of the public, could permit such persons to encumber the Association's disciplinary process. This would be inconsistent with the fundamental purpose of the Association's disciplinary procedures, which are designed to provide a mechanism for the protection of investors generally and the promotion of the public interest, rather than a means to redress individual private grievances. In this connection, the Association notes that no other self-regulatory organization has a similar provision in its rules.

For these reasons, the Association proposes to rescind current Rule 8120. While the Association believes this Rule is no longer necessary or appropriate, the Association also acknowledges its responsibility as a self-regulatory organization to give due consideration to complaints by members, associated persons, or members of the public who bring forth information suggesting wrongdoing. Under these circumstances, the Association recognizes its duty to investigate and to determine whether its disciplinary process should be invoked. For this reason, the Association proposes to add to the Delegation Plan a provision requiring NASD Regulation to establish internal procedures for considering complaints by members, associated persons, and members of the public who request an investigation or disciplinary action by the Association.[42] The procedures established would involve regular oversight by NASD Internal Review.

The Association also proposes to delete current Rule 8130, which authorizes District Business Conduct Committees to file complaints, to comply with Undertaking 4. The Association proposes to delete current Rule 8140, which authorizes the NASD Board to file a complaint, because

[42] NASD Regulation currently logs, tracks, and investigates all customer complaints through the Association's long-standing customer complaint program.

procedures for the NASD Board and the NASD Regulation Board to initiate a complaint are included in proposed Rule 9211.

The Association proposes a new Rule 8120 to clarify that the terms used in the proposed Rule 8000 Series have the meaning defined in the proposed Rule 0120 Series, except the term ''Adjudicator,'' which has the meaning defined in the proposed Rule 9120 Series as described below.

Proposed Rule 8210 combines current Rule 8210, which provides for reports and inspections of books, records, and accounts for the purpose of investigating or hearing a complaint, and current Rule 9132, which requires members to provide reports and permit examinations of books and records for the purpose of an investigation or a Rule 9000 Series proceeding.[43] Proposed Rule 8210 also clarifies that the Association may require a member, a person associated with a member, or a person still subject to the Association's jurisdiction to testify under oath or affirmation if requested. In addition, proposed Rule 8210 divides the concepts in Rule 8210 into shorter sentences and more paragraphs in order to make the Rule easier to read and understand.

The Association proposes significant changes to current Rule 8220, which authorizes the suspension of a member for failure to furnish the Association with duly requested information or for failure to keep a membership application and supporting documents current. The proposed changes retain the summary suspension power the Association requires, but provide members with enhanced procedural protections in connection with the suspension process.

The proposed Rule 8220 Series applies to members and persons associated with members. Under the proposed revisions to Rule 8221, the National Business Conduct Committee, rather than the President of the Association, must provide written notice of the suspension to the member or associated person. The notice specifies the information that must be provided or the action that must be taken and states that the failure to do so within 20 days after service of the notice constitutes grounds for suspension. The National Business Conduct Committee must serve notice of the suspension via personal service or commercial courier.

Proposed Rule 8222 makes explicit the right of a member or associated person to request a hearing concerning the notice of suspension. This change conforms the proposed Rule with the Act and proposed Article VII, Section 2 of the NASD By-Laws, which authorize such a suspension after notice and opportunity for a hearing is provided. If a member or associated person wants a hearing on the suspension, the member or associated person must request a hearing within five days after service of the notice of suspension under Rule 8221. Any requested hearing is scheduled on an expedited basis (within 20 days after service of the Rule 8221 notice) and is held before a subcommittee of the National Business Conduct Committee. At least seven days before the scheduled hearing, the member or associated person receives written notice (via commercial courier or facsimile) of the date and time of the hearing and is provided with copies of all documents the National Business Conduct Committee considered in determining to issue the proposed Rule 8221 notice.

The appropriate NASD Regulation department or office [44] and the member or associated person may be represented by counsel at the hearing. Copies of proposed hearing exhibits and witness lists must be exchanged and provided to the subcommittee at least four days before the hearing. Witnesses subject to the jurisdiction of the Association must testify under oath or affirmation. The hearing is recorded by a court reporter, and a transcript is prepared.

Proposed Rule 8223 requires the subcommittee to prepare a proposed written decision. If the subcommittee decides to impose a suspension, then the decision must state the grounds for the suspension and the conditions for terminating the suspension. The subcommittee's proposed written decision must be presented to the NASD Board. A Governor may call a suspension proceeding for review within ten days of receipt of the subcommittee's proposed written decision, unless the Board votes to extend or shorten this call for review period. If no Governor calls the proposed decision for review within the prescribed time, the subcommittee's decision becomes final and is served on the member or associated person. If, however, a Governor calls the suspension proceeding for review, the NASD Board must consider the matter not later than its next meeting and, within seven days of that meeting, serve a final written decision on the member or associated person. Any decision to impose a suspension must state the grounds for the suspension and the conditions for terminating it. A suspension, if imposed, becomes final upon service of the decision.

Proposed Rule 8224 requires the Association to provide to the NASD membership notice of any suspension imposed pursuant to Rule 8223, and proposed Rule 8226 requires that the Association also serve a copy of a notice or decision served on a person associated with a member on such member.

Proposed Rule 8225 adds a new provision for termination of the suspension. Upon request by the suspended member or associated person, the head of the appropriate NASD Regulation department or office may terminate a suspension if the member or associated person has fully complied with a notice or decision issued under the Rule 8220 Series. If the head of the appropriate department or office denies the request, the proposed Rule provides the member or associated person with the right to apply to the National Business Conduct Committee for relief from the suspension on the ground of full compliance with the notice issued under proposed Rule 8221 or the conditions specified in a decision issued under proposed Rule 8223.

Finally, proposed Rule 8227 clarifies that any action taken under the Rule 8220 Series does not foreclose the Association from taking action against the member or associated person under any other Rule.

With respect to the Rule 8300 Series, the NASD proposes to amend Rule 8310, which provides for sanctions, to conform with the proposed Rule 9000 Series and to make Rule 8310 shorter, clearer, and easier to understand. IM–8310–1, which addresses the effect of a suspension, revocation, or bar, is amended to add clarity and readability to the interpretive material. No change is proposed to IM–8310–2.[45] Rule 8320, which sets forth requirements for the payment of fines, other monetary sanctions, or costs, is amended to divide the provisions of the Rule into shorter and clearer sentences and more numerous paragraphs for clarity. Rule

[43] Proposed Rule 8210 also reflects a proposed rule change to provide for electronic submissions, which was submitted to the Commission in rule filing NASD–96–46.

[44] The appropriate department or office of NASD Regulation is the department or office that issued the request for information, reports, material, data, or testimony that the member or associated person failed to provide, or in the case of a member that failed to keep its membership application or supporting documents current, the Department of Member Regulation.

[45] NASD Regulation has pending at the Commission a rule proposal to amend IM–8310–2 that was published for comment by the Commission in Securities Exchange Act Rel. No. 38380 (March 10, 1997), 62 FR 12866 (March 18, 1997). This rule filing does not propose further changes to IM–8310–2.

8330, which addresses the assessment of costs in Rule 9000 Series proceedings, is amended to conform to the proposed Rule 9000 Series.

h. Proposed Changes to Disciplinary Proceedings in the Rule 9000 Series

(i) *Summary*

In the current and proposed Rule 9000 Series, the Rule 9100 Series sets forth rules of general applicability to disciplinary proceedings and other proceedings brought against a member or a person associated with a member. The Rule 9200 Series sets forth the specific procedures for disciplinary proceedings, including settlements, letters of acceptance, waiver, and consent (''AWCs'') and minor rule plan violation letters (''MRVs''), and the Rule 9300 Series sets forth the appeal or review of a disciplinary proceeding.

The Rule 9100 Series now contains seven rules, the three most important of which set forth a series of defined terms and provide for disqualification of an adjudicator in case of conflict of interest, and the service of complaints, decisions and notices.[46] In contrast, the proposed Rule 9100 Series contains 20 proposed Rules, setting forth a variety of important procedural improvements, including a series of rules regarding service and notice of various papers and filing requirements (the proposed Rule 9130 Series), rules relating to the appearance of counsel, or other person authorized to act in a representative capacity (Proposed Rules 9141, 9142, 9150), a detailed rule provision prohibiting *ex parte* communications generally (Proposed Rule 9143) and a related provision regarding separation of functions (Proposed Rule 9144), a proposed Rule providing for a motions practice (Proposed Rule 9146), a provision for disqualification of an Adjudicator (Proposed Rule 9160),[47] and a provision prohibiting interlocutory review (Proposed Rule 9148).[48] The more significant proposed Rules in the Rule 9100 Series are discussed in greater detail below.

The Rule 9200 Series now contains 13 rules, the most important of which provide for: the issuance of a complaint by a District Committee, the Market Regulation Committee, or the NASD Board of Governors or the National Business Conduct Committee; the use of AWCs or MRVs to resolve certain disciplinary matters prior to issuing a complaint; summary complaint procedures; hearings; the consideration of a complaint by a Hearing Panel comprised of persons from a District Committee in the geographic area where the relevant office of the Respondent is located (the venue provision), the composition of Hearing Panels; evidence and procedure in a committee hearing; the decision of a committee; and settlement procedures.[49]

In comparison, the proposed Rule 9200 Series contains 30 proposed Rules. The roles of the District Committee and Market Regulation Committee are greatly reduced. Neither may initiate a complaint; instead, the Department of Enforcement may investigate a case and file a complaint to initiate a disciplinary proceeding. (Proposed Rule 9211(a).) Hearing Panels or, if applicable, Extended Hearing Panels,[50] are now selected by a Chief Hearing Officer, and are composed of a Hearing Officer, a professional NASD Regulation staff member, and two Panelists, both selected from the securities industry and drawn from a pool of persons including those who currently serve on a District Committee or who formerly served on a disciplinary hearing panel, and others who have served previously in certain aspects of the disciplinary process, including former members of the NASD Regulation Board, the NASD Board and the Nasdaq Board of Directors. (Proposed Rules 9120(o), 9120(i), 9120(n), 9120(q), 9213, 9231, and 9232.) The Hearing Panel, or, if applicable, the Extended Hearing Panel, issues the ''trial-level'' decision in a disciplinary proceeding. (Proposed Rule 9268.)

A number of procedural enhancements are proposed. Proposed Rule 9215(c) provides for the filing of a motion for a more definite statement (in addition to proposed Rule 9146, providing for the filing of motions generally), proposed Rule 9221 allows a Hearing Officer or a Hearing Panel to order a hearing if the Adjudicator determines a hearing is necessary, notwithstanding that Respondents have waived their rights to a hearing, and proposed Rules 9233 and 9234 set forth detailed disqualification provisions.

The proposed Rule 9240 Series and proposed Rule 9250 Series set forth requirements for Parties to participate in pre-hearing conferences, and exchange, before a hearing on the merits, documentary evidence, a list of witnesses and expert witnesses, and an outline of the case or defense. The same proposed rules also provide that a Complainant must provide documents to a Respondent, and set forth procedures for doing so. Sanctions for not complying with Rule requirements regarding the production of Documents, other provisions of the Rule 9200 Series, or an order of an Adjudicator in the Rule 9200 Series, are set forth in proposed Rule 9280.

At hearings, under proposed Rule 9262, a witness subject to the jurisdiction of the Association is required to testify under oath or

[46] The seven rules are: Rule 9110, entitled ''Application and Purpose of Code''; Rule 9111, entitled ''Communications Relating to Grievances''; Rule 9120, entitled ''Definitions''; Rule 9131, entitled ''Grounds of Disqualification to Participate in Proceedings''; Rule 9132, entitled ''Reports and Examination of Books and Records''; Rule 9133, entitled ''Rulings on Procedural Matters'; and, Rule 9134, entitled ''Service of Complaints, Decisions and Other Notices.''

[47] The term ''Adjudicator'' means: (1) A body, board, committee, other group, or natural person that presides over a proceeding and renders a decision; (2) a body, board, committee, other group, or natural person that presides over a proceeding and renders a recommended or proposed decision which is acted upon by an Adjudicator described in (1); or, (3) a natural person who serves on a body, board, committee, or other group described in (1) or (2). The term includes a Subcommittee as defined in paragraph (z), an Extended Proceeding Committee as defined in paragraph (k), and a Statutory Disqualification Committee as defined in paragraph (y). (Proposed Rule 9120(a).)

[48] The proposed Rules of general applicability to all proceedings do not include a specific provision regarding the attorney-client privilege and the work-product privilege. The Association has an important obligation to detect and address violations of its rules and the federal securities laws and the rules and regulations thereunder, and member firms are obligated to cooperate in such efforts. The attorney-client privilege and the work-product privilege are recognized. In the context of the obligations and statutory responsibilities of a self-regulatory organization (''SRO'') and a member's agreement to abide by the rules of the SRO, however, the existence of such privileges does not limit the obligation of a member to comply with duties imposed by the SRO or shield a member from such obligations. (*See, e.g.*, letter from Edward Kwalwasser, Executive Vice President, Regulatory Group, New York Stock Exchange (''NYSE''), to Robert I. Kleinberg, Executive Vice President, Oppenheimer & Co., January 30, 1991, appending 11 ''Broad Principles'' discussed by the NYSE and the Securities Industry Association.)

[49] The rules of the current Rule 9200 Series are: Rule 9211, entitled ''Issuance of Complaints by Committees''; Rule 9212, entitled ''Form, Content, Notice and Withdrawal of Complaints''; Rule 9213, entitled ''Complaints Directed by the Board or the National Business Conduct Committee''; Rule 9214, entitled ''Complaint Docket''; Rule 9215, entitled ''Consolidation of Complaints''; Rule 9216 , entitled ''Answers to Complaints''; Rule 9217, entitled ''Acceptance, Waiver and Consent, Minor Rule Violations, and Summary Complaint Procedures''; Rule 9221, entitled ''Request for Hearing''; Rule 9222, entitled ''Venue''; Rule 9223, entitled ''Hearing Panels''; Rule 9224, entitled ''Evidence and Procedure in Committee Hearings''; Rule 9225, entitled ''Decision of the Committee''; and Rule 9226, entitled ''Settlement Procedure.''

[50] The Chief Hearing Officer appoints an Extended Hearing Panel if upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors, the Chief Hearing Officer determines that a matter shall be an Extended Hearing. (Proposed Rule 9120(i) and proposed Rule 9120(h).) Designation of a matter as an Extended Hearing provides the Chief Hearing Officer the ability to select, among other potential Panelists, persons who are retired and may have both time and relevant experience to bring to an Extended Hearing. (Proposed Rule 9231(c).)

affirmation. Under proposed Rule 9264, rules are set forth allowing a Party to file a motion for summary disposition.

In the post-hearing time frame, under proposed Rule 9266, a Hearing Officer may require a Party to file proposed findings of fact, conclusions of law, and post-hearing briefs. A Hearing Officer prepares a decision representing the majority of the Hearing Panel or, if applicable, the Extended Hearing Panel under proposed Rule 9268. Proposed Rule 9268(c) allows a Panelist or a Hearing Officer to write a dissenting opinion. Under proposed Rule 9270, the Association proposes to modify existing settlement procedures.

The most important of the changes proposed to the Rule 9200 Series are discussed in greater detail below.

In the current and proposed Rule 9300 Series, procedures are set forth for the appeal of a case by a Party or the review of a case by the National Business Conduct Committee, and the NASD Regulation Board and the NASD Board. Current Rule 9300 Series contains eight rules;[51] the proposed Rule 9300 Series contains 19 proposed rules.

In the proposed Rule 9300 Series, important changes include the unlimited right of the Department of Enforcement to appeal a disciplinary proceeding decision issued by a Hearing Panel or, if applicable, an Extended Hearing Panel (Proposed Rule 9311(a)), the requirement that persons subject to the jurisdiction of the Association testify under oath or affirmation (Proposed Rule 9346(h)); and the requirement that members of the NASD Regulation Board or the NASD Board shall have at least a specific period of time to review a disciplinary proceeding decision in order to determine whether to call a case for discretionary review by such board. (Proposed Rules 9351 and 9352.) Proposed Rule 9360 provides that a sanction imposed in a final disciplinary action of the Association becomes effective not earlier than 30 days after the date of service of the decision. In a proposed change designed to reflect current practice in most cases, proposed Rule 9370 codifies existing practice under which sanctions, other than a bar or expulsion, are stayed when a person files a request for review of a final disciplinary action of the Association with the Commission.

Some of the most significant proposed changes requiring greater explanation are discussed in detail in the discussion following.

Currently, the Rule 9400 Series consists of two Rules, Rule 9410, Sanctions, and Rule 9420, Costs of Proceedings. The Association proposes to delete the current Rule 9400 Series because it duplicates provisions in the current and proposed Rule 8000 Series. The Rules providing for sanctions and the imposition of costs, now set forth in proposed Rules in the Rule 8000 Series, are discussed above in Part g, entitled ''Proposed Changes to Rule 8000 Series.''

(ii) *The Role of the District Committees*

Under the current Rule 9000 Series, each of the District Committees, in addition to authorizing complaints, also (1) serves as a pool for the hearing panels that hear disciplinary proceedings and recommend decisions to the full District Business Conduct Committee; and (2) issues initial decisions in disciplinary proceedings brought against NASD members and their associated persons. (Rules 9211 through Rule 9216, and Rules 9221 through 9225.) Under the proposed rule change, a District Committee's adjudicatory role is to serve as a pool of persons from which the Chief Hearing Officer may select Panelists to serve on the adjudicatory panels. (Proposed Rules 9231 and 9232.) This change is designed to preserve the core of the NASD's disciplinary process, ''member participation and peer review,'' while eliminating aspects of the disciplinary process pursuant to the Undertakings. (Select Committee Report, p. C–16.)

Specifically, proposed Rule 9231(b) provides, in pertinent part: ''The Hearing Panel shall be composed of a Hearing Officer and two Panelists * * *.'' To serve as a Panelist for a Hearing Panel, each Panelist must be associated with a member and be:

(A) A current member of a District Committee;

(B) A person who previously served on a disciplinary hearing panel;

(C) A former member of the National Business Conduct Committee;

(D) A person who previously served on a disciplinary subcommittee of the National Business Conduct Committee, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; or

(E) A person who previously was a Director, a member of the Nasdaq Board of Directors, or a Governor, but does not sit currently on any of the boards.(Proposed Rule 9231(b)(1) (A) through (E).) The parallel provision in paragraph (c) of proposed Rule 9231 provides, in pertinent part, that: ''The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists * * *.'' To serve as a Panelist for an Extended Hearing Panel, each Panelist must be associated with a member or retired therefrom. In other respects, the pool from which a Panelist may be drawn is identical to that described above for a Hearing Panel. (*Compare* proposed Rule 9231(b)(1) (A) through (E) and proposed Rule 9231(c)(1) (A) through (E).)

Generally, both Panelists will be selected from the larger pool of Panelists based upon whether they reside in the same geographic area in which the alleged misconduct occurred. (Proposed Rule 9232(c).) Specifically, in proposed Rule 9232(d), the Association proposes that the Chief Hearing Officer generally select Panelists in the following priority: (1) From the current members of the Primary District Committee; (2) from the other categories of persons eligible to serve as Panelists as set forth in Rule 9231(b)(1) (A) through (E) or, if applicable, in Rule 9231(c)(1) (A) through (E), who are located in the same geographic areas as the Primary District Committee; and (3) if applicable, and discussed in greater detail below, from current or former members of the Market Regulation Committee. However, the Chief Hearing Officer has discretion to select one or both Panelists from the larger, national pool. (Proposed Rule 9232 (d) and (e).)

Proposed Rule 9232 provides, in paragraph (a)(1), that the Chief Hearing Officer shall determine ''which District Committee will be the Primary District Committee from which Panelists may be selected.'' The term ''Primary District Committee'' is defined in Rule 9120(w).[52] Paragraph (c) of proposed Rule 9232 sets forth the non-exclusive list of factors used by the Chief Hearing Officer to designate a Primary District Committee.[53]

[51] In the Rule 9300 Series, the eight rules are: Rule 9310, entitled ''Review of Disciplinary Actions by the National Business Conduct Committee and the Board'; Rule 9311, entitled ''Proceedings'; Rule 9312, entitled ''Evidence in National Business Conduct Committee Proceedings'; Rule 9313, entitled ''Powers of the National Business Conduct Committee on Review'; Rule 9314, entitled ''Decision of the National Business Conduct Committee'; Rule 9315, entitled ''Notification of Decision; Final Disciplinary Action'; Rule 9316 entitled ''Discretionary Review by the Board'; and Rule 9317, entitled ''Application to SEC for Review.''

[52] The term ''Primary District Committee'' means, in a disciplinary proceedings, the District Committee designated by the Chief Hearing Officer pursuant to Rule 9232 to provide one or more of the Panelists to a Hearing Panel or, if applicable, to an Extended Hearing Panel, for such disciplinary proceedings. (Proposed 9120(w).)

[53] The factors used by the Chief Hearing Officer are as follows:

(1) The location of a Respondent's principal office if the Respondent is or was a member firm;

After designating the Primary District Committee, the Chief Hearing Officer selects two Panelists based on expertise, the absence of any conflict of interest or bias, and any appearance thereof, availability, and the frequency with which a member has served as a Panelist on Hearing Panels or Extended Hearing Panels during the past two years. (Proposed Rule 9232(d).) However, as noted previously, proposed Rule 9232 provides the Chief Hearing Officer flexibility to select one or both Panelists from the national pool of Panelists. Specifically, proposed Rule 9232 provides that the designation of a Primary District Committee ''does not preclude the Chief Hearing Officer from selecting one or more Panelists from other categories of eligible Panelists if the Chief Hearing Officer determines that one or more persons from other categories of eligible Panelists more clearly meet the criteria of paragraph (d)(1) through (4)'' (Proposed Rule 9232(e) (regarding expertise, absence of any conflict of interest or bias, availability, and frequency of service)) ''and the public interest or the administration of NASD Regulation's regulatory and enforcement program would be enhanced'' by such selection (Proposed Rule 9232(e)). Moreover, as discussed in greater detail below, proposed Rule 9232 provides the Chief Hearing Officer flexibility to select one Panelist from the pool of Market Regulation Committee members and former members, if appropriate. (Proposed Rule 9232 (b) and (d).)

In summary, the District Committees, in contrast to their current authority, are not allowed to initiate a disciplinary proceeding, serve as an evidentiary Hearing Panel for a disciplinary proceeding, issue a final decision, or review or approve a final decision. These revisions are consistent with Undertakings 3 and 4 and incorporate the recommendations of the Select Committee.

(iii) *The Role of the Market Regulation Committee*

Under the proposed rule change, the only adjudicative role for the former Market Surveillance Committee, now the Market Regulation Committee, is to serve as a pool of Panelists to serve on a Hearing Panel or, if applicable, an Extended Hearing Panel. A current or former Market Regulation Committee member who is associated with an NASD member may be chosen by the Chief Hearing Officer to serve as a Panelist on a Hearing Committee or an Extended Hearing Committee. However, a current or former member of the Market Regulation Committee may be selected by the Chief Hearing Officer only in limited instances, *i.e.*, when the Chief Hearing Officer determines that the complaint alleges at least one cause of action involving a violation of a statute or a rule within the scope of proposed Rule 9120(q),[54] the Chief Hearing Officer, in the exercise of his or her discretion, may determine to appoint *one* of the two Panelists from within the Market Regulation Committee pool. (*See, e.g.*, Rule 9232(b)(2).)

Specifically, proposed Rule 9231(b)(2) pertaining to Hearing Panel selection provides: ''If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(q), the Chief Hearing Officer may select as a Panelist a current member of the Market Regulation Committee or a former member of the Market Regulation Committee who previously served on a disciplinary hearing panel.'' In addition, the general criteria in proposed Rule 9231 that a Panelist be associated with a member applies to any Panelist drawn from the Market Regulation Committee pool.''

The parallel provision in paragraph (c)(2) of proposed Rule 9231 pertaining to Extended Hearing Panel selection provides: ''If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(q), the Chief Hearing Officer may select as a Panelist a current member of the Market Regulation Committee, or a Panelist drawn from the Market Regulation Committee pool.

The parallel provision in paragraph (c)(2) of proposed Rule 9231 pertaining to Extended Hearing Panel selection provides: ''If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(q), the Chief Hearing Officer may select as a Panelist a current member of the Market Regulation Committee, or a former member of the Market Regulation Committee, who, at the time of his or her membership on the Market Regulation Committee, was associated with a member of the Association. In order to be eligible to sit as a Panelist on an Extended Hearing Panel, a former member of the Market Regulation Committee shall have served previously on a disciplinary hearing panel.'' (Proposed Rule 9231(c)(2).) With respect to an Extended Hearing Panel, a former member of the Market Regulation Committee may be chosen, if retired from the securities industry, only if such person has retired from such employment not earlier than four years before the date the complaint was filed. (Proposed Rule 9231(c).)

The potential impact of Market Regulation Committee members or former members on a disciplinary proceeding decision is limited in two significant ways. First, a Market Regulation Committee member or former member may not be selected to serve as a Panelist unless at least one of the causes of action alleges a violation of a federal securities statute, or a rule or regulation, a Rule of the Association or a policy designated in proposed Rule 9120(q).[55] Second, the Chief Hearing Officer in each case has discretion whether to select a Panelist from the Market Regulation Committee (Proposed Rules 9231 (b) and (c), and 9232 (a)(2) and (b)), and may not select more than one such Panelist (Proposed Rules 9231 (b)(2) and (c)(2), and 9232(a)(2) and (b)).

In summary, the limitations on the Market Regulation Committee imposed in the proposed Rule 9200 Series, in contrast to its current authority in disciplinary proceedings, are parallel to those limitations imposed on the District Committees. Thus, under the proposed Rule 9200 Series, the Market Regulation Committee is not allowed to initiate a disciplinary proceeding, serve as an evidentiary Hearing Panel for a disciplinary proceeding, issue a final decision, or review or approve a final decision. These revisions are consistent with Undertakings 3 and 4 and incorporate the recommendations of the Select Committee. In contrast to the District Committee provisions relating to Panelists, Market Regulation Committee Panelists will participate in fewer disciplinary proceedings than the Panelists drawn from the District Committee portion of the pool.

(2) The location of a Respondent's office at the time of the alleged misconduct if the Respondent is or was an associated person;

(3) The location of the office of a member or an associated person, or a former member or associated person, where the alleged misconduct occurred;

(4) The location of witnesses at the time of the filing of the complaint, especially the location of witnesses who are or were customers of a Respondent;

(5) The location, at the time of the alleged misconduct, of the main, branch, or other office in which supervisory personnel, who are or were responsible for the supervision of a Respondent, were employed; and

(6) The location, at the time of the alleged misconduct, of the main, branch, or other office in which supervisory personnel, who are or were responsible for the supervision of the office, division, function, or segment of the member where the alleged misconduct occurred, were employed.

(Proposed Rule 9232(c).)

[54] *See supra* note 9.

[55] *See supra* note 9.

(iv) *How Disciplinary Proceedings Are Initiated*

As noted above, currently, the Rule 9200 Series provides that a complaint to initiate a disciplinary proceeding may be initiated by a District Committee, the Market Regulation Committee, the National Business Conduct Committee, or the NASD Board. (Rule 9211 and Rule 9213.) In contrast, proposed Rules 9211 authorizes the Department of Enforcement of NASD Regulation to authorize and issue complaints. (Proposed Rule 9211 (a) and (b).) In addition, as also provided in Undertaking 3 of the SEC Settlement, the Department of Enforcement may be directed to authorize and issue a complaint by the NASD Regulation Board or the NASD Board. (Proposed Rule 9211(b).) The shift in the allocation of the ''grand jury'' function from the District Committees and the Market Regulation Committee to the Department of Enforcement is a key element in providing the professional staff of NASD Regulation with the autonomy and independence required to implement a vigorous and evenhanded enforcement program. The Association believes proposed Rules 9211 (a) and (b) comply fully with Undertaking 3 of the SEC Settlement and avoid conflicts of interest or inconsistencies in application that may result from the division of the ''grand jury'' function among the District Committees.

(v) *Ex Parte Communications Prohibited*

As recommended by the Select Committee, *ex parte* contacts between the disciplinary panels and the Parties or their representatives (counsel and other representatives) are prohibited in the new Rule 9000 Series disciplinary proceedings. Proposed Rule 9143 defines and prohibits *ex parte* communications. Proposed Rule 9143 is derived from Section 554(d)[56] and Section 557(d)(1) of the APA,[57] SEC Rules of Practice 120,[58] and ACUS Model Adjudication Rule 120.[59] Where appropriate, the prohibition also applies to the other proceedings governed by the Rule 9000 Series.

1. *Persons Subject to Rule.* In order to understand the scope of proposed Rule 9143, the four basic parts of the Rule and proposed Rule 9120(p), the definition of ''Interested Association Staff,'' must be considered together. First, in paragraphs (a) (1) and (2) of proposed Rule 9143, three groups of people are identified (two Parties and persons identified with such Parties and one Adjudicator and persons identified with such Adjudicator). Each group is subject to the prohibition against making or receiving communications in a proceeding for the benefit of only one side or one Party. Second, in paragraphs (a) (1) and (2) of proposed Rule 9143 and the introductory clause of paragraph (a) providing ''or to the extent required for the disposition of *ex parte* matters as authorized by this Rule 9000 Series,'' the broad classes of communications that are subject to this prohibition are described and narrow exceptions are set forth. Third, in proposed Rule 9143 (b) and (c), the remedy for an aggrieved Party and any remedial action to be taken by an Adjudicator when an opposing Party (or a person identified with such Party) has made a prohibited communication is set forth. Fourth, in proposed Rule 9143(d), the point in time after which communications in violation of the Rule could occur is established for disciplinary proceedings. (In various provisions in the proposed Rule 9400 Series and the proposed Rule 9500 Series, proposed Rule 9143 applies, but the point in time after which violative communications could occur is modified to reflect the particular aspects of the proceeding.)

First, the adjudicatory group that is prohibited from making or receiving prohibited communications includes the Adjudicator and any person, such as a law clerk or other person, who is engaged in advising the Adjudicator. In proposed Rule 9143, these persons are:

> A Governor,[60] a Director[61] or an Adjudicator who is participating in a decision with respect to that proceeding, or [to] an Association employee who is participating or advising in the decision of a Governor, a Director, or an Adjudicator with respect to that proceeding * * *.[62]

(Proposed Rule 9143(a)(1).) Like ACUS Model Rule 120,[63] the proposed rule is not intended to preclude persons acting in an adjudicatory role, either singly or on a committee or panel, from consulting with adjudicatory employees, such as attorney advisers or law clerks, because they are viewed as within the Adjudicator's group.[64]

The two other groups are identifiable based on their affiliation with either the Complainant or Respondent. Each group consists of at least a Party, and his or her counsel or representative. In disciplinary proceedings, the relevant group includes the Respondent or the several Respondents (each a member firm or an associated person), and counsel or representatives.

The third group is the Complainant's group. The Complainant is the Department of Enforcement, and because of its institutional nature, this group is more difficult to identify. In addition to counsel or a representative identified with such Party, an additional group of persons is identified with the Complainant and also is subject to the *ex parte* prohibition. This additional group of persons, ''Interested Association Staff,'' is defined in proposed Rule 9120(p). ''Interested Association Staff'' represents other parts of the Association that have been involved with the Department of Enforcement in certain stages prior to or during the actual prosecution of the disciplinary proceeding (*e.g.*, referring the case to the Department of Enforcement or forwarding examination reports or other relevant information or documents to the Department of Enforcement for use as evidence). For a proposed Rule 9200 Series disciplinary proceeding, for example, ''Interested Association Staff'' means:

> (a) The Head of Enforcement;
> (b) A Department of Enforcement employee who reports to the Head of Enforcement;
> (c) An Association employee who directly participated in the authorization of the complaint; or
> (d) An Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports * * *.''

(Proposed Rule 9120(p)(1)(D).) The definition encompasses persons who are engaged ''in the investigative or prosecuting functions'' referred to in SEC Rules of Practice 120(a)(2).[65] For example, certain Association personnel involved in examining a member may

[56] 5 U.S.C. 554(d).
[57] 5 U.S.C. 557(d)(7).
[58] 17 CFR 201.120.
[59] MAR 120.

[60] The term ''Governor'' means a member of the NASD Board. (Proposed Rule 9120(l).)

[61] The term ''Director'' means a member of the NASD Regulation Board only. Nasdaq directors are excluded intentionally because they do not participate in disciplinary proceedings. (Proposed Rule 9120(e).)

[62] Routinely, there are a number of people in addition to the staff of the Department of Enforcement who participate in the factual inquiry forming the basis for the determination that a complaint should be issued. For example, district offices are responsible for the examination of certain members. If, for example, the Department of Enforcement authorizes the issuance of a complaint against a member located in a particular district, in most cases, at least the following staff would be involved in the disciplinary process and would be considered ''Interested Association Staff': the examiners employed in the district office who are responsible for the examination of the member, the regional attorney in the district, and the director of the district.

[63] MAR 120.
[64] MAR 120, comment 1.
[65] 17 CFR 201.120(a)(2).

be included in ''Interested Association Staff.''

2. *Scope.* To ensure that Respondents in an Association disciplinary proceeding are protected from unfair *ex parte* communication, the proposed *ex parte* Rule prohibits the initiating Party, the Department of Enforcement, such Party's counsel, and all other persons within the Association who have had sufficient contact with the case, *i.e.,* the ''Interested Association Staff,'' from engaging in any prohibited communication with the Adjudicator (or a person identified with such Adjudicator).[66] Proposed Rule 9143 is broader in that the scope of persons who are subject to the prohibition against *ex parte* communications is greater than under both Section 557 of the APA [67] and ACUS Model Rule 120 [68] because ''Interested Association Staff,'' is broader than the term ''no interested person outside the agency'' used in Section 557(d)(1) (A) and(B) of the APA [69] and ACUS Model Rule 120.[70]

3. *Narrow Exceptions.* In Rule 9143(a) (1) and (2), all communications ''relative to the merits'' of a proceeding are prohibited between one Party (or persons identified with such Party) and the Adjudicator (or persons identified with the Adjudicator). Paragraph (a), which prohibits communication except ''to the extent required for the disposition of *ex parte* matters as authorized by the Rule 9000 Series,'' is intended to clarify that a communication that ultimately is not related to the merits of the proceeding is not intended to be prohibited. For example, the proposed Rule is not intended to prohibit communications such as inquiries about such matters as the status of the case, when it will be heard, and similar inquiries. Similar language is found in Section 554 [71] and Section 557 of the APA [72] and ACUS Model Adjudication Rule 120.[73]

4. *Remedy.* In paragraphs (b) and (c), proposed Rule 9143 provides a remedy for an aggrieved Party and remedial action to be taken by an Adjudicator when an opposing Party (or a person identified with such Party) has made a communication in violation of the Rule. Paragraph (b) of proposed Rule 9143 is parallel to the language in Section 557(d)(1)(C) [74] of the APA and paragraph (C) of ACUS Model Adjudication Rule 120.[75] Paragraph (c) of proposed Rule 9143 is substantially drawn from Section 557(d)(1)(D) of the APA.[76] Paragraph (c) of proposed Rule 9143, although somewhat parallel to paragraph (D) of ACUS Model Adjudication Rule 120,[77] allows an Adjudicator to apply a sanction with more frequency than the corresponding provision of ACUS Model Adjudication Rule 120.[78]

5. *When Prohibition Begins.* Proposed Rule 9143(d) establishes, for a disciplinary proceeding brought under the proposed Rule 9200 Series, the point in time beginning with which the prohibition applies. Specifically, the prohibition applies upon ''the authorization of a complaint * * * unless the person responsible for the communication has knowledge that the complaint will be authorized, in which case the prohibitions shall apply beginning at the time of his or her acquisition of such knowledge.'' [79] Section 557(d)(1)(E) of the APA [80] is more flexible in its application than Rule 9143(d). Section 557(d)(1)(E) of the APA [81] provides that the prohibitions apply no ''later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.'' Model Adjudication Rule 120, paragraph (E), adopts a similar standard, providing that: ''The prohibitions of this rule shall apply beginning (time designated by (the AA)), but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of her/his acquisition of such knowledge.'' [82]

6. *Waiver.* Paragraph (e) of proposed Rule 9143 provides that the protections under the proposed rule for a Respondent, or a person anticipating that he or she will be named as a Respondent if potential charges are not resolved using alternative procedures (*e.g.,* an AWC or a MRV), are waived if: (1) A Respondent submits an offer of settlement under Rule 9270, or (2) a member or a person associated with a member executes an AWC under proposed Rule 9216(a) or a MRV under proposed Rule 9216(b). This provision provides all persons involved in the settlement process or the pre-complaint resolution process with the flexibility to attempt to dispose of a disciplinary matter, and is consistent with the *ex parte* concepts applied in civil litigation.

In summary, the Association believes that proposed Rule 9143 either parallels or provides for slightly more stringent protections against *ex parte* communications than do other standard procedural rules referred to above. Based on the breadth of the term ''Interested Association Staff'' and the other parts of proposed Rule 9143, the *ex parte* protections in the proposed Rule provide assurance that no Party will be able to obtain an unfair advantage by discussions with a person involved in adjudicating a proceeding. Finally, proposed Rule 9143 incorporates a change specifically recommended by the Select Committee.

(vi) *The Role of The Hearing Officer and Hearing Panel*

1. *Establishment of Office of Hearing Officers.* As recommended by the Select Committee and pursuant to Undertaking 3, NASD Regulation has established an Office of Hearing Officers (''OHO'') as an independent office within NASD Regulation. The OHO is headed by the Chief Hearing Officer, who is an Executive Vice President and reports directly to the President of NASD Regulation. The purpose of the OHO is to provide a corps of independent and professional Hearing Officers (attorneys with appropriate experience and training) to preside over all formal NASD disciplinary proceedings. The Association believes the appointment of such Hearing Officers is consistent with the recommendations of the Select Committee and complies with Undertaking 3.

The participation of Hearing Officers will enhance dispassionate application of the rules and promote fairness in the disciplinary process. In addition, as recognized by the Select Committee, the participation of Hearing Officers will help ensure that complex or contentious

[66] In proceedings subject to the Rule 9000 Series other than disciplinary proceedings, the Department of Member Regulation generally initiates the specified proceeding.

[67] 5 U.S.C. 557.

[68] MAR 120.

[69] 5 U.S.C. 557(d)(1) (A) and (B).

[70] MAR 120.

[71] 5 U.S.C. 554.

[72] 5 U.S.C. 557.

[73] MAR 120, comment 2.

[74] 5 U.S.C. 557(d)(1)(C).

[75] MAR 120.

[76] 5 U.S.C. 557(d)(1)(D).

[77] MAR 120.

[78] *Id.*

[79] For example, if after a meeting among various staff members of NASD Regulation, a staff member who attended the meeting knew that a complaint would be issued and then spoke to an Adjudicator concerning the case, the staff member would violate the Rule 9143 prohibition against *ex parte* communication.

[80] 5 U.S.C. 557(d)(1)(E).

[81] *Id.*

[82] MAR 120. In MAR 120, the term ''AA'' means ''adopting agency.'' The phrase ''(time designated by (the AA))'' means the time designated by the agency adopting the model rule.

cases are managed effectively. All litigated disciplinary proceedings will be decided by a panel comprised of one Hearing Officer and two Panelists, *i.e.*, the two securities industry representatives. The use of industry Panelists is intended to ensure that market expertise and judgment will continue to be brought to bear on the disciplinary process. Participation of a professional Hearing Officer in a securities industry disciplinary proceeding is not new; for example, the New York Stock Exchange maintains a similar procedure.[83]

2. *Assignment of Hearing Officer.* Proposed Rule 9213(a) requires the Chief Hearing Officer to assign a Hearing Officer to preside over a disciplinary proceeding ''as soon as practicable after a Complainant has filed his or her complaint with the Office of Hearing Officers.'' Thus, once a complaint is filed, a Hearing Officer is appointed and presides over all matters relating to the proceeding. This helps ensure effective case management from the outset of the proceeding. For example, a Hearing Officer considers motions to amend a complaint (Proposed Rule 9212(b)) and motions by Respondents for a more definite statement (Proposed Rule 9215(c)).

3. *Appointment of Hearing Panel or Extended Hearing Panel, Timing, and Hearing Panel Composition.* Proposed Rule 9213(b) requires that the Chief Hearing Officer appoint persons to serve as Panelists in the disciplinary proceeding ''[a]s soon as practicable after assigning a Hearing Officer'' to such proceeding. In doing so, the Chief Hearing Officer must determine if the case will require the appointment of a Hearing Panel or an Extended Hearing Panel. (Proposed Rule 9213(b).)

Proposed Rules 9231(a) and 9231(b) set forth the composition of a Hearing Panel and an Extended Hearing Panel and provide that both types of panels are composed of two Panelists and a Hearing Officer. A Hearing Panel is appointed for and decides most disciplinary proceedings. (Proposed Rule 9231(a).) As referenced above, an Extended Hearing Panel is appointed if the Chief Hearing Officer determines that the matter should be designated an Extended Hearing because the issues are complex, or it is anticipated that the hearing will be lengthy, or based upon other material factors. (Proposed Rules 9231(b) and 9120(h).) By designating a proceeding as an Extended Hearing, the Chief Hearing Officer has a larger pool of persons from which to appoint Panelists and may consider appointing persons who have greater time to donate to the disciplinary process, *i.e.*, persons who have retired recently from employment in the securities industry.

4. *Hearing Officer Responsibility for Case Management.* Consistent with the recommendations of the Select Committee, the Hearing Officer has the authority to and will be responsible for determining procedural, evidentiary, scheduling, and other matters pertaining to case management during the pre-hearing and hearing phase of the disciplinary process. In this regard, various rules setting forth the authority of the Hearing Officer have been incorporated in the proposed Rule 9000 Series. Also consistent with the recommendations of the Select Committee, the Hearing Officer's authority is limited to determining non-dispositive matters; determinations of motions for summary disposition require action by the Hearing Panel, or, if applicable, the Extended Hearing Panel. (Proposed Rule 9146(j).) Effective case management by the Hearing Officer will enhance the disciplinary process. Early, pre-hearing resolution of various procedural and evidentiary matters will save time and assist in streamlining the presentation of evidence at the hearing. Effective case management also will help ensure that the Parties appropriately satisfy their discovery and other obligations in a timely fashion, and will thus enhance fairness in the disciplinary process.

Broad statements of a Hearing Officer's authority are set forth in proposed Rule 9235, ''Hearing Officer Authority,'' proposed Rule 9241, ''Pre-hearing Conferences,'' proposed Rule 9242, ''Pre-hearing Submissions,'' and proposed Rule 9266, ''Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs.'' These proposed rules, along with various other proposed rules addressing specific duties of a Hearing Officer, delegate to a Hearing Officer responsibility for case management, from the institution of a proceeding to its conclusion.

Specifically, proposed Rule 9235 provides that a Hearing Officer shall have authority to: hold pre-hearing and other conferences and require the attendance at such conferences of persons who have authority to negotiate on behalf of the Parties (Proposed Rule 9235(a)(1)); regulate the course of the hearing (Proposed Rule 9235(a)(2)); order the Parties to present oral argument at any stage of the disciplinary hearing (Proposed Rule 9235(a)(3)); resolve procedural, evidentiary, discovery, and other non-dispositive matters (Proposed Rule 9235(a)(4)); reopen any hearing, if necessary (Proposed Rule 9235(a)(5)); create and maintain the official record of the disciplinary proceeding (Proposed Rule 9235(a)(6)); and draft a decision that represents the views of the majority of the Hearing Panel or, if applicable, the Extended Hearing Panel assigned to the proceeding (Proposed Rule 9235(a)(7)).

Proposed Rule 9235 expressly indicates that the list of powers is illustrative, not exhaustive; the Hearing Officer is permitted to take any action ''necessary and appropriate to discharge his or her duties.'' The proposed rule is patterned on SEC Rules of Practice 111,[84] entitled ''Hearing Officer Authority,'' and the powers enumerated in proposed Rule 9235 are consistent with many of the powers enumerated in that rule. The powers set forth in proposed Rule 9235 are also consistent with certain of the powers enumerated in ACUS Model Adjudication Rule 111,[85] ''Adjudicator: Powers.''

In connection with a Hearing Officer's responsibility for case management, it is anticipated that through the use of pre-hearing conferences (Proposed Rule 9241), a Hearing Officer will assist in eliminating unnecessary delay and improving the quality of the hearing. For example, these conferences may be used to clarify and simplify the issues, sharpen the preparation of the case, and facilitate the pre-hearing exchange of documents and witness lists. A Hearing Officer also has the authority to require the submission of a variety of pre-hearing materials (Proposed Rule 9242) and post-hearing findings of fact, conclusions of law, and post-hearing briefs (Proposed Rule 9266). These materials likely will be of particular assistance to the Hearing Panel, or, if applicable, the Extended Hearing Panel in complex or lengthy proceedings.

In addition to the broad delegations of discretionary authority discussed above, the proposed rules specifically authorize a Hearing Officer to perform various functions in the pre-hearing stage and during the hearing. With respect to pre-hearing matters, a Hearing Officer is authorized to: rule on motions to amend a complaint (Proposed Rule 9212(b)); rule on motions for a more definite statement and to amend an answer (Proposed Rule 9215 (c) and (d)); issue a notice of hearing (Proposed Rule 9221(d)); grant the Parties' extensions of time for the completion of tasks and grant adjournments of a hearing (*e.g.*, proposed Rule 9222); rule on motions to disqualify one or both of the Panelists (Proposed Rule 9234(d)); and rule on discovery issues (Proposed Rules 9251,

[83] *See, e.g.*, NYSE Rule 476.

[84] 17 CFR 201.111.

[85] MAR 111.

9252 and 9253). With respect to a hearing, a Hearing Officer is authorized to rule on the admission of evidence during the hearing. (Proposed Rule 9263.) These powers are comparable to the powers delegated to a hearing officer in an SEC administrative proceeding.

Consistent with a Hearing Officer's case management responsibilities, a Hearing Officer is authorized to enter a default judgment when a Respondent fails to file an answer to the complaint within the prescribed time (Proposed Rule 9215(f)); or when, after receiving proper notice, a Respondent fails to appear at a pre-hearing conference (Proposed Rule 9241(f)) or at the hearing (Proposed Rule 9269(a)). Finally, to help ensure that a Hearing Officer's efforts to enhance the fairness of and promote order in the disciplinary process are not thwarted by recalcitrant Parties, their representatives, or their counsel, the proposed rules empower a Hearing Officer to fashion discretionary sanctions for violations of an order issued by the Hearing Officer, Hearing Panel or, if applicable, Extended Hearing Panel, or for other contemptuous conduct during any stage of the disciplinary proceeding. (Proposed Rule 9280.)

(vii) *The Role of Motions*

1. *Establishment of Motions Practice.* There is no rule in the current Rule 9000 Series explicitly governing a motions practice. As recommended by the Select Committee, the proposed Rule 9000 Series provides for a formal motions practice in NASD disciplinary proceedings. The purpose of the proposed change is to enhance the fair and efficient preparation and conduct of the hearings.

The general provisions for and structure governing motions practice set forth in proposed Rule 9146 are modeled upon ACUS Model Adjudication Rule 170.[86] Except for the treatment of motions for summary disposition, proposed Rule 9146 incorporates all of the provisions of ACUS Model Adjudication Rule 170[87] with only minor variations. In addition, reference was made to Rule 154 of the SEC Rules of Practice[88] and F.R.C.P. Rule 7(b).

Consistent with ACUS Model Adjudication Rule 170,[89] proposed Rule 9146 expressly permits written and oral motions, but the Adjudicator may order that an oral motion be set forth in writing if the Adjudicator finds that a written motion is warranted by the facts and circumstances. Under both the ACUS Model Adjudication Rule 170[90] and the proposed Rule 9146, a motion must state the specific relief requested, the basis for the motion, and it may be denied without awaiting a response if it is dilatory, repetitive or frivolous. Likewise, unless otherwise ordered, the filing of a motion does not stay a proceeding.

There are two minor dissimilarities between the proposed Rule 9146 and ACUS Model Adjudication Rule 170.[91] First, the time limit to respond to a written motion is longer under proposed Rule 9146(d) than it is under ACUS Model Adjudication Rule 170:[92] 14 versus 10 days. In neither case, however, is the moving party granted the right to file a reply to an opposition without the Adjudicator's permission. Second, proposed Rule 9146(i) includes page limits and format requirements for written motions. Similar format requirements but not page limits are found in ACUS Model Adjudication Rule 152.[93] The Association believes that the page limit is appropriate because in the disciplinary proceeding forum generally there should be a narrower range of issues and fewer contested legal issues than in civil litigation.

2. *Motion for Summary Disposition.* Paragraph (a) of proposed Rule 9264 provides that, after a Respondent's answer has been filed and Documents have been made available to that Respondent, the Respondent or Complainant may file a motion for summary disposition of some or all of the causes of action in the complaint without leave of the Hearing Officer. Such motions must be filed at least 21 days before the time set for the hearing on the merits. Paragraph (b) of proposed Rule 9264 provides that, after a Complainant has completed presentation of its case in chief as to a Respondent, the Respondent or the Complainant, without leave of the Hearing Officer, may file a motion for summary disposition with respect to that Respondent. If a Complainant has not completed its case in chief, a Complainant or Respondent may move for summary disposition only with leave of the Hearing Officer. As noted previously, the current Rule 9000 Series does not provide for the filing of a motion for summary disposition.

The standards for motions for summary disposition under proposed Rule 9264 deviate from the standards in the ACUS Model Adjudication Rules[94] and the SEC Rules of Practice[95] in two respects. First, proposed Rule 9146(j) explicitly states that a motion for summary disposition may only be decided by a majority vote of a Hearing Panel or Extended Hearing Panel'not by a Hearing Officer. This provision should be read in conjunction with proposed Rules 9147 and 9235, which set out the power of a Hearing Officer to rule on procedural and other administrative matters arising during the course of a disciplinary proceeding. Proposed Rule 9235(a)(4) restricts a Hearing Officer's decisional authority to resolving all procedural and evidentiary matters, discovery requests, and other non-dispositive motions. Second, proposed Rule 9264 limits when a motion for summary disposition may be made without leave of a Hearing Officer. In this aspect, proposed Rule 9264 closely mirrors SEC Rules of Practice 250,[96] by restricting the filing of pre-hearing motions for summary disposition until after a Respondent has answered and Documents have been made available to the Respondent for inspection and copying pursuant to proposed Rule 9251. After a hearing on the merits has started, a motion for summary disposition may be made without leave of the Hearing Officer only after the Complainant in the proceeding has completed presentation of its case in chief.

(viii) *Expanded Discovery*

1. *Basis for Expanded Discovery Provisions.* The Select Committee recommended that:

> The documentary discovery rights of respondents in NASD disciplinary proceedings should be expanded to furnish respondents, at a reasonable time in advance of the initial hearing, with all non-privileged materials in the NASD's possession (including exculpatory evidence) directly relevant to the dispute.

(Select Committee Report, p. C–25.) In response to and consistent with the Select Committee's recommendation, proposed Rules 9251 through 9253 provide for the discovery of non-privileged Documents[97] by Respondents in a disciplinary proceeding. Special attention was devoted to the Rule 9250 Series to assure that Documents received by the Department of

[86] MAR 170.

[87] *Id.*

[88] 17 CFR 201.154.

[89] MAR 170.

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] MAR 152.

[94] *Id.*

[95] 17 CFR 201.111.

[96] 17 CFR 201.250.

[97] ''Document'' means a writing, drawing, graph, chart, photograph, recording, or any other data compilation, including data stored by computer, from which information can be obtained. (Proposed Rule 9120(g).)

Enforcement after a Respondent had inspected and copied Documents would be made available expeditiously to Respondents (Proposed Rule 9251(a)(2)) and that evidence that becomes available shortly before or during a hearing on the merits would be produced expeditiously to Respondents[98] (Proposed Rule 9252(c)). Under the proposed Rules, a Respondent has a right to obtain certain Documents, and the right to insist upon their production based upon a schedule set forth in the rules.

2. *Mandatory Document Disclosure Obligations of the Department of Enforcement.* Proposed Rule 9251(a)(1) requires the Department of Enforcement to make available for inspection and copying to any Respondent Documents prepared or obtained by Interested Association Staff in connection with the investigation that led to the institution of the disciplinary proceeding. This includes, but is not limited to: Requests for information pursuant to Rule 8210; written requests for information to persons not employed by the Association and all Documents provided in response to such requests; all transcripts and transcript exhibits; and all other Documents obtained from persons not employed by the Association.

Under proposed Rule 9251(d), unless otherwise ordered by a Hearing Officer, the Department of Enforcement must begin making these Documents available for inspection and copying not later than 21 days after the last timely answer has been filed. These Documents will be made available for inspection in the Association office where they are ordinarily maintained, unless agreed to or ordered otherwise.

With respect to Documents obtained by the staff pursuant to Rule 8210 after the issuance of a complaint, but under the same investigative file number, proposed Rule 9251(a)(2) specifies that the Department of Enforcement also must make those documents available to the Respondents for inspection and copying.

Proposed Rule 9251(b) identifies those Documents that may be withheld by the Department of Enforcement. A Document need not be produced if it is privileged, constitutes attorney work product, is an examination or inspection report, or is an internal memorandum or writing prepared by Association staff that will not be offered in evidence. Documents that would disclose an examination or investigatory technique or the identity of a confidential source likewise, need not be disclosed. The proposed rule also allows the Hearing Officer to grant leave to withhold Documents that are not relevant or for good cause shown. The Hearing Officer may require the Department of Enforcement to submit a list of the Documents withheld, and may conduct an *in camera* inspection of any such Documents to determine whether they should be produced.

Although Rule 9251(b)(1) allows the Department of Enforcement to withhold certain Documents from discovery, proposed Rule 9251(b)(2) requires the Department of Enforcement to provide a Document or a part of a Document that contains material exculpatory evidence.[99] For example, if a portion of an examination report includes statements or documentary evidence that is exculpatory, the Department of Enforcement is required to provide that portion of the Document. This is a significant enhancement over the existing rules, which contain no such obligation.

Proposed Rule 9251 is modeled on and is substantially the same as SEC Rules of Practice 230[100] in that, among other things, the proposed Rule: Affords Respondents an automatic right to Document discovery from the Department of Enforcement; allows the Department of Enforcement to withhold privileged and certain other categories of Documents from discovery; requires the disclosure of material exculpatory evidence; and requires that the Respondents bear the cost of photocopying the Documents.

3. *Respondents' Requests for Documents and Production of Witness Statements.* Proposed Rule 9252 formally recognizes a current practice in disciplinary proceedings that allows Respondents to request the Association to compel the production of Documents or testimony for hearing pursuant to Rule 8210. As set forth in proposed Rule 9252, such requests must be made not later than 21 days prior to the scheduled hearing date; describe with specificity the Documents or testimony sought; state why the Documents or testimony are material; describe the Respondent's previous efforts to obtain the Documents or testimony through other means; and state whether the custodian of the Documents or each proposed witness is subject to the jurisdiction of the Association.

4. *Proposed Rule 9253.* Proposed Rule 9253 further broadens the discovery procedures by establishing a procedure for Respondents to obtain copies of statements of any person called or to be called as a witness by the Department of Enforcement that pertain to that witness' direct testimony. Such written statements include those that would be required to be furnished under the Jencks Act, 18 U.S.C. 3500. This new requirement is consistent with SEC Rules of Practice 231.[101]

(ix) *Pre-hearing Procedures*

1. *General Considerations.* In connection with the goal of enhancing the fairness and efficiency of NASD disciplinary proceedings, the proposed rules grant the Hearing Officer discretionary authority to require the Parties to participate in pre-hearing conferences or to file a variety of informational materials in advance of the hearing. Effective planning and increased control over the proceeding by the Hearing Officer during the pre-hearing phase will assist in accelerating the disciplinary process. The use of pre-hearing procedures as a means of effective case management is consistent with the practice in SEC administrative proceedings and in federal district courts.

2. *The Uses of Pre-Hearing Conferences.* Proposed Rule 9241 grants the Hearing Officer authority to require the Parties or their counsel to participate in a pre-hearing conference. As set forth in the proposed rule, the conference is intended, among other things, to: expedite the disposition of the proceeding; establish procedures to manage the proceeding efficiently; and improve the quality of the hearing through more thorough preparation. (Proposed Rule 9241(a).) At the discretion of the Hearing Officer, such conferences may be held with one or more persons participating by telephone or other remote means. (Proposed Rule 9241(b).)

The proposed rule enumerates a list of subjects that the Hearing Officer may consider and with respect to which the Hearing Officer may take action at the pre-hearing conference, including: Simplification and clarification of the issues; exchange of witness and exhibit lists, and copies of exhibits; stipulations and admissions; matters of which official notice may be taken; the schedule for exchanging pre-hearing motions, if any; the method of service and filing of papers by the Parties; determination of hearing dates; amendments to the complaint or

[98] Currently, the disciplinary hearing panel before whom the Respondent shall appear determines the extent of discovery, the scope and the timing of the production of documents, and other issues.

[99] This provision is intended to be consistent with the doctrine enunciated in *Brady* v. *Maryland,* 373 U.S. 83 (1963).

[100] 17 CFR 201.230.

[101] 17 CFR 201.231.

answers; and production of documents. (Proposed Rule 9241(c).) By its terms, the list of enumerated subjects is not exhaustive; any ''other matters as may aid in the orderly and expeditious disposition of the proceeding'' may be considered at a pre-hearing conference. (Proposed Rule 9241(c)(10).) Following the conclusion of the pre-hearing conference, the Hearing Officer is required to enter an order or ruling reciting any agreements reached and any procedural determinations made by the Hearing Officer during the conference.

Unless determined by the Hearing Officer to be unnecessary or premature, the proposed rules require that an initial pre-hearing conference be held within 21 days of the last-filed answer. Pursuant to proposed Rule 9251(d), the Department of Enforcement is required to commence making documents available to the Respondents for inspection and copying within 21 days of the last-filed answer. Consequently, the initial pre-hearing conference may be used to address any pending issues related to document availability, as well as claims of privilege and other matters pertaining to the Department of Enforcement's document production.

Recognizing that pre-hearing conferences are important in contributing to effective case management, the proposed Rule provides for the imposition of sanctions, *i.e.*, entry of a default judgment against a Party who, after receiving proper notice, fails to appear at a pre-hearing conference. (Proposed Rule 9241(f).)

Proposed Rule 9241 is consistent with the intent and concepts underlying SEC Rules of Practice 221; [102] F.R.C.P. Rule 16, entitled ''Pre-trial Conferences; Scheduling; Management;'' and ACUS Model Adjudication Rule 221,[103] entitled ''Pre-hearing, Settlement, and Other Conferences.'' In addition, the provisions included in proposed Rule 9241 are substantially the same as certain provisions in SEC Rules of Practice 221,[104] specifically, those that set forth the purpose of pre-hearing conferences, the subjects to be addressed at such conferences, the entry of a default judgment for failure to attend such conferences, and the necessity of issuing an order or ruling reciting any agreements reached and determinations made during such conferences. For example, each of the pre-hearing conference subjects enumerated in proposed Rule 9241(c) is included in SEC Rules of Practice 221.[105]

3. *Pre-hearing Submissions.* As part of the pre-hearing process, the proposed rules also contemplate that the Hearing Officer may, in the exercise of his or her discretion, order the Parties to file one or more types of pre-hearing submissions. (Proposed Rule 9242.) Among the possible pre-hearing submissions that may be required are: An outline or narrative summary of the case or defense; the legal theories upon which the parties will rely; a list of documents and copies of documents that the Parties intend to introduce at the hearing; a list of the Parties' anticipated witnesses, including the witnesses' names, occupations, addresses, and brief summary of their expected testimony; and, with respect to an expert witness, a statement of the expert's qualifications, a listing of other proceedings in which the witness has given expert testimony, a list of the expert's publications, and copies of those publications that are not readily available. (Proposed Rule 9242(a) (1)–(5).)

Proposed Rule 9242 is modeled on SEC Rules of Practice 222 [106] and also is consistent with ACUS Model Adjudication Rule 220,[107] entitled ''Pre-hearing Statement.'' The descriptive list of pre-hearing submissions in proposed Rule 9242 (a)(1)–(a)(5) is virtually identical to that set forth in SEC Rules of Practice 222.[108] It also reflects the concept underlying ACUS Model Adjudication Rule 220,[109] which suggests that the Parties, in advance of hearing, file a statement setting forth the issues involved in the adjudication, the facts in dispute, and the identity of witnesses and exhibits to be presented at the hearing.

(x) *Pro Se Respondents*

Enhancing the Rule 9000 Series to formalize requirements regarding the filing of papers and service of such papers upon Parties, the timely production to Respondents of relevant evidence, the use of motions and to incorporate other procedural protections should improve the fairness and efficiency of a disciplinary proceeding, but could disadvantage some *pro se* Respondents.

The NASD, through the NASD Regulation's Office of Dispute Resolution and the Chief Hearing Officer, is committed to providing a fair forum for all Parties. Thus, the Chief Hearing Officer and all Hearing Officers shall adopt as a practice the flexible approach adopted in state and federal judicial proceedings. *Pro se* Respondents shall be granted waivers from certain procedural requirements [110] or otherwise be excused from fully or partially complying with certain procedural or technical rules to the extent that the Adjudicator may allow and still: (i) Provide fair notice to other Parties of the issues before the Adjudicator; (ii) provide the Parties an opportunity to respond to the issues; and (iii) establish and maintain a record for any appeal of the matter.

The Association believes that this approach will be fairer for all Parties and more effective in promoting the efficient administration of disciplinary proceedings than adopting a general waiver of one or more procedural rules for the benefit of a *pro se* Respondent. The Hearing Officers will be trained and instructed to provide flexibility to *pro se* Respondents to further fairness, which is a fundamental principle guiding the revision of the proposed Rule 9000 Series.

(xi) *Offers of Settlement, AWCs and MRVs*

As set forth in proposed Rule 9216(a), an AWC is a letter that a person or a member who perceives he or it will be the subject of a complaint initiating a disciplinary proceeding agrees to execute to resolve the matter in a pre-complaint environment. As set forth in proposed Rule 9216(b), an MRV is a letter that a person or a member who perceives he or it will be the subject of a complaint initiating a disciplinary proceeding agrees to execute to resolve the matter prior to the issuance of a complaint.[111] As set forth in proposed

[102] 17 CFR 201.221.

[103] MAR 221.

[104] 17 CFR 201.221.

[105] Id.

[106] 17 CFR 201.222.

[107] MAR 220.

[108] 17 CFR 201.222.

[109] MAR 220.

[110] For example, in certain circumstances it would be appropriate to excuse a *pro se* Respondent from complying with certain requirements in Rule 9146. NASD Regulation anticipates that with respect to several of the proposed rules, *pro se* Respondents will be treated with good faith, fairness, and flexibility.

[111] Current MRV procedures are set forth in Rule 9217(b) and Rule IM–9217. Current Rule IM–9217 also includes Rules 2847(b) and (c), Rules 4615 and 4616, the Rule 4650 Series, Rules 6620 and 6420, Rules 4613(d), and the Rule 6700 Series.

By this filing, the Association proposes to amend IM–9216 by removing trade reporting violations from the list. As amended, proposed Rule IM–9216, listing those violations appropriate for disposition under the minor rule violations plan, includes only the following violations:

• Rule 2210 (b) and (c), and Rule 2220(b) and (c)—Failure to have advertisements and sales literature approved by a principal prior to use, failure to maintain separate files of advertisements and sales literature containing required information, and failure to file advertisements with the Association within the required time limits.

Continued

Rule 9270, an offer of settlement is an offer made by a Respondent prior to a determination on the merits after a hearing, which a person or a member makes in order to resolve the matter prior to the issuance of a decision on the merits. Each of these proceedings exists in the current Code. (Rules 9217 and 9226.)

In proposing Rules 9216 and 9270 relating to AWC, MRVs, and offers of settlement, the NASD recognizes that such actions taken voluntarily by a Respondent, or a person about to be named as a Respondent, create different conditions under which the involved persons may act. Thus, in proposed Rules 9216 and 9270, to go forward with such procedures, a Party (or a potential Party) must agree to waive the protections offered against *ex parte* communications and the separation of function concept expressed in proposed Rule 9144. (Proposed Rules 9216 (a)(2) and (b)(2), and 9270(d)(3).) However, if the AWC, MRV, or offer of settlement is not accepted by the final arbiter, the rejected document does not constitute a part of the record in any proceeding. (*See, e.g.*, Proposed Rules 9270(h), 9216(a)(4), and 9216(b)(4).)

The Select Committee recommended that the Association seek to reduce the workload of the National Business Conduct Committee by limiting its review of certain cases, including certain settlements and related types of voluntary, negotiated resolutions of disputed matters, such as AWCs and MRVs. To achieve this goal, NASD and NASD Regulation, by resolution, have delegated to the General Counsel of NASD Regulation the authority of the National Business Conduct Committee to accept or refer to the National Business Conduct Committee for its consideration AWCs, MRVs, and offers of settlement, and have delegated to the Chair and the Vice Chair of the National Business Conduct Committee the authority of the National Business Conduct Committee to accept or reject such AWCs, MRVs, and offers of settlement. Proposed Rule 9216 and proposed Rule 9270(e)(2) codify these delegations. However, a contested offer of settlement and order of acceptance may be accepted or rejected only by either the full National Business Conduct Committee or the Chair and Vice Chair, as provided in proposed Rule 9270(f)(2). The Association believes these delegations will allow the National Business Conduct Committee to concentrate on contested disciplinary matters and those matters raising policy questions.

(xii) *National Business Conduct Committee Appeals or Review of Disciplinary Proceedings and Discretionary Review By the NASD Regulation Board or the NASD Board*

Like the current Rule 9300 Series, proposed Rule 9312 through proposed Rule 9349 provide that the National Business Conduct Committee may review any disciplinary proceeding for which a first or ''trial-level'' decision has been rendered.[112] Also, like current Rule 9310(a), proposed Rule 9311 provides that a Respondent may appeal any ''trial level'' decision, including a default decision.[113] Proposed Rule 9311(a) also contains a new right—the right of the Department of Enforcement (or any other Complainant) to appeal as a matter of right. This provision recognizes that, following the complete separation of the adjudicative function from the Department of Enforcement and the complete segregation of the prosecutorial function within the Department of Enforcement, it is appropriate to permit the Department of Enforcement staff to make an independent, professional judgment as to whether an appeal should be filed.

There are very few other changes of significance to the review procedures used by the National Business Conduct Committee. Proposed Rule 9311(c) and proposed Rule 9312(c) now explicitly set forth the information required for a Party to file a notice of appeal and the National Business Conduct Committee to file a notice of review. Further, proposed Rule 9311 provides for the right of a Party to cross-appeal.

In proposed Rule 9312(a)(1), the National Business Conduct Committee's decision whether to call a case for review rests with a National Business Conduct Committee Review Subcommittee. The Review Subcommittee is composed of two to four persons who are current members of the National Business Conduct Committee, and must include a balance of Non-Industry Directors and Industry Directors, or, if not balanced, shall include a majority of Non-Industry Directors. (Proposed Rule 9312(a)(1).)

Proposed Rule 9312(a)(2), codifies existing delegations to the General Counsel of NASD Regulation of the authority of the National Business Conduct Committee to determine if a default decision issued pursuant to Rule 9269 should be reviewed by the National Business Conduct Committee. The provision reflects another part of the decision of the NASD Board to reduce the work of the National Business Conduct Committee and the related Select Committee's recommendation.

Subcommittees[114] and Extended Proceeding Committees[115] continue to act as the appeal forum to which the Parties present arguments, and if allowed, any new evidence. (Proposed Rule 9346.) Proposed Rule 9346(h) contains the new requirement that any person testifying in such a hearing will do so under oath or by affirmation, except in unusual circumstances.

A Subcommittee or, if applicable, an Extended Proceeding Committee transmits a written, recommended decision to the National Business Conduct Committee. (Proposed Rule 9345.) The National Business Conduct Committee receives the recommended decision in writing not later than seven days before the meeting of the National Business Conduct Committee at which the disciplinary proceeding is considered. (Proposed Rule 9345.) At the same time, all other Directors who sit on the NASD Regulation Board also receive the written recommended decision. (Proposed Rule 9345.)

Pursuant to proposed Rule 9349, the National Business Conduct Committee, after considering all matters presented in the appeal or review, and the written recommended decision of the Subcommittee, or, if applicable, the

• Rule 3360—Failure to timely file reports of short positions on Form NS–1.

• Rule 3110—Failure to keep and preserve books, accounts, records, memoranda and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of the Association.

Thus, only certain types of violations may be resolved pursuant to an MRV.

[112] In the current rules, such decisions are rendered by a Hearing Committee or an Extended Hearing Committee. (Rule 9223 (a) and (b).) As noted earlier, under the proposed rules such decisions would be rendered by a Hearing Panel, or, if applicable, an Extended Hearing Panel.

[113] A Respondent may not ''appeal'' any final action contained in an AWC, an MRV or an offer of settlement and an order of acceptance that has been accepted by any of the General Counsel of NASD Regulation, the Chair and the Vice Chair of the National Business Conduct Committee, or the National Business Conduct Committee. (Proposed Rules 9216 (a) and (b), and 9270.)

[114] The term ''Subcommittee'' means an appellate body that is appointed by the National Business Conduct Committee: (1) Constituted by Rule 9331(a) to participate in the National Business Conduct Committee's consideration of a disciplinary proceeding pursuant to the Rule 9300 Series; or (2) constituted under the Rule 9400 Series or Rule 9500 Series to conduct a review proceeding. (Proposed Rule 9120(z).)

[115] The terms ''Extended Proceeding Committee'' means an appellate body that is appointed by the National Business Conduct Committee and constituted under Rule 9331(a)(2) to participate in the National Business Conduct Committee's consideration of a disciplinary proceeding that is classified as an ''Extended Proceeding'' and governed by the Rule 9300 Series. (Proposed rule 9120(k).)

Extended Proceeding Committee, may affirm, modify, or reverse the decision of the Hearing Panel, or, if applicable, the Extended Hearing Panel, and may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the National Business Conduct Committee may remand the disciplinary proceeding with instructions.

Although proposed Rule 9346 provides that the National Business Conduct Committee may hear the Parties present arguments, and consider and rule upon motions for leave to introduce new evidence, the Association anticipates these functions will be performed by the appointed Subcommittee or Extended Proceeding Committee as provided explicitly in Rule 9331(b). Thus, the inclusion of the National Business Conduct Committee in certain procedural rules (*e.g.*, proposed Rules 9341, 9342, 9343, 9346, and 9347) is intended to provide flexibility to the whole National Business Conduct Committee in extraordinary circumstances.[116]

After reaching its conclusions on the issues, the National Business Conduct Committee prepares a proposed written decision.[117] (Proposed Rule 9349(b).) Under proposed Rule 9351 and proposed Rule 9352, the proposed written decision of the National Business Conduct Committee may be called for review by, respectively, any Director of the NASD Regulation Board, and any Governor of the NASD Board. The opportunity for a Director or Governor to call a case for review occurs sequentially.

Each Director receives a summary of the National Business Conduct Committee's decisions at the NASD Regulation Board meeting the day after the National Business Conduct Committee meeting at which the written recommended decisions of the Subcommittees or the Extended Proceeding Committees are considered. As discussed above, each Director previously will have received the full text of such written recommended decisions of the Subcommittees and the Extended Proceeding Committees. Any Director may call a case for review at the NASD Regulation Board meeting next following the National Business Conduct Committee meeting.

Second, the National Business Conduct Committee transmits the full text of its proposed written decisions and summaries to each of the NASD Regulation Board Directors immediately after the Board meeting following the National Business Conduct Committee meeting at which the written recommended decisions of the Subcommittees and the Extended Proceeding Committees are considered by the National Business Conduct Committee.[118] If no Director calls the case for review during the second seven day call for review period provided in Rule 9351(b), then the National Business Conduct Committee proposed written decision is transmitted to each Governor of the NASD Board. If no Governor calls the case for review during the period provided in Rule 9352(b), then the proposed written decision of the National Business Conduct Committee is served upon the Parties and is the final disciplinary action of the Association for purposes of SEC Rule 19d–1(c)(1). (Proposed Rule 9349(c).)

If a proposed written decision of the National Business Conduct Committee is called for review by a Director of the NASD Regulation Board, the disciplinary proceeding is placed on the agenda for the next scheduled meeting of the NASD Regulation Board and the NASD Regulation Board considers the disciplinary proceeding at that meeting. (Proposed Rule 9351(c).) The NASD Regulation Board then prepares a proposed written decision, which becomes the final disciplinary action of the Association for purposes of SEC Rule 19d–1(c)(1), unless the NASD Board exercises its right to call the disciplinary proceeding for review (Proposed Rules 9351(e) and 9352(b)(1)), or unless the proceeding is remanded (Proposed Rule 9351(e)).

As referenced earlier, proposed Rule 9352 provides for the NASD Board to call for review, and thereafter review at its next meeting, either a proposed written decision of the National Business Conduct Committee, or, if the NASD Regulation Board reviewed the disciplinary proceeding, a proposed written decision of the NASD Regulation Board. (Proposed Rule 9352(b) (1) and (2).) The review procedures of the NASD Board in other respects follow those described above with respect to review by the NASD Regulation Board. (Proposed Rule 9352.)

(xiii) *Recusal or Disqualification*

There are four provisions in the proposed Rule 9000 Series dealing with the recusal or disqualification of an Adjudicator in the event the Adjudicator in a disciplinary or other proceeding, at the ''trial level'' or in a subsequent appeal or review of such proceeding, has a conflict of interest or a bias. (Proposed Rules 9160, 9233, 9234, and 9332.) In the Rule 9000 Series, the standard set forth under which an Adjudicator must recuse himself or herself or may be disqualified by motion is: ''a conflict of interest or bias, or circumstances otherwise exist where the * * * [the Adjudicator's] fairness might reasonably be questioned.''

The standard borrows heavily from the conflict of interest standard applicable to federal judges. Under 28 U.S.C. 455(a) ''[a]ny justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.'' In addition, the Association has also looked to the APA. Section 556(b) of the APA provides that ''[a] presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter * * *.''

The proposed standard will be interpreted in a manner that accords with the operation of a self-regulatory disciplinary system in which members of the industry are intended to serve as Adjudicators. The judicial interpretation of 28 U.S.C. 455(a) provides a basis for

[116] For example, Respondent in a simple case may unearth clear new documentary evidence which may alter the disposition of the case and submit a motion for consideration of such new evidence after the Subcommittee or the Extended Proceeding Committee has transmitted a recommended decision to the National Business Conduct Committee, but before the National Business Conduct Committee had prepared a proposed written decision. The National Business Conduct Committee generally would request that the Subcommittee or the Extended Proceeding Committee consider the motion, but, using the flexibility provided in Rule 9346, could consider and decide the motion itself.

[117] Specifically, the decision must include:

(1) A statement describing the investigative or other origin of the disciplinary proceeding;

(2) The specific statutory or rule provisions that were alleged to have been violated;

(3) A statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;

(4) The conclusions as to whether the Respondent violated any provision alleged in the complaint;

(5) A statement in support of the disposition of the principal issues raised in the proceeding; and

(6) A statement describing any sanction imposed, the reasons therefore, and, pursuant to Rule 9360, the date upon which such sanction shall become effective.

(Proposed Rule 9349(b) (1)–(6).)

[118] Because the National Business Conduct Committee sometimes changes the written recommended decisions of the Subcommittees (or, if applicable, those of the Extended Proceeding Committees), the second call-for-review period gives each Director a chance to carefully consider whether these changes to the Subcommittees' (or, if applicable, the Extended Proceeding Committees'') written recommended decisions, which each Director receives seven days before the NASD Regulation Board meeting, suggest the need for a call for review.

such an interpretation because the judicial interpretation relies upon additional objective factors used to determine a disputed claim of bias. The Association intends to rely on such judicial interpretation of the clause ''in which his impartiality might reasonably be questioned'' in 28 U.S.C. 455(a), in interpreting the proposed clause, ''if circumstances otherwise exist where * * * [the Adjudicator's] fairness might reasonably be questioned.'' The notions of impartiality and fairness are inextricably linked in an analysis of whether an Adjudicator fairly judges a proceeding.

In *Pepsico, Inc.* v. *McMillan*, 764 F.2d 458, 460 (7th Cir.1985), the Seventh Circuit said: ''[t]he test for an appearance of partiality is * * * whether an objective, disinterested observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt that justice would be done in the case.'' Cases in the Second, Eighth and Eleventh Circuits set forth similar interpretive language. The Second Circuit stated, in *United States* v. *Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992), that in interpreting the statutory standard, a person would be required to ask: ''Would a reasonable person, knowing all the facts, conclude that the trial judge's impartiality could reasonably be questioned?'' *See also United States* v. *Walker*, 920 F.2d 513, 517 (8th Cir. 1990) (after considering public and private circumstances, would a reasonable, uninvolved observer question the judge's impartiality, and would an objective, disinterested observer fully informed of facts underlying the ground on which recusal is sought entertain significant doubt that justice would be done); *Parker* v. *Connors Steel Co.*, 855 F.2d 1510, 1524 (11th Cir.), *cert. denied*, 490 U.S. 1066 (1988) (Section 455(a) embodies an objective standard; ''whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality'').

The general provision for disqualification is set forth in proposed Rule 9160, and refers to each of the various persons or groups that may act as an Adjudicator under the proposed Rule 9000 Series. Each of the rules contemplates that an Adjudicator shall exercise good faith and recuse himself or herself as necessary.

Consistent with the Select Committee Report, proposed Rules 9233 and 9234 expressly provide a procedure for a Party to seek the disqualification of a Hearing Officer or a Hearing Panelist. The purpose of these proposed changes is to formalize the existing practice of permitting such challenges so that they can be dealt with expeditiously.

In addition, the Association proposes to authorize the Chief Hearing Officer to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel. (Proposed Rule 9234(b).) This provision was added to assure that if a Hearing Officer or any other person became aware of a factual basis for the disqualification of a Panelist, the Chief Hearing Officer could act even if the Parties did not, and the Panelist or Hearing Officer had not recused himself or herself.

Proposed Rules 9233 and 9234 governing the disqualification of a Hearing Officer or one or both Panelists of a Hearing Panel or an Extended Hearing Panel draw, in part, on the basic provisions found in Model Adjudication Rule 112 [119] and SEC Rules of Practice 112. [120] But rather than relying on the challenged Adjudicator to make the initial decision regarding disqualification, the proposed rules initially place that decision with the Chief Hearing Officer when the challenge is to the impartiality or fairness of a Hearing Officer (Proposed Rule 9233(c)), or to the Hearing Officer appointed to a disciplinary proceeding if the challenge is to the impartiality or fairness of one or both of the other Panelists (Proposed Rule 9234 (c) and (d)). If a person challenges the composition of the entire Hearing Panel, or Extended Hearing Panel, the Chief Hearing Officer decides whether one or all three members of the Hearing Panel or Extended Hearing Panel shall be disqualified. (Proposed Rule 9234(e).) In all cases a written ruling must be issued on the motion, which will facilitate review of the decision.

Proposed Rule 9332, providing for the disqualification of Panelists appointed to one of the two panels or committees used in the appeal or review process by the National Business Conduct Committee, the Subcommittee or an Extended Proceeding Committee, as described above, is substantively the same as proposed Rules 9233 and 9234, except that under proposed Rule 9332 the Chair or the Vice Chair of the National Business Conduct Committee shall determine a motion for the disqualification of a Panelist, and appoint a replacement Panelist. (Proposed Rule 9332 (c) and (d).)

[119] MAR 112.

[120] 17 CFR 201.112.

(xiv) *Contemptuous Conduct*

The Select Committee recognized that NASD disciplinary proceedings have become increasingly more ''contentious,'' which presents a ''growing need for the power to sanction frivolous practice or contumacious conduct.'' (Select Committee Report, p. R–24.) The Select Committee broadly recommended rule revisions ''to discipline parties or counsel on either side who engage in such behavior.'' (*Id.*) The prospect of potential sanctions can be an important impetus toward compliance with otherwise unenforceable orders.

Proposed Rule 9280 is responsive to the Select Committee's recommendation. The proposed rule suggests a variety of sanctions that may be imposed for conduct that violates orders of a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, and for other contemptuous conduct during a hearing.

Under Proposed Rule 9280(b)(1), The Hearing Officer, Hearing Panel, or, if applicable, an Extended Hearing Panel can sanction contemptuous conduct by ruling, among other things, that: the subject matter of the violated order or any other designated facts be taken as established for purposes of the proceeding; the violator or contemptuous Party be precluded from supporting or opposing certain claims or defenses, or precluded from introducing evidence on certain matters; and particular pleadings or parts thereof be stricken.

Proposed Rule 9280(b)(2) provides for the imposition of sanctions for a Party's unjustified refusal to make disclosures required by the proposed Rule 9250 Series, or otherwise required by order of a Hearing Officer, Hearing Panel, or, if applicable, an Extended Hearing Panel. Unless the failure to make disclosures is harmless, the recalcitrant Party is precluded from using any of the information withheld or the testimony of the witness that was not disclosed as evidence at the hearing, or otherwise relying on such information or testimony. This sanction may be imposed in addition to, or in lieu of, the various restrictions on the conduct of the case authorized by proposed Rule 9280(b)(1). Further, under Proposed Rule 9280(c), absent reasonable basis, a Party's failure to admit the genuineness of a document that is later found to be genuine may also be subject to the sanctions listed in proposed Rule 9280(b)(1).

Proposed Rule 9280, read in conjunction with proposed Rule 9150, also authorizes a Hearing Officer,

Hearing Panel, or, if applicable, an Extended Hearing Panel to exclude an offending attorney or person acting in a representative capacity from functioning as such in the particular proceedings. In this regard, proposed Rule 9141(b) also makes clear that the right to representation in a disciplinary proceeding is subject to the power to exclude a Party's representative or attorney under proposed Rules 9150 and 9280. Under proposed Rule 9280(c), an attorney or representative who is excluded from participating in a disciplinary proceeding may seek immediate review of the exclusion order by the National Business Conduct Committee by filing a motion to vacate within five days after service of the order. The filing of such a motion operates to stay all aspects of the disciplinary proceeding, pending expedited consideration and a prompt decision by the National Business Conduct Committee.

Proposed Rule 9280 is, in part, modeled on SEC Rules of Practice 180.[121] SEC Rule 180,[122] also entitled ''Contemptuous Conduct,'' similarly authorizes excluding the violator from the proceeding and/or suspending that person from representing others in it. Under SEC Rule 180(b),[123] any filing which fails to comply with SEC rules or with any order issued in the proceeding can be rejected. In addition, under SEC Rule 180(c),[124] a failure to make a required filing or to cure a deficiency within the time ordered can lead to dismissal or default, or to orders limiting or restricting the offending party's evidentiary opportunities. The Association believes the discretionary sanctioning powers granted to hearing officers in SEC administrative proceedings are comparable to those authorized by proposed Rule 9280.

The sanctions set forth in proposed Rule 9280(b)(1) are also drawn from F.R.C.P. 37(b)(2), which authorizes federal district courts to impose a variety of sanctions for violations of the courts' discovery orders. As reflected in SEC Rule 180(c)[125] and ACUS Model Rule 111(L),[126] F.R.C.P. 37-type sanctions may be appropriate for other contemptuous conduct, in addition to discovery violations. Comment 5 to ACUS Model Rule 111(L) lists possible appropriate sanctions: ''Refusing to allow the support or opposition to a defense, prohibiting the introduction of disputed matters into evidence, excluding testimony or expelling a party or person from the hearing.''[127] As noted, these are among the sanctions set forth in proposed Rule 9280.

i. Proposed Changes to Proceedings in the Rule 9500 Rule Series and the Rule 9600 Series

(i) *General*

The Association is requesting temporary approval of the proposed Rule 9400 and 9500 Series as an interim step to give the Association the opportunity to review comprehensively these Rules, consider the consolidation of the procedures covered by these Rules, and propose a revision of these Rules based upon this review. The Association will submit this proposed revision as an amendment to this filing. Temporary approval of the changes proposed in this filing will give the Commission time to publish for comment and consider approval of this amendment.

In this rule filing, in addition to renumbering the Rules (the current Rules are found in the Rule 9500 and 9600 Series), the Association proposes to amend the Rules only as necessary to conform the procedures to the Association's revised organizational structure and to the changes being made to the proposed Rule 9200 and 9300 Series. In addition, the Association proposes to delete Rule 9520 (Expedited Remedial Proceedings) because these proceedings, as currently designed, do not serve their intended purpose. The Association intends to submit a separate rule filing proposing a different approach to expedited remedial proceedings after submitting the amendment proposing the comprehensive revision of the other Rule 9500–9600 Series proceedings.

(ii) *Proposed Rule 9410 Series*

The current Rule 9510 Series sets forth procedures to limit the business operations of a member that is experiencing financial or operational difficulty as specified in Rules 3130 and 3131. Rule 3130 was adopted in connection with the adoption of regulatory changes by the SEC to reduce net capital requirements, in order to permit the Association to be able to respond quickly to a firm's deteriorating financial or operational conditions. At the time Rule 3130 was adopted, the New York Stock Exchange and other stock exchanges had long-established rules to reduce or restrict the business activities of their members under certain circumstances.

Rule 3130 applies to members for which the NASD is the designated self-regulatory organization, but excludes certain brokers that generally do not carry customer accounts, certain broker/dealers engaged solely in the sale of redeemable shares of registered investment companies and certain other share accounts, and any other broker/dealer that is exempt from SEC Rule 15c3–1. Rule 3130 addresses two levels of possible financial or operational difficulties. First, it restricts a member from expanding its business whenever certain early warning financial criteria relating to minimum net capital ratio requirements are met, or scheduled capital withdrawals are exceeded. Second, Rule 3130 covers a deteriorating situation in which another set of warning criteria with lower tolerances are exceeded.

Rule 3131 was recently adopted to provide the Association with similar authority with respect to certain members of the Association that are registered with the Commission under Section 15C of the Act as government securities brokers and dealers.

Under the current Rule 9510 Series, a District Surveillance Committee notifies a member if limitations are to be imposed pursuant to Rule 3130. The member may request a hearing before the District Surveillance Committee, which issues a written decision. The decision may be appealed by the member or called for review by the NASD Board.

The Association proposes to renumber this Rule Series as the Rule 9410 Series and to conform it to other changes made in the Rule 9000 Series. Under the proposed Rule 9410 Series, the Department of Member Regulation notifies a member if limitations are to be imposed under Rule 3130 or Rule 3131. The limitations may go into effect seven days after service of the notice unless the member requests a hearing. The member may request a hearing before the Department of Member Regulation, which then issues a written decision. The member may request review of the Department of Member Regulation's decision by the National Business Conduct Committee, or a member of the National Business Conduct Committee or the Review Subcommittee (described in the discussion of proposed Rule 9312) may call such a decision for review. *Ex parte* rules apply when Association staff has knowledge that the member intends to file a request for a review with the National Business Conduct Committee or that the National Business Conduct Committee intends to

[121] 17 CFR 201.180.

[122] *Id.*

[123] 17 CFR 201.180(b).

[124] 17 CFR 201.180(c).

[125] *Id.*

[126] *See* MAR 111(L), which authorizes the Adjudicator to impose ''appropriate sanctions'' for disobeying orders.

[127] *Id.*

call the decision of the Department of Member Regulation for review. If oral argument is requested, the National Business Conduct Committee appoints a Subcommittee to hear it and take any evidence that the member can show good cause for not previously submitting. The Subcommittee recommends a decision to the full National Business Conduct Committee. The National Business Conduct Committee may affirm, modify, or reverse the Department of Member Regulation's decision or remand it with instructions. The contents of the National Business Conduct Committee's proposed decision, which must be in writing, are specified in proposed Rule 9414(c)(2). The National Business Conduct Committee's proposed decision is subject to discretionary review by the NASD Regulation Board and the NASD Board. If the proceeding is not called for review, the National Business Conduct Committee's proposed written decision becomes final and is issued upon expiration of the discretionary review periods specified in the proposed Rule. The call for review procedures for the NASD Regulation Board and the NASD Board are parallel to the procedures set forth in proposed Rules 9351 and 9352.

(iii) *Proposed Rule 9420 Series*

The current Rule 9520 Series sets forth procedures for implementing Rule 3140, which requires a member to seek approval of a change in its business operations that will result in a change in its exemptive status under SEC Rule 15c3–3. Rule 15c3–3 generally sets forth minimum requirements for reserves and custody of securities. Rule 15c3–3 exempts broker/dealers that engage in transactions limited to certain investment company securities and that do not hold customer securities or accounts, clearing broker/dealers that do not carry margin accounts or hold customer securities or funds, and introducing broker/dealers that clear on a fully disclosed basis. The purpose of Rule 3140 is to require any firm that intends to begin holding customer funds or securities or clearing its own transactions, and thereby change its exemptive status, to notify the Association so that the Association can determine if the firm has adequate procedures to safeguard customer funds and securities.

Under the current Rule 9520 Series, a member must file an application seeking the approval of the District Office staff prior to making the type of change noted above. If the application is denied in whole or in part, the member may request a hearing before the District Business Conduct Committee. The written decision of the District Business Conduct Committee may be appealed or called for review by the NASD Board.

The Association proposes to renumber this Rule Series as the Rule 9420 Series and to conform it to other changes made in the Rule 9000 Series. Under the proposed Rule 9420 Series, the member files the application with the Department of Member Regulation at the NASD Regulation district office. The Department of Member Regulation issues a written decision on the application. If the application is denied in whole or part by the Department of Member Regulation, the member may request review by the National Business Conduct Committee, or a member of the National Business Conduct Committee or the Review Subcommittee may call the decision for review. *Ex parte* rules apply when Association staff has knowledge that the member intends to file a request for review or that the National Business Conduct Committee intends to call the decision of the Department of Member Regulation for review. If review is requested, the National Business Conduct Committee appoints a Subcommittee to hear oral argument and take any evidence that the member can show good cause for not previously submitting. The Subcommittee recommends a decision to the full National Business Conduct Committee. The National Business Conduct Committee may affirm, modify, or reverse the Department of Member Regulation's decision. The National Business Conduct Committee's proposed decision must be in writing, and the contents of the decision are specified in proposed Rule 9423(c)(2).

The National Business Conduct Committee's proposed decision is subject to discretionary review by the NASD Regulation Board and the NASD Board. If the proceeding is not called for review, the National Business Conduct Committee's proposed written decision becomes final and is issued upon expiration of the discretionary review periods specified in the proposed Rule. The call for review procedures for the NASD Regulation Board and the NASD Board are parallel to the procedures set forth in proposed Rules 9351 and 9352.

(iv) *Proposed Rule 9510 Series*

Summary suspension procedures are authorized by Section 15A(h)(3) of the Act. The Act permits summary suspension if: (1) A member or person associated with a member has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization; or (2) a member is in such financial or operating difficulty that the Association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the Association. The Act also permits a summary limitation or prohibition against any person with respect to access to services of the Association if the person is subject to a summary suspension under (1) or (2) or, in the case of a person who is not a member, if the Association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, other members, or the Association. The Act requires that any person aggrieved by the summary action be promptly afforded an opportunity for a hearing.

Under the current Rule 9610 Series, the NASD Board Executive Committee may authorize the staff to issue a notice of summary suspension to a member or person on any of the three grounds set forth in the Act. The suspension is effective immediately. The member or person may request a hearing before a Hearing Panel of the NASD Board, which issues a written decision. The decision may be appealed to or called for review by the full Board.

The Association proposes to amend the Rule 9610 Series and renumber it as the Rule 9510 Series. Under the proposed Rule 9510 Series, the NASD Board may authorize the President of NASD Regulation or Nasdaq to issue a summary suspension to a member or person on the three grounds listed in Section 15A(h)(3) of the Act.[128] Under the proposed rule change, as under the current rule, the suspension is effective immediately. The member or person may request a hearing on the summary suspension before a Hearing Panel of the NASD Board. The Hearing Panel is composed of two or more members, one of whom must be a current NASD Board member. The other members of the Hearing Panel must be current or former members of the NASD Regulation, Nasdaq, or NASD Boards. The Hearing Panel determines whether the summary suspension should be affirmed or reversed. The Hearing Panel's proposed decision must be in writing, and the contents of the proposed decision are specified in proposed Rule 9513(c)(2).

[128] In a subsequent rule filing, the Association intends to propose to divide the authority to initiate a summary suspension on the grounds set forth in the Act between NASD Regulation and Nasdaq and set forth the procedures for each subsidiary in separate rule series for clarity.

The proposed written decision is subject to discretionary review by the NASD Board. If the NASD Board does not call the proceeding for review, the Hearing Panel's proposed decision becomes final and is issued upon expiration of the discretionary review period specified in the Rule. The call for review procedures for the NASD Board are essentially parallel to the procedures set forth in proposed Rule 9352.

(v) *Proposed Rule 9520 Series*

Under the current Rule 9620 Series, ''revocation'' procedures provide a rapid means to cancel or suspend the membership of a member or bar or suspend a person from being associated with a member for the following reasons: Ineligibility for membership or association; failure to make a required payment of fees, dues, assessments, or other charges; failure to submit a required report or information related to such a payment; failure to comply with an arbitration award; failure to comply with a settlement agreement obtained in connection with an arbitration or mediation; or failure to file or submit on request any report, document, or other information required to be filed with or requested by the Association.

Under the current Rule 9620 Series, a ''revocation'' proceeding is initiated by sending the affected member or associated person a notice. If the member or associated person wants a hearing, he must request one within five to 15 days of the notice (depending on which Article of the NASD By-Laws authorizes the notice). The request stays the effective date of the revocation. A hearing is held before a Hearing Panel of the NASD Board, which issues a final decision. There is no appeal or call for review by the full Board.

Under the proposed Rule 9520 Series, revocation procedures are renamed ''Non-Summary Suspension, Cancellation, and Bar Procedures'' to describe better the specific actions that the Association may take under this Rule Series and to differentiate these procedures from other similar procedures set forth in the Rules of the Association. Under the proposed Rule 9520 Series, Association staff initiates a non-summary cancellation, suspension, or bar proceeding by sending a notice to the affected member or associated person. The member or associated person may request a hearing before a Hearing Panel of the NASD Board. *Ex parte* rules apply when the Association staff has knowledge that the member or associated person intends to request a hearing on the notice. As under the current Rule, the request stays the effective date of the cancellation, suspension, or bar set forth in the notice. The Hearing Panel is composed of two or more current or former members of the NASD Regulation Board. The Hearing Panel decides whether a cancellation, suspension, or bar should be imposed. The Hearing Panel's proposed decision must be in writing, and the contents of the proposed decision are specified in the proposed Rule 9523(g). The proposed written decision is subject to discretionary review by the NASD Board. There is no call for review by the full NASD Regulation Board in order to expedite the resolution of the proceeding. If the NASD Board does not call the proceeding for review, the Hearing Panel's proposed written decision is issued as the final decision upon expiration of the discretionary review period specified in the Rule. The call for review procedures for the NASD Board is essentially parallel to the call for review procedures in proposed Rule 9352.

(vi) *Proposed Rule 9530 Series*

The eligibility procedures in the current Rule 9640 Series provide another means to cancel the membership of a member or bar a person from association with a member when a statutory disqualification exists or a member or person otherwise becomes ineligible for membership or association (*e.g.*, when there is a similarity of membership names). Typically, a cancellation or bar proceeding is used when the ground for statutory disqualification is serious (*e.g.*, conviction of a financial crime) and the Association needs to take quick action. An eligibility proceeding, which moves more slowly, is used when the ground for the statutory disqualification does not raise immediate customer protection concerns (*e.g.*, a drunk driving conviction). An eligibility proceeding can be initiated by the Association or by a member when it determines that a statutory disqualification exists (as to itself, which is less common, or as to one of its current registered representatives, which is more often the case) or when the member wishes to associate with a person subject to a statutory disqualification.

Under the current Rule 9640 Series, an eligibility proceeding may be initiated by the Association sending a notice to a member or by a member filing an application for relief from the Association's membership or eligibility requirements. A hearing on the application may be held before a Hearing Panel of the NASD Board, which makes a recommendation to the full NASD Board. The Board issues a written decision, which may include conditions on the member and person.

Under the proposed Rule 9530 Series, the Department of Member Regulation may initiate an eligibility proceeding by sending a notice to the affected member or person if the Department of Member Regulation has reason to believe that a statutory disqualification exists. The notice specifies that a member may file a written application for relief on its own behalf and on behalf of its associated person, as applicable. Alternatively, a member may initiate an eligibility proceeding by submitting a written application for relief. *Ex parte* rules apply when the Department of Member Regulation initiates the proceeding and Association staff has knowledge that the member intends to file a written application for relief. If a member files an application for relief, a National Business Conduct Committee Hearing Panel is appointed. The Hearing Panel is composed of at least two current or former members of the NASD Regulation Board or former members of the NASD Board. The Hearing Panel holds a hearing and provides a recommended written decision on the application for relief to the Statutory Disqualification Committee. The Statutory Disqualification Committee, which reviews the Hearing Panel's recommendation to ensure consistency in the disposition of requests for relief, then forwards a recommended written decision to the full National Business Conduct Committee. The National Business Conduct Committee decides whether to grant the request for relief. The National Business Conduct Committee's proposed decision must be in writing, and the contents of the decision are specified in the proposed Rule. The National Business Conduct Committee's proposed written decision is subject to discretionary review by the NASD Regulation Board and the NASD Board. If neither Board calls the eligibility proceeding for review, the National Business Conduct Committee's proposed decision is issued as the final decision upon expiration of the discretionary review periods specified in the Rule. The call for review procedures for the NASD Regulation Board and the NASD Board are parallel to the call for review procedures in proposed Rules 9351 and 9352.

2. *Statutory Basis*

The NASD believes the proposed rule change is consistent with section 15A(b)(7), 15 U.S.C. 78o–3(b)(7), and Section 15A(b)(8), 15 U.S.C. 78o–3(b)(8), under the Act. In pertinent part, Section 15A(b)(7) mandates that a national securities association establish rules

providing that ''its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this title, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.'' In pertinent part, section 15A(b)(8) mandates that a national securities association establish rules providing for ''a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof.'' The NASD believes the proposed rule changes will further the goals of Sections 15A(b) (7) and (8).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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. In addition to general comments concerning the Association's proposal, the Commission requests particular comments addressing whether the proposal would result in any burdens on competition and whether the proposal would promote efficiency, competition and capital formation. Furthermore, the Commission invites interested persons to comment on the following specific issues:

(a) Currently, the NASD By-Laws require applicants for NASD membership to agree to waive the liability of the NASD, Nasdaq and NASD Regulation Boards, committee members, officers, and employees for action taken within the scope of their authority, except for willful malfeasance. As proposed, the amended By-Laws will maintain this waiver of liability provision. Prospective members will still be required to sign an agreement to waive this liability as a condition of membership in the NASD.

(b) The proposed By-Laws and Rules 1012, 9160, 9233, 9234, and 9332 prohibit Governors, Directors, and members of the NBCC or a subcommittee thereof from participating in a matter if they have ''a conflict of interest or bias, or if circumstances otherwise exist where [their] fairness might reasonably be questioned.'' This standard is derived from 28 U.S.C. 455(a).

(c) The proposed revisions to the procedures relating to election of the members of the NASD Board of Governors, the NASD Regulation Board of Directors and the Nasdaq Board of Directors.

(d) The proposed By-Laws incorporate the Delegation Plan provision permitting ''employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of the non-member entity'' to serve as Non-Industry Governors, Directors and/or Committee Members. Commenters are asked to address whether a specific standard for materiality would be appropriate and if so, what such a standard should be.

The Commission seeks comment on whether the proposal, given the unique nature of the Association as a self-regulatory organization, adequately promotes the goals of 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. 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 Association. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. File Number SR–NASD–97–28 should be included on the subject line if E-mail is used to submit a comment letter. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

All submissions should refer to File No. SR–NASD–97–28 and should be submitted by June 9, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[129]

Margaret H. McFarland,

Deputy Secretary.

Exhibit 1

Additions are italicized; deletions are bracketed.

By-Laws of the National Association of Securities Dealers, Inc.

Article I

Definitions

When used in these By-Laws,[and any rules of the Corporation,] unless the context otherwise requires, the term: (a) ''Act'' means the Securities Exchange Act of 1934, as amended; (b) ''bank'' means (1) a banking institution organized under the laws of the United States, (2) a member bank of the Federal Reserve System, (3) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87–722 (12 U.S.C. § 92a), and which is supervised and examined by a State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of the Act, and (4) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (1), (2), or (3) of this subsection; (c) ''Board'' means the Board of Governors of the [Corporation.] *NASD;*

[(d) ''Boards'' means the Board of Governors of the Corporation and the Boards of Directors of The Nasdaq Stock Market, Inc. and NASD Regulation, Inc.;

(e)]*(d)* ''branch office'' means an office defined as a branch office in [NASD Rule 3010;] *the Rules of the Association*;

[129] 17 CFR 200.30–3(a)(12).

[(f)]*(e)* ''broker'' means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

[(g)]*(f)* ''Commission'' means the Securities and Exchange Commission;

[(h) ''Corporation'' means the National Association of Securities Dealers, Inc.;]

[(i) ''Corporations'' means the National Association of Securities Dealers, Inc. (''NASD''), and its subsidiaries, The Nasdaq Stock Market, Inc. (''Nasdaq'') and NASD Regulation, Inc. (''NASD Regulation'');]

(g) ''day'' means calendar days;

[(j)]*(h)* ''dealer'' means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for [his] *such individual's or entity's* own account, through a broker or otherwise, but does not include a bank, or any person insofar as [he] *such person* buys or sells securities for [his] *such person's* own account, either individually or in some fiduciary capacity, but not as part of a regular business;

[(k) ''delegation] *(i) ''Delegation* Plan'' means the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries'' as approved by the Commission, and as amended from time to time;

(j) ''district'' means a district established by the NASD Regulation Board pursuant to the NASD Regulation By-Laws;

[(l)]*(k)* ''government securities broker'' shall have the same meaning as in Section 3(a)(43) of the Act except that it shall not include financial institutions as defined in Section 3(a)(46) of the Act;

[(m)]*(l)* ''government securities dealer'' shall have the same meaning as in Section 3(a)(44) of the Act except that it shall not include financial institutions as defined in Section 3(a)(46) of the Act;

[(n)]*(m)* ''Governor'' means a member of the Board[.]*;*

(n) ''Industry Director'' means a Director of the NASD Regulation Board (excluding the President of NASD Regulation) or a Director of the Nasdaq Board (excluding the President of Nasdaq) who: (1) is an officer, director, or employee of a broker or dealer or has been employed in any such capacity at any time within the prior three years; or (2) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

(o) ''Industry Governor'' or ''Industry committee member'' means a Governor (excluding the Chief Executive Officer of the NASD) or committee member who (1) is an officer, director, or employee of a broker or dealer or has been employed in any such capacity at any time within the prior three years; and (2) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

[(o)]*(p)* ''investment banking or securities business'' means the business, carried on by a broker, dealer, or municipal securities dealer (other than a bank or department or division of a bank), or government securities broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others;

[(p)]*(q)* ''member'' means any broker or dealer admitted to membership in the [Corporation] *NASD*;

[(q)]*(r)* ''municipal securities'' means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond as defined by Section 3(a)(29) of the Act;

[(r)]*(s)* ''municipal securities broker'' means a broker, except a bank or department or division of a bank, engaged in the business of effecting transactions in municipal securities for the account of others;

[(s)]*(t)* ''municipal securities dealer'' means any person, except a bank or department or division of a bank, engaged in the business of buying and selling municipal securities for [his] *such person's* own account, through a broker or otherwise, but does not include any person insofar as [he] *such person* buys or sells securities for [his] *such person's* own account either individually or in some fiduciary capacity, but not as a part of a regular business;

(u) ''NASD'' means the National Association of Securities Dealers, Inc.;

(v) ''NASD Regulation'' means NASD Regulation, Inc.;

(w) ''NASD Regulation Board'' means the Board of Directors of NASD Regulation;

(x) ''Nasdaq'' means The Nasdaq Stock Market, Inc.;

(y) ''Nasdaq Board'' means the Board of Directors of Nasdaq;

(z) ''National Nominating Committee'' means the National Nominating Committee appointed pursuant to Article VII, Section 9 of these By-Laws;

(aa) '' Non-Industry Director'' means a Director of the NASD Regulation Board or Nasdaq Board who is (1) a Public Director; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; (3) a person affiliated with a broker or a dealer that operates solely to assist the securities-related activities of the business of a non-member affiliate (such as a broker or dealer established to (i) distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate); (4) an employee of an entity that is affiliated with a broker or a dealer that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-member entity; or (5) any other individual who would not be an Industry Director;

(bb) ''Non-Industry Governor'' or ''Non-Industry committee member'' means a Governor or committee member who is (1) a Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; (3) a person affiliated with a broker or dealer that operates solely to assist the securities-related activities of the business of a non-member affiliate (such as a broker or dealer established to (i) distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate); (4) an employee of an entity that is affiliated with a broker or a dealer that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-member entity; or (5) any other individual who would not be an Industry Governor or committee member;

[(t)]*(cc)* ''person associated with a member'' or ''associated person of a member'' means every sole proprietor, partner, officer, director, or branch manager of any member, or any natural person occupying a similar status or performing similar functions, or any natural person engaged in the investment banking or securities

business who is directly or indirectly controlling or controlled by such member, whether or not any such person is registered or exempt from registration with the [Corporation] *NASD* pursuant to these By-Laws *or the Rules of the Association*;

(dd) '' Public Director'' means a Director of the NASD Regulation Board or Nasdaq Board who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq;

(ee) ''Public Governor'' or ''Public committee member'' means a Governor or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq;

[(u)]*(ff)* ''registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer'' means any broker, dealer, municipal securities broker or dealer, or government securities broker or dealer which is registered with the Commission under the Act; and

[(v) ''rules of the Corporation'' means all rules of the Corporation (which rules may be referred to as ''NASD Rules''), Certificate of Incorporation, By-Laws,] *(gg) ''* Rules of the Association[, any other rules, and any interpretations thereunder.]'' *or ''Rules'' means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the Board pursuant to these By-Laws, as hereafter amended or supplemented.*

Article II

Offices

Location

Sec. 1. *The address of the registered office of the NASD in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. The NASD also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of the NASD may require.*

Change of Location

Sec. 2. *In the manner permitted by law, the Board or the registered agent may change the address of the NASD's registered office in the State of Delaware and the Board may make, revoke, or change the designation of the registered agent.*

Article [II] ***III***

Qualifications of Members and Associated Persons

Persons Eligible to [become] ***Become Members and Associated Persons of Members***

Sec. 1. (a) Any registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer authorized to transact, and whose regular course of business consists in actually transacting, any branch of the investment banking or securities business in the United States, under the laws of the United States, shall be eligible for membership in the [Corporation] *NASD*, except such registered brokers, dealers, or municipal securities brokers or dealers, or government securities brokers or dealers which are excluded under the provisions of [Sections 3 (a) or (b) of this Article] *Section 3*.

(b) Any person shall be eligible to become an associated person of a member, except such persons who are excluded under the provisions of Section 3[(b) of this Article].

Authority of Board to Adopt Qualification Requirements

Sec. 2. (a) The Board [of Governors] shall have authority to adopt rules and regulations applicable to applicants for membership, members, and persons associated with applicants or members establishing specified and appropriate standards with respect to the training, experience, competence, and such other qualifications as the Board [of Governors] finds necessary or desirable, and in the case of an applicant for membership or a member, standards of financial responsibility and operational capability.

(b) In establishing and applying such standards, the Board [of Governors] may classify members and persons associated with such members, taking into account relevant matters, including the nature, extent, and type of business being conducted and of securities sold, dealt in, or otherwise handled. The Board [of Governors] may specify that all or any portion of such standards shall be applicable to any such class and may require the persons in any such class to be registered with the [Corporation] *NASD*.

(c) The Board [of Governors] may from time to time make changes in such rules, regulations, and standards as it deems necessary or appropriate.

Ineligibility of Certain Persons for Membership or Association

Sec. 3. (a) No registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer shall be admitted to membership, and no member shall be continued in membership, if such broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member fails or ceases to satisfy the qualification requirements *established* under Section 2 [of this Article], if applicable, or if such broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member is or becomes subject to a disqualification under Section 4 [of this Article], or if such member fails to comply with the requirement that all forms filed pursuant to these By-Laws be filed via electronic process or such other process the [Corporation] *NASD* may prescribe.

(b) No person shall become associated with a member, continue to be associated with a member, or transfer association to another member, if such person fails or ceases to satisfy the qualification requirements under Section 2 [of this Article], if applicable, or if such person is or becomes subject to a disqualification under Section 4 [of this Article]; and no broker, dealer, municipal securities broker or dealer, or government securities broker or dealer shall be admitted to membership, and no member shall be continued in membership, if any person associated with it is ineligible to be an associated person under this subsection.

(c) If it deems appropriate, the Board [of Governors], upon notice and opportunity for a hearing, may cancel the membership of a member if it becomes ineligible for continuance in membership under subsection (a) [hereof], may suspend or bar a person [for] *from* continuing to be associated with any member if such person is or becomes ineligible for association under subsection (b) [hereof], and may cancel the membership of any member who continues to be associated with any such ineligible person.

(d) Any [broker, dealer, municipal securities dealer, or government securities broker or dealer which is ineligible for admission into membership, or any member which] *member that* is ineligible for continuance in membership[,] may file with the Board [of Governors] an application requesting relief from the ineligibility pursuant to [procedures adopted by the Board of Governors and contained in the Corporation's Procedural Rules. The Board of Governors] *the Rules of the Association. A member may file such application on its own behalf and on behalf of a current or prospective associated person. The Board* may, in its discretion, approve

the [admission] *continuance in membership, and may also approve the association* or continuance of [an applicant or member, or the] association [of any person], if the Board determines that such approval is consistent with the public interest and the protection of investors. Any approval hereunder may be granted unconditionally or on such terms and conditions as the Board considers necessary or appropriate. In the exercise of the authority granted hereunder, the Board [of Governors] may[: (1)] conduct such inquiry or investigation into the relevant facts and circumstances as it, in its discretion, considers necessary to its determination, which, in addition to the background and circumstances giving rise to the failure to qualify or disqualification, may include the proposed or present business of [an applicant for membership or of] a member and the conditions of association of any *current or prospective associated person*. [prospective or presently] associated person, among other matters; (2) permit, in limited types of situations, a membership or association with a member pending completion of its inquiry or investigation, and its final determination, based upon a consideration of relevant factors, and may classify situations taking into account the status of brokers, dealers, municipal securities brokers and dealers and government securities brokers and dealers as applicants or existing members and of persons as prospective or presently associated persons of members; the type of disqualification or failure to qualify; whether a member or associated person has been the subject of a previous approval and the terms and conditions thereof; and any other relevant factors; and

(3) delegate any of its functions and authority under this subsection (d) to appropriate committees of the Corporation or to Corporation staff members.]

(e) An application filed under subsection (d) [hereof] shall not foreclose any action which the Board [of Governors] is authorized to take under subsection (c) [hereof] until approval has been granted.

(f) Approval by the Board of [Governors of] an application made under subsection (d) shall be subject to whatever further action the Commission may take pursuant to authority granted to the Commission under the Act.

(g) The Board may delegate its authority under this Section in a manner not inconsistent with the Delegation Plan.

Definition of Disqualification

Sec. 4. A person is subject to a ''disqualification'' with respect to membership, or association with a member, if such person:

(a) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to Section 5 of the Commodity Exchange Act, or foreign equivalent of a contract market designated pursuant to any substantially equivalent foreign statute or regulation, or futures association registered under Section 17 of the Commodity Exchange Act or a foreign equivalent of a futures association designated pursuant to any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;

(b) is subject to—

(1) an order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority:

(i) denying, suspending for a period not exceeding 12 months, or revoking [his] *such person's* registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or limiting [his] *such person's* activities as a foreign person performing a function substantially equivalent to any of the above; or

(ii) barring or suspending for a period not exceeding 12 months [his] *such person* being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or foreign person performing a function substantially equivalent to any of the above;

(2) an order of the Commodity Futures Trading Commission denying, suspending, or revoking [his] *such person's* registration under the Commodity Exchange Act (7 U.S.C. *§* 1 et seq.); or

(3) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;

(c) by [his] *such person's* conduct while associated with a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in [subsections] *subsection* (a) or (b) of this Section;

(d) by [his] *such person's* conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subsection (a) or (b) of this Section;

(e) has associated with him *or her* any person who is known, or in the exercise of reasonable care should be known, to him *or her* to be a person described in [subsections] *subsection* (a), (b), (c), or (d) of this Section;

(f) has willfully made or caused to be made in any application for membership in a self-regulatory organization, or to become associated with a member of a self-regulatory organization, or in any report required to be filed with a self-regulatory organization, or in any proceeding before a self-regulatory organization, any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein;

(g)(1) has been convicted within ten years preceding the filing of any application for membership in the [Corporation] *NASD*, or to become associated with a member of the [Corporation] *NASD*, or at any time thereafter, of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which:

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant

foreign government, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, foreign person performing a function substantially equivalent to any of the above, or any entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(iv) involves the violation of Sections 152, 1341, 1342, or 1343 or Chapters 25 or 47 of Title 18, United States Code, or a violation of a substantially equivalent foreign statute;

(2) has been convicted within ten years preceding the filing of any application for membership in the [Corporation] *NASD,* or to become associated with a member of the [Corporation] *NASD,* or at any time thereafter of any other felony;

(h) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, *or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation,* or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security;

(i) has been found by a foreign financial regulatory authority to have—

(1) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

(2) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

(3) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to [his] *such person's* supervision.

Article [III] ***IV***

Membership

Application for Membership

Sec. 1. (a) Application for membership in the [Corporation] *NASD,* properly signed by the applicant, shall be made to the [Corporation] *NASD* via electronic process or such other process the [Corporation] *NASD* may prescribe, on the form to be prescribed by the [Corporation] *NASD,* and shall contain: (1) an [acceptance of and an agreement to abide by, comply with, and adhere to, all the provisions, conditions, and covenants of the Restated Certificate of Incorporation, the By-Laws] *agreement to comply with the federal securities laws,* the rules and regulations [of the Corporation as they are or may from time to time be adopted, changed or amended,] *thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation, and NASDaq, the Rules of the Association, and* all rulings, orders, directions, and decisions [of,] *issued* and sanctions imposed [by, the Board of Governors or any duly authorized committee, and the provisions of the federal securities laws, including the rules and regulations adopted thereunder, including the rules of the Municipal Securities Rulemaking Board and the Treasury Department, provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act;] *under the Rules of the Association;*

(2) an agreement to pay such dues, assessments, and other charges in the manner and amount as [shall from time to time be fixed by the Board of Governors pursuant to these By-Laws;] *from time to time shall be fixed pursuant to the NASD By-Laws, Schedules to the NASD By-Laws, and the Rules of the Association;*

(3) an agreement that [none of] *neither* the [Corporations, or] *NASD, nor* any officer[,] *or* employee[, or] *thereof, nor any* member of the Board [or committees of the Corporations] *of Governors or of any district or other committee,* shall be liable, except for willful malfeasance, to the applicant or to any member of the [Corporation] *NASD* or to any other person, for any action taken by such officer or member of the [Boards] *Board of Governors* or of any *district or other* committee, in his official capacity, or by any employee of the [Corporations] *NASD* while acting within the scope of his employment or under instruction of any officer, [Board] *board,* or committee of the [Corporations] *NASD,* in connection with the administration or enforcement of any of the provisions of the [rules] *Rules* of the [Corporation] *Association* as they are or may from time to time be adopted, or amended, *or* any ruling, order, directive, decision of, or penalty imposed by, the [Boards] *Board of Governors* or any duly authorized committee [thereof], [or] the provisions of the federal securities laws, including the rules and regulations adopted thereunder, [and] *including* the rules of the Municipal Securities Rulemaking Board and the Treasury Department; and

(4) such other reasonable information with respect to the applicant as the [Corporation] *Board of Governors* may require. (b) Any application for membership received by the [Corporation] *NASD* shall be processed in the manner set forth in the [Procedural] Rules of the [Corporation] *Association.* (c) Each member shall ensure that the member's membership application with the [Corporation] *NASD* is kept current at all times by supplementary amendments via electronic process or such other process the [Corporation] *NASD* may prescribe to the original application. Such amendments to the application shall be filed with the [Corporation] *NASD* not later than [thirty (30) calendar] *30* days

after learning of the facts or circumstances giving rise to the amendment.

Similarity of Membership Names

Sec. 2. (a) No person or firm shall be admitted to or continued in membership in the [Corporation] *NASD* having a name [which] *that* is identical to the name of another member appearing on the membership roll of the [Corporation] *NASD* or a name so similar to any such name as to tend to confuse or mislead. (b) No member may change its name without prior approval of the [Corporation] *NASD.*

Executive Representative

Sec. 3. Each member shall appoint and certify to the Secretary of the [Corporation one ''executive] *NASD one ''executive* representative'' who shall represent, vote, and act for the member in all the affairs of the [Corporation] *NASD,* except that other executives of a member may also hold office in the [Corporation] *NASD,* serve on the Board [of Governors] or committees of the [Corporation] *NASD,* or otherwise take part in the affairs of the [Corporation] *NASD.* A member may change its executive representative upon giving notice thereof via electronic process or such other process the [Corporation] *NASD* may prescribe to the Secretary, or may, when necessary, appoint, by notice via electronic process to the Secretary, a substitute for its executive representative. An executive representative of a member or a substitute shall be a member of senior management and registered principal of the member.

Membership Roll

Sec. 4. The Secretary of the [Corporation] *NASD* shall keep a currently accurate and complete membership roll, containing the name and address of each member, and the name and address of the executive representative of each member. In any case where a membership has been terminated, such fact shall be recorded together with the date on which the membership ceased. The membership roll of the [Corporation] *NASD* shall at all times be available to all members of the [Corporation] *NASD,* to all governmental authorities, and to the general public.

Resignation of Members

Sec. 5. Membership in the [Association] *NASD* may be voluntarily terminated only by formal resignation. Resignations of members must be filed via electronic process or such other process the [Corporation] *NASD* may prescribe and addressed to the [Corporation] *NASD.* Any member may resign from the [Corporation] *NASD* at any time. Such resignation shall not take effect until [thirty (30) calendar] *30* days after receipt thereof by the [Corporation] *NASD* and until all indebtedness due the [Corporation] *NASD* from such member shall have been paid in full and so long as any complaint or action is pending against the member under the [Procedural] Rules *of the Association.* The [Corporation] *NASD,* however, may in its discretion declare a resignation effective at any time.

Retention of Jurisdiction

Sec. 6. A resigned member or a member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the [Procedural] Rules *of the Association* based upon conduct which commenced prior to the effective date of the member's resignation from the [Corporation] *NASD* or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two [(2)] years after the effective date of resignation, cancellation, or revocation.

Transfer and Termination of Membership

Sec. 7. (a) Except as provided hereinafter, no member of the [Corporation] *NASD* may transfer its membership or any right arising therefrom and the membership of a corporation, partnership, or any other business organization which is a member of the [Corporation] *NASD* shall terminate upon its liquidation, dissolution, or winding up, and the membership of a sole proprietor which is a member shall terminate at death, provided that all obligations of membership under the By-Laws and the [other rules] *Rules* of the [Corporation] *Association* have been fulfilled.

(b) The consolidation, reorganization, merger, change of name, or similar change in any corporate member shall not terminate the membership of such corporate member provided that the member or surviving organization, if any, shall be deemed a successor to the business of the corporate member, and the member or the surviving organization shall continue in the investment banking and securities business, and shall possess the qualifications for membership in the [Corporation] *NASD.* The death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership member shall not terminate the membership of such partnership member provided that the member or surviving organization, if any, shall be deemed a successor to the business of the partnership member, and the member or surviving organization shall continue in the investment banking and securities business and shall possess the qualifications for membership in the [Corporation] *NASD.* If the business of any predecessor member is to be carried on by an organization deemed to be a successor organization by the [Corporation] *NASD,* the membership of such predecessor member shall be extended to the successor organization *subject to the notice and review requirements of the Rules of the Association and the right of the NASD to place restrictions on the successor organization pursuant to the Rules of the Association;* otherwise, any surviving organization shall be required to satisfy all of the *membership application* requirements of [the] *these* By-Laws *and the Rules of the Association.*

Registration of Branch Offices

Sec. 8. (a) Each branch office of a member of the [Corporation] *NASD* shall be registered with and listed upon the membership roll of the [Corporation] *NASD,* and shall pay such dues, assessments, and other charges as shall be fixed from time to time by the Board [of Governors] pursuant to Article [V of the By-Laws] *VI.* (b) Each member of the [Corporation] *NASD* shall promptly advise the [Corporation] *NASD* via electronic process or such other process the [Corporation] *NASD* may prescribe of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such member not later than [thirty (30) calendar] *30* days after the effective date of such change.

Article [IV] ***V***

Registered Representatives and Associated Persons

Qualification Requirements

Sec. 1. No member shall permit any person associated with [such] *the* member to engage in the investment banking or securities business unless the member determines that such person [has complied with the applicable provisions under Article II of the By-Laws.] *satisfies the qualification requirements established under Article III, Section 2 and is not subject to a disqualification under Article III, Section 4.*

Application for Registration

Sec. 2. (a) Application by any person for registration with the [Corporation] *NASD,* properly signed by the applicant, shall be made to the [Corporation] *NASD* via electronic process or such other process the [Corporation] *NASD* may prescribe, on the form to be prescribed by the [Corporation] *NASD* and shall contain:

(1) [an acceptance of and] an agreement to comply with the [all the provisions of the rules of the Corporation as they are or may from time to time be adopted or amended,] *federal securities laws, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation, and Nasdaq, the Rules of the Association, and* all rulings, orders, directions [and decisions of, and penalties imposed by, the Board of Governors or any duly authorized committee, and the provisions of the federal securities laws, including the rules and regulations adopted thereunder, and the rules of the Municipal Securities Rulemaking Board and the Treasury Department, provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act;], *and decisions issued and sanctions imposed under the Rules of the Association;*

(2) an agreement that [none of] *neither* the [Corporations, or] *NASD, nor* any officer[,] *or* employee[, or] *thereof, nor any* member of the [Boards or committees of the Corporation] *Board of Governors or of any district or other committee,* shall be liable except for willful malfeasance, to the applicant or to any member of the [Corporation] *NASD* or to any other person, for any action taken by such officer, member of the [Boards] *Board of Governors* or of any *district or other* committee in his official capacity, or by any employee of the [Corporation] *NASD* while acting within the scope of his employment, or under instruction of any officer, [Board] *board,* or committee of the [Corporations] *NASD,* in connection with the administration or enforcement of any of the provisions of the By-Laws, any [rules] *Rules* of the [Corporation] *Association* as they are or may from time to time be adopted or amended, any ruling, order, direction, decision of, or penalty imposed by the [Boards] *Board of Governors* or any duly authorized committee [thereof], [and] the provisions of the federal securities laws, including the rules and regulations adopted thereunder including the rules of the Municipal Securities Rulemaking Board and the rules of the Treasury Department; and

(3) such other reasonable information with respect to the applicant as the [Corporation] *NASD* may require.

(b) The [Corporation] *NASD* shall not approve an application for registration of any person who is not eligible to be an associated person of a member under the provisions of *Article III,* Section 3[(b) of Article II of these By-Laws].

(c) Every application for registration filed with the [Corporation] *NASD* shall be kept current at all times by supplementary amendments via electronic process or such other process the [Corporation] *NASD* may prescribe to the original application. Such amendment to the application shall be filed with the [Corporation] *NASD* not later than [thirty (30) calendar] *30* days [of] *after* learning of the facts or circumstances giving rise to the amendment. If such amendment involves a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the Act, such amendment shall be filed not later than ten [(10) calendar] days after such disqualification occurs.

Notification by Member to [Corporation] *the NASD* and Associated Person of Termination; Amendments to Notification

Sec. 3. (a) Following the termination of the association with a member of a person who is registered with it, such member shall not later than [thirty (30) calendar] *30* days after such termination, give notice of the termination of such association to the [Corporation] *NASD* via electronic process or such other process the [Corporation] *NASD* may prescribe on a form designated by the [Corporation] *NASD,* and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the [Corporation.] *NASD.* A member [which] *that* does not submit such notification, and provide a copy to the person whose association has been terminated, within the time period prescribed, shall be assessed a late filing fee as specified by the [Corporation] *NASD.* Termination of registration of such person associated with a member shall not take effect so long as any complaint or action under the [rules] *Rules* of the [Corporation] *Association* is pending against a member and to which complaint or action such person associated with a member is also a respondent, or so long as any complaint or action is pending against such person individually under the [rules] *Rules* of the [Corporation. The Corporation] *Association. The NASD,* however, may in its discretion declare the termination effective at any time.

(b) The member shall notify the [Corporation] *NASD* via electronic process or such other process the [Corporation] *NASD* may prescribe by means of an amendment to the notice filed pursuant to *subsection* [paragraph] (a) [above] in the event that the member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with the [Corporation] *NASD* via electronic process or such other process the [Corporation] *NASD* may prescribe and a copy provided to the person whose association with the member has been terminated not later than [thirty (30) calendar] *30* days after the member learns of the facts or circumstances giving rise to the amendment.

Retention of Jurisdiction

Sec. 4. A person whose association with a member has been terminated and is no longer associated with any member of the [Corporation] *NASD* or a person whose registration has been revoked *or canceled* shall continue to be subject to the filing of a complaint under the [rules] *Rules* of the [Corporation] *Association* based upon conduct which commenced prior to the termination [or], revocation, *or cancellation* or upon such person's failure, while subject to the [Corporation's] *NASD's* jurisdiction as provided herein, to provide information requested by the [Corporation] *NASD* pursuant to [NASD Rule 8210] *the Rules of the Association,* but any such complaint shall be filed within:

(a) two [(2)] years after the effective date of termination of registration pursuant to Section 3 [above], provided, however that any amendment to a notice of termination filed pursuant to Section 3(b) that is filed within two years of the original notice which discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this [paragraph] *subsection;*

(b) two [(2)] years after the effective date of revocation *or cancellation* of registration pursuant to [NASD Rule 8320] *the Rules of the Association;* or

(c) in the case of an unregistered person, within two [(2)] years after the date upon which such person ceased to be associated with the member.

Article [V] ***VI***

Dues, Assessments, ***and Other Charges***

Power of [Corporation] ***the NASD*** **to Fix and Levy Assessments**

Sec. 1. The [Corporation] *NASD* shall prepare an estimate of the funds necessary to defray reasonable expenses of administration in carrying on the work of the [Corporation] *NASD* each fiscal year, and on the basis of such estimate, shall fix and levy the amount of admission fees, dues, assessments, and other charges to be paid by members of the [Corporation] *NASD* and issuers and any other persons using any facility or system which the [Corporation] *NASD, NASD Regulation, or Nasdaq* operates or controls. Fees, dues, assessments, and other charges shall be called and payable as determined by the [Corporation] *NASD* from time to time; provided, however, that such admission fees, dues, assessments, and other charges shall be equitably allocated among members and issuers and any other persons using any facility or system which the [Corporation] *NASD* operates or controls. The [Corporation] *NASD* may from time to time make such changes or adjustments in such fees, dues, assessments, and other charges as it deems necessary or appropriate to assure equitable allocation of dues among members. In the event of termination of membership or the extension of any membership to a successor organization during any fiscal year for which an assessment has been levied and become payable, the [Corporation] *NASD* may make such adjustment in the fees, dues, assessments, or other charges payable by any such member or successor organization or organizations during such fiscal years as it deems fair and appropriate in the circumstances.

Reports of Members

Sec. 2. Each member, issuer, or other person shall promptly furnish all information or reports requested by the [Corporation] *NASD* in connection with the determination of the amount of admission fees, dues, assessments, or other charges.

Suspension or Cancellation of Membership or Registration

Sec. 3. The [Corporation] *NASD* after [fifteen (15)] *15* days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments, or other charges or for failure to furnish any information or reports requested pursuant to Section 2 [of this Article], or for failure to comply with an award of arbitrators properly rendered pursuant to [Section 41] *the Rules* of the [Code of Arbitration Procedure] *Association,* where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied, or for failure to comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the [procedures specified by the Corporation] *Rules of the Association.*

Reinstatement of Membership or Registration

Sec. 4. Any membership or registration suspended or canceled under this Article may be reinstated by the [Corporation] *NASD* upon such terms and conditions as it shall deem just; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the [Corporation.] *NASD.*

Delegation

Sec. 5. *The NASD may delegate its authority under this Article in a manner not inconsistent with the Delegation Plan.*

Article [VI] ***VII***

Board of Governors

Powers and Authority of Board

Sec. 1. (a) The Board [of Governors] shall be the governing body of the [Corporation] *NASD* and, except as otherwise provided by applicable law, the Restated Certificate of Incorporation, or these By-Laws, shall be vested with all powers necessary for the management and administration of the affairs of the [Corporation] *NASD* and the promotion of the [Corporation's] *NASD's* welfare, objects, and purposes. In the exercise of such powers, the Board [of Governors] shall have the authority to:

[(1)](*i*) adopt for submission to the membership, as hereinafter provided, such By-Laws and changes or additions thereto as it deems necessary or appropriate;

[(2)](*ii*) adopt such other [rules] *Rules* of the [Corporation] *Association* and changes or additions thereto as it deems necessary or appropriate, provided, however, that the Board may at its option submit to the membership any such adoption, change, or addition to such [rules] *Rules*;

[(3)](*iii*) make such regulations, issue such orders, resolutions, interpretations, including interpretations of *these By-Laws and* the [rules] *Rules* of the [Corporation] *Association,* and directions, and make such decisions as it deems necessary or appropriate;

[(4)](*iv*) prescribe [a code of arbitration procedure providing] *rules* for the required or voluntary arbitration of controversies between members and between members and customers or others as it shall deem necessary or appropriate;

[(5)](*v*) establish rules and procedures to be followed by members in connection with the distribution of securities issued by members and affiliates thereof;

[(6)](*vi*) require all over-the-counter transactions in securities between members, other than transactions in exempted securities as defined in Section 3(a)(12) of the Act, to be cleared and settled through the facilities of a clearing agency registered with the Commission pursuant to the Act, which clears and settles such over-the-counter transactions in securities;

[(7)](*vii*) organize and operate automated systems to provide qualified subscribers with securities information and automated services. The systems may be organized and operated by a division or subsidiary company of the [Corporation] *NASD* or by one or more independent firms under contract with the [Corporation] *NASD* as the Board [of Governors] may deem necessary or appropriate. The Board [of Governors] may adopt rules for such automated systems, establish reasonable qualifications and classifications for members and other subscribers, provide qualification standards for securities included in such systems, require members to report promptly information in connection with securities included in such systems, and establish charges to be collected from subscribers and others;

[(8)](*viii*) require the prompt reporting by members of such original and supplementary trade data as the Board deems appropriate. Such reporting requirements may be administered by the [Corporation] *NASD,* a division or subsidiary thereof, or a clearing agency registered under the Act; and

[(9)](*ix*) engage in any activities or conduct necessary or appropriate to carry out the [Corporation's] *NASD's* purposes under its Restated Certificate of Incorporation and the federal securities laws.

(b) In the event of the refusal, failure, neglect, or inability of any member of the Board [of Governors] to discharge [his] *such member's* duties, or for any cause affecting the best interests of the [Corporation] *NASD* the sufficiency of which the Board [of Governors] shall be

the sole judge, the Board shall have the power, by the affirmative vote of two-thirds of the Governors then in office, to remove such member and declare [his] *such member's* position vacant and that it shall be filled in accordance with the provisions of Section 6 [of this Article].

(c) To the fullest extent permitted by *applicable law,* the Restated Certificate of Incorporation [and applicable law, the Corporation]*, and these By-Laws, the NASD* may delegate any power of the [Corporation or the Board of Governors to any person or entity, including a subsidiary of the Corporation; provided that such delegation is] *NASD or the Board to a committee appointed pursuant to Article IX, Section 1, the NASD Regulation Board, the Nasdaq Board, or NASD staff in a manner* not inconsistent with the Delegation Plan.

Authority to *Cancel or* Suspend for Failure to Submit Required Information

Sec. 2. (a) The Board [of Governors] shall have authority, upon notice and opportunity for a hearing, to cancel or suspend the membership of any member or suspend the association of any person associated with a member for failure to file, or to submit on request, any report, document, or other information required to be filed with or requested by the [Corporation.] *NASD pursuant to these By-Laws or the Rules of the Association.*

(b) Any membership or association suspended or canceled pursuant to this Section may be reinstated by the NASD pursuant to the Rules of the Association.

[(b)](*c*) The Board [of Governors] is authorized to delegate [the authority hereinabove granted to the Chief Executive Officer of the Corporation; provided, however, that the Executive Committee of the Board of Governors shall be notified in writing of any such contemplated action by the Chief Executive Officer.] *its authority under this Section in a manner not inconsistent with the Delegation Plan and otherwise in accordance with the Rules of the Association.*

Authority To Take Action Under Emergency or Extraordinary Market Conditions

Sec. 3. The Board [of Governors], or such person or persons as may be designated by the Board, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding[;]*:*

[(1)]*(a)* the trading in or operation of the over-the-counter securities market, the operation of any automated system owned or operated by the [Corporations] *NASD, NASD Regulation, or Nasdaq,* and the participation in any such system of any or all persons or the trading therein of any or all securities; and

[(2)]*(b)* the operation of any or all member firms' offices or systems, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

Composition [and Qualifications] of the Board

Sec. 4. (a) The Board [of Governors] shall be composed of [five or more members] *at least nine and not more than thirteen Governors,* the number thereof to be determined [from time to time by the Board of Governors, and shall include at all times the] *by the Board prior to each annual election of the Governors. Any new Governor position created as a result of an increase in the size of the Board shall be filled as part of the annual election conducted under Sections 9 through 13. The* Chief Executive Officer [and such Industry, Non-Industry, and Public Governors as shall be determined from time to time by the Board of Governors, both of which determinations shall be consistent with the Delegation Plan and Section 15A(b)(4) of the Act. The criteria for the categories of Industry, Non-Industry and Public Governors, as used herein, shall be established by the Board of Governors from time to time, which criteria shall be consistent with the Delegation Plan.] *of the NASD shall be a Governor, and a majority of the remaining Governors shall be Non-Industry Governors, including at least two Public Governors. In the event that the Board shall consist of eleven or more Governors, at least three Governors shall be Public Governors.*

(b) As soon as practicable, following the annual election of members to the Board [of Governors], the Board [of Governors] shall elect from the members of the Board [of Governors a Chairman,] *a Chair* and such other persons having such titles as it shall deem necessary or advisable, to serve until the next annual election or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board [of Governors]. The Board [of Governors, by affirmative vote of]*, by resolution adopted by* a majority of [its members] *the Governors then in office,* may remove any such person from such position at any time.

Term of Office of Governors

Sec. 5. Each Governor, except as otherwise provided by the Restated Certificate of Incorporation or these By-Laws, shall hold office for a term of not more than three years, such term to be fixed by the Board at the time of the nomination or certification of such Governor, or until [his] *a* successor is elected and qualified, or until [his] death, resignation, disqualification, or removal. Except for the Chief Executive Officer, no Governor may serve more than two consecutive terms[,]*;* provided, however, that if a Governor is appointed to fill a term of less than one year, such Governor may serve up to two consecutive terms following the expiration of such Governor's [current] *initial* term. The Chief Executive Officer of the [Corporation] *NASD* shall serve as a member of the Board until [his] *a* successor is selected and qualified, or until [his] death, resignation, disqualification, or removal.

Disqualification

Sec. 6. *A Governor shall immediately resign or be automatically removed from office if the Board determines by a majority vote of the remaining Governors that (a) the Governor no longer satisfies the classification (Industry, Non-Industry, or Public Governor) for which the Governor was elected; (b) failure to remove the Governor would violate the compositional requirements of the Board set forth in Section 4; and (c) the Governor has a remaining term of office of more than six months.*

Filling of Vacancies

Sec. [6.] *7.* [(a) Any vacancy in the office of] *If* a Governor *position becomes vacant,* whether [occurring by reason] *because* of death, disability, disqualification, removal, or resignation, [other than a vacancy by reason of an increase in the size of the Board, shall be filled] *the National Nominating Committee shall nominate, and the Board shall elect* by majority vote of the remaining Governors then in office [and any person elected to fill such vacancy shall satisfy the qualifications and criteria]*,* a person satisfying the classification (Industry, Non-Industry, or Public Governor) for the governorship [being filled] as provided in Section 4 [of this Article.] *to fill such vacancy, except that if the remaining term of office for the vacant Governor position is not more than six months, no replacement shall be required. If the remaining term of office for the vacant Governor position is more than one year, the Governor elected by the Board to fill such position shall stand for election in the next annual election pursuant to this Article.*

[(b) Any vacancy in the office of a Governor occurring by reason of an increase in the size of the Board shall be filled by majority vote of the Board and any person elected to fill such vacancy shall satisfy the criteria for such newly created governorship as shall be established by resolution of the Board, provided that the filling of any such vacancy shall not be inconsistent with any other provisions of these By-Laws or the Delegation Plan.]

Meetings of Board; Quorum; Required Vote

Sec. 8. Meetings of the Board shall be held at such times and places, upon such notice, and in accordance with such procedure as the Board [of Governors] in its discretion may determine. *At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a* quorum [of the Board of Governors] *for the transaction of business* shall consist of a majority of the [total number of Governors of the Corporation and any] *Board, including not less than 50 percent of the Non-Industry Governors. Any* action taken by a majority vote at any meeting at which a quorum is present, except as otherwise provided in the Restated Certificate of Incorporation or these By-Laws, shall constitute the action of the Board [of Governors]. Members of the Board [of Governors], or any committee [appointed] *designated* by the Board [of Governors] or any other committee of the [Corporation] NASD, may participate in a meeting thereof by means of communications facilities that ensure all persons participating in the meeting can hear and speak to each other, and participation in a meeting pursuant to this By-Law shall constitute presence in person at such meeting. No member of the Board [of Governors] shall vote by proxy at any meeting of the Board.

The National Nominating Committee

[(b)] ***Sec. 9.*** *(a)* The National Nominating Committee shall [have such powers and shall perform such functions as shall be determined by resolution of the Board of Governors from time to time, consistent with the Delegation Plan.] *nominate Industry, Non-Industry, and Public Governors for each vacant or new Governor position on the NASD Board and Industry, Non-Industry, and Public Directors for each vacant or new position on the NASD Regulation Board and the Nasdaq Board.*

(b) The National Nominating Committee shall [consist of six or more persons who shall have such qualifications, and who shall be selected in such manner, as shall be determined by resolution of the Board of Governors from time to time, which qualifications and manner of selection shall be consistent with the Delegation Plan.] *be composed of at least six and not more than nine members, the number thereof to be determined by the Board from time to time.*

(c) The members of the National Nominating Committee shall be equally balanced between Industry and Non-Industry committee members, including at least two Public committee members. If the Nominating Committee shall consist of seven or more members, at least three shall be Public committee members. If at any time there shall be an odd number of members of the National Nominating Committee, Non-Industry committee members shall be in the majority. No officer or employee of the NASD, NASD Regulation, or Nasdaq shall serve as a member of the National Nominating Committee in any voting or non-voting capacity. The NASD Regulation Board and the Nasdaq Board each shall select two members of the National Nominating Committee, and the NASD Board shall select the remaining committee members. Not more than three of the committee members and not more than two of the Industry committee members shall be current members of the Board, the NASD Regulation Board, or the Nasdaq Board. A National Nominating Committee member may not simultaneously serve on the National Nominating Committee and the Board, the NASD Regulation Board, or the Nasdaq Board, unless such member is in his or her final year of service on any such board, and following that year, that member may not stand for election to the Board, the NASD Regulation Board, or the Nasdaq Board until such time as he or she is no longer a member of the National Nominating Committee.

(d) Members of the National Nominating Committee shall be appointed annually by the Board and may be removed for cause by a majority vote of the Board. The Board shall ensure that the composition of the National Nominating Committee meets the requirements of subsection (c). If the selection of a National Nominating Committee member by the NASD Regulation Board or Nasdaq Board would violate the compositional requirements of subsection (c), the Board shall request that the NASD Regulation Board or Nasdaq Board select another member such that the compositional requirements of subsection (c) are met.

(e) The Secretary of the NASD shall collect from each nominee for Governor of the NASD Board and each nominee for Director of the NASD Regulation Board or Nasdaq Board such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, or Public Governor or Director, and the Secretary shall certify to the National Nominating Committee each nominee's classification.

Procedure for Nomination of Governors

[(c)] ***Sec. 10.*** At least 90 days prior to a meeting of members for the election of Governors *pursuant to Section 13,* the [Corporation] *NASD* shall notify the members of the date, place, and time of such meeting and shall set forth in such notice the names of each nominee [(a ''Nominee''),] as selected by the National Nominating Committee[,] for each governorship up for election, [and shall further provide in such notice the qualifications]*the category of governorship (Industry, Non-Industry, or Public Governor) for which the nominee is nominated, the qualifications of each nominee,* and such other information regarding each [such Nominee] *nominee* as the National Nominating Committee deems pertinent. A person who has not been so nominated may be included on the ballot for the election of Governors if [(1)](a) at least 60 days prior to the scheduled date for the meeting of members, such person [complies with the requirements and procedures for nomination set forth in the Delegation Plan and (2) the person is certified] *presents duly executed petitions to the Secretary of the NASD demonstrating that such person has the support of three percent of the members, one-half of which must have their principal place of business outside of the district in which the person is employed; and (b) the Secretary certifies that (i) the petitions are duly executed by the requisite number of members; and (ii) the person satisfies the classification (Industry, Non-Industry, or Public Governor) of the governorship to be filled, based on such information provided by the person as is reasonably necessary to make the certification. The Secretary shall not unreasonably withhold or delay the certification. Upon certification, the election shall be deemed a contested election.*

Communication of Views

Sec. 11. *The NASD, the Board, the National Nominating Committee, a committee appointed pursuant to Article IX, Section 1, and NASD staff shall not take any position publicly or with a member or person associated with or employed by a member with respect to any candidate in a contested*

election or nomination held pursuant to these By-Laws or the NASD Regulation By-Laws. A Governor or a member of the National Nominating Committee or any other committee may communicate his or her views with respect to any candidate if such Governor or committee member acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of the NASD, the NASD Board, the National Nominating Committee or any other committee. Except as provided herein, any candidate and his or her representatives may communicate support for the candidate to a membership or person associated with or employed by a member.

Administrative Support

Sec. 12. *The Secretary shall provide administrative support to the candidates in a contested election under this Article by sending to NASD members eligible to vote up to two mailings of materials prepared by the candidates. The NASD shall pay the postage for the mailings. The materials shall be prepared on the personal stationery of each candidate and shall state that the materials represent the opinions of the candidate. A candidate nominated by the National Nominating Committee may identify himself or herself as such in his or her materials. Any candidate may send additional materials to NASD members at the candidate's own expense. Except as provided in this Article, the NASD, the Board, any committee, and NASD staff shall not provide any other administrative support to a candidate in a contested election conducted under this Article or a contested election or nomination conducted under the NASD Regulation By-Laws.*

Election of Board Members

Sec. [7.(a)] ***13*** The members of the Board [of Governors] shall be elected by a plurality of the votes of the members of the [Corporation] *NASD* present in person or represented by proxy at the annual meeting of the [Corporation] *NASD* and entitled to vote thereat. The annual meeting of the [Corporation] *NASD* shall be on such date and at such place as the Board [of Governors] shall designate. Any Governor so elected must be nominated *or certified* by the National Nominating Committee [described in subsection (b) below or certified] pursuant to [subsection (c) below and must satisfy the other qualifications for Governors set forth in Section 4 of this Article or as established by resolution of the Board of Governors from time to time, which qualifications shall be consistent with the Delegation Plan] *Section 10.*

Maintenance of Compositional Requirements of the Board

Sec. 14. *Each Governor shall update the information submitted under Section 9(e) regarding his or her classification as an Industry, Non-Industry, or Public Governor at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such classification.*

Article [VII] ***VIII***

Officers, ***Agents, and Employees***

Officers

Sec. 1. The Board [of Governors] shall [elect] *select* a Chief Executive Officer, who shall be responsible for the management and administration of its affairs and shall be the official representative of the [Corporation] *NASD* in all public matters and who shall have such powers and duties in the management of the [Corporation] *NASD* as may be prescribed in a resolution by the Board [of Governors], and which powers and duties shall not be inconsistent with the Delegation Plan. *The Board shall elect a Secretary, who shall have such powers and duties conferred by these By-Laws and such other duties and powers as may be prescribed in a resolution by the Board.* The Board may provide for such other executive or administrative officers as it shall deem necessary or advisable, including, but not limited to, Executive Vice [-]President, Senior Vice [-]President, Vice [-]President, [Secretary,] and Treasurer of the [Corporation] *NASD.* All such officers shall have such titles, [such] powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board [of Governors]. Each such officer shall hold office until [his] *a* successor is elected and qualified or until [his] *such officer's* earlier resignation or removal. Any officer may resign at any time upon written notice to the [Corporation.] *NASD.* The Board [of Governors] may remove any officer, with or without cause, at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the [Corporation] *NASD.* Any number of offices may be held by the same person. Any vacancy occurring in any office of the [Corporation] *NASD* by death, resignation, removal, or otherwise may be filled for the unexpired portion of the term by the Board [of Governors] at any meeting.

Absence of Chief Executive Officer

Sec. 2. In the case of the absence or inability to act of the [President] *Chief Executive Officer* of the [Corporation,] *NASD,* or in *the* case of a vacancy in such office, the Board [of Governors] may appoint its [Chairman] *Chair* or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the [President.] *Chief Executive Officer.*

Agents and Employees

Sec. 3. *The Board may employ or authorize the employment and prescribe the powers and duties of such agents and employees as it deems necessary or advisable. The employment and compensation of such agents and employees shall be at the pleasure of the Board, provided that such determinations are not inconsistent with the requirements of the Delegation Plan. Agents and employees of the NASD shall be under the supervision and control of the officers of the NASD, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.*

Employment of Counsel

Sec. [3.] ***4.*** The Board [of Governors] may retain or authorize the employment of counsel, with such powers, titles, duties, and authority as it shall deem necessary or advisable.

Administrative Staff

Sec. 4. The Board of Governors may employ or authorize the employment and prescribe the powers and duties of such an administrative staff as it deems necessary or advisable. The employment and compensation of such administrative staff of the Corporation shall be at the pleasure of the Board of Governors, provided that such determinations are not inconsistent with the requirements of the Delegation Plan.]

Delegation of Duties of Officers

Sec. 5. *The Board may delegate the duties and powers of any officer of the NASD to any other officer or to any Governor for a specified period of time and for any reason that the Board may deem sufficient.*

Resignation and Removal of Officers

Sec. 6. *(a) Any officer may resign at any time upon written notice of resignation to the Board, the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation*

shall not be necessary to make the resignation effective.

(b) Any officer of the NASD may be removed, with or without cause, by resolution adopted by a majority of the Governors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Governors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the NASD.

Bond

Sec. 7. *The NASD may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.*

Article [VIII] ***IX***

Committees

Appointment

Sec. 1. Subject to Article VII, Section 1(c), the Board may appoint such committees or subcommittees as it deems necessary or desirable, and it shall fix their powers, duties [and terms of office; provided that such determinations are not inconsistent with requirements of the Delegation Plan], *and terms of office.* Any such committee or subcommittee consisting *solely* of one or more Governors, to the extent provided by these By-Laws or by resolution of the Board, shall have and may exercise all powers and authority of the Board in the management of the business and affairs of the [Corporation.] *NASD.*

Maintenance of Compositional Requirements of Committees

Sec. 2. *Upon request, each prospective committee member who is not a Governor shall provide to the Secretary of the NASD such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member, and the Secretary shall certify to the Board each prospective committee member's classification. Each committee member shall update the information submitted under this Section at least annually and upon request of the Secretary of the NASD, and shall report immediately to the Secretary any change in such classification.*

Removal of Committee Member

Sec. [2] ***3.*** Any member of any committee or subcommittee appointed pursuant to this Article [VIII] may be removed from such committee or subcommittee *only by a majority vote of the whole Board,* after appropriate notice, for refusal, failure, neglect, or inability to discharge [his] *such member's* duties, or for any cause the sufficiency of which shall be decided by the Board.

[Resolution of the Board of Governors

Interpretations and Explanations

The Executive Committee be and hereby is authorized and directed to consider and make recommendations to the Board of Governors with respect to such interpretative questions, having to do with the Certificate of Incorporation, By-Laws, Rules of Fair Practice and Code of Procedure of the Association, as may from time to time be submitted to the Committee by the Board of Governors or the President.

Where a decision is required as to which reasonable men, equally well informed, might well not differ, the ruling shall be deemed to be an explanation. Where a decision is required where reasonable men, equally well informed, might well differ, the ruling shall be deemed to be an interpretation.

Where in the judgment of the President and upon advice of Counsel, any question involves an answer clearly in the nature of an explanation, such question may be answered in the Office of the President.

Where in the judgment of the President and upon advice of Counsel, any question involves an answer in the nature of an interpretation, the President shall present such question to the Executive Committee.

The President may, after consultation with and upon advice of Counsel, give an office opinion. Such office opinion shall state that it reflects only the opinion of the office of the President and it is provisional and subject to the approval of the Board of Governors.

District Committees, District Business Conduct Committees, Counsel or staff thereof, are hereby directed not to issue any interpretations of the Certificate of Incorporation, By-Laws, Rules of Fair Practice or Code of Procedure, either in oral or written form without presentation of the question to the President and in such case, if the questions presented appear to be an interpretation with the meaning of this resolution the matter shall be presented in writing to the Executive Committee.]

Executive Committee

Sec. 4. *The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by the General Corporation Law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the NASD between meetings of the Board and which may authorize the seal of the NASD to be affixed to all papers that may require it. The Chief Executive Officer of the NASD shall be a member of the Executive Committee, and with respect to the remaining members, the Executive Committee shall have a percentage of Non-Industry Governors at least as great as the percentage of Non-Industry Governors on the whole Board, and a percentage of Public Governors at least as great as the percentage of Public Governors on the whole Board.*

Audit Committee

Sec. 5. *(a) The Board shall appoint an Audit Committee. The Audit Committee shall be composed of four or five Governors, none of whom shall be officers or employees of the Association. The Audit Committee shall include at least one Public Governor who shall serve as Chair of the Committee. If the Audit Committee is composed of five Governors, it shall have not more than two Industry Governors. If the Committee is composed of four Governors, it shall have not more than one Industry Governor. If the size of the NASD Board shall at any time consist of 11 or more members, the Audit Committee shall include two Public Governors. The NASD Regulation Board and the Nasdaq Board each shall designate a Public Director of its Board as a liaison to the Audit Committee. The Audit Committee may consult with such liaisons on issues relating to the functions of NASD Regulation and Nasdaq, but neither the liaisons nor any officer or employee of the NASD, NASD Regulation, or Nasdaq shall serve on the Audit Committee in any voting or non-voting capacity.*

(b) The Audit Committee shall perform the following functions: (1) ensure the existence of adequate controls and the integrity of the financial reporting process of the NASD; (2) recommend to the NASD Board, and monitor the independence and performance of, the certified public accountants retained as outside auditors by the NASD; and (3) direct and oversee all the activities of the NASD's internal review function, including but not limited to management's responses to the internal review function.

(c) No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular NASD member, company, or individual if such Audit

Committee member has a material interest in, or a professional, business, or personal relationship with, that member, company, or individual, or if such participation shall create an appearance of impropriety. Audit Committee members shall consult with the General Counsel of the NASD to determine if recusal is necessary. If a member of the Audit Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Audit Committee.

(d) The Audit Committee shall have exclusive authority to: (1) hire or terminate the Director of Internal Review; (2) determine the compensation of the Director of Internal Review; and (3) determine the budget for the Office of Internal Review. The Office of Internal Review shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Office of Internal Review also report to senior management of the NASD on matters the Audit Committee deems appropriate and may request that senior NASD management perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal review function.

Article X

Compensation of Board and Committee Members

[Sec. 5.] The Board may provide for reasonable compensation of the Chair[man] of the Board, *the* Governors, and the members of any committee [of the Board from the Corporation]. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the [Corporation] *NASD.*

Article [IX] ***XI***

Rules

To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among members of the [Corporation] *NASD,* to prevent fraudulent and manipulative acts and practices, to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges, to protect investors and the public interest, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the [Corporation] *NASD* and of the Act, the Board [of Governors] is hereby authorized to adopt such [Rules of Fair Practice] *rules* for the members and persons associated with members, and such amendments thereto as it may, from time to time, deem necessary or appropriate. If any such [Rules] *rules* or amendments thereto are approved by the Commission as provided in the Act, they shall become effective Rules of the Association as of such date as the Board [of Governors] may prescribe. The Board [of Governors] is hereby authorized, subject to the provisions of the By-Laws and the Act, to administer, enforce, suspend, or cancel any Rules of [Fair Practice] *the Association* adopted hereunder.

Article [X] ***XII***

Disciplinary Proceedings

Sec. 1. The Board [of Governors] shall have authority to establish procedures relating to disciplinary proceedings involving members and their associated persons.

Sec. 2. Except as otherwise permitted under these By-Laws or the Act, in any disciplinary proceeding [before the Corporation] *under the Rules of the Association,* any member or person associated with a member shall be given the opportunity to have a hearing at which [he] *such member or person associated with a member* shall be entitled to be heard in person [and/or by counsel] *or by counsel or by a representative as provided in the Rules of the Association.* Such persons may present any relevant material *in accordance with the Rules of the Association.* In any such proceeding against a member or against a person associated with a member to determine whether the member [and/or] *or* the person associated with a member shall be disciplined:

(a) specific charges shall be brought;

(b) such member or person associated with a member shall be notified of and be given an opportunity to defend against such charges;

(c) a record shall be kept; and

(d) any determination shall include a statement setting forth:

(1) any act or practice, in which such member or person associated with a member may be found to have engaged or which such member or person associated with a member may be found to have omitted;

(2) the rule, regulation, or statutory provision of which any such act or practice, or omission to act, is deemed to be in violation;

(3) the basis upon which any findings are made; and

(4) the [penalty] *sanction* imposed.

Article [XI] ***XIII***

Powers of Board to [Prescribe] ***Impose*** **Sanctions**

Sec. 1. The Board is hereby authorized to [prescribe] *impose* appropriate sanctions applicable to members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all members, limitation of activities, functions, and operations of a member, or any other fitting sanction, and to [prescribe] *impose* appropriate sanctions applicable to persons associated with members, including censure, fine, suspension or barring a person associated with a member from being associated with all members, limitation of activities, functions, and operations of a person associated with a member, or any other fitting sanction, for:

(a) breach by a member or a person associated with a member of any covenant with the [Corporation] *NASD* or its members;

(b) violation by a member or a person associated with a member of any of the terms, conditions, covenants, and provisions of the [rules of the Corporation] *By-Laws of the NASD, NASD Regulation, or Nasdaq, the Rules of the Association*, or the federal securities laws, including the rules and regulations adopted thereunder, [and including] *the* rules of the Municipal Securities Rulemaking Board, and the rules of the Treasury Department;

(c) failure by a member or person associated with a member to submit a dispute for arbitration [under the Code of Arbitration Procedure (''Arbitration Code'')] as required by the [Arbitration Code] *Rules of the Association*, or to fail to appear or to produce any document in [their] *the member's or person's* possession or control as directed pursuant to provisions of the [Arbitration Code] *Rules of the Association*, or to fail to [honor] *comply with* an award of arbitrators properly rendered pursuant to the [Arbitration Code] *Rules of the Association,* where a timely motion [has not been made] to vacate or modify such award *has not been made* pursuant to applicable law *or where such a motion has been denied or for failure to comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the Rules of the Association*;

(d) refusal by a member or person associated with a member to abide by an official ruling of the Board or any committee exercising powers assigned by the Board with respect to any

transaction which is subject to the Uniform Practice Code; or

(e) failure by a member or person associated with a member to adhere to any ruling, order, direction, or decision of[,] or to pay any [penalty,] *sanction,* fine, or costs[,] imposed by the Board[, or any committee exercising powers assigned by the Board] *or any entity to which the Board has delegated its powers in accordance with the Delegation Plan.*

Sec. 2. *The Board may delegate its authority under this Article in accordance with the Delegation Plan.*

Article [XII] ***XIV***

Uniform Practice Code

Authority to Adopt Code

Sec. 1. The Board [of Governors] is hereby authorized to adopt a Uniform Practice Code and amendments, interpretations and explanations thereto, designed to make uniform, where practicable, custom, practice, usage, and trading technique in the investment banking and securities business with respect to such matters as trade terms, deliveries, payments, dividends, rights, interest, reclamations, exchange of confirmations, stamp taxes, claims, assignments, powers of substitution, computation of interest and basis prices, due-bills, transfer fees, ''when, as and if issued'' trading, ''when, as and if distributed'' trading, marking to the market, and close-out procedure, all to the end that the transaction of day-to-day business by members may be simplified and facilitated, that business disputes and misunderstandings, which arise from uncertainty and lack of uniformity in such matters, may be eliminated, and that the mechanisms of a free and open market may be improved and impediments thereto removed.

Administration of Code

Sec. 2. The administration of any Uniform Practice Code, or any amendment thereto, adopted by the Board [of Governors] pursuant to Section 1 [of this Article], shall be vested in the Board [of Governors], and the Board is hereby granted such powers as are reasonably necessary to achieve its effective operation. In the exercise of such powers, the Board may issue explanations and interpretations and make binding rulings with respect to the applicability of the provisions of the Uniform Practice Code to situations in which there is no substantial disagreement as to the facts involved. [The] *In accordance with the Delegation Plan, the* Board may delegate to [appropriate committees such of its powers,] *the NASD Regulation Board and the Nasdaq Board such of the Board's powers* hereunder as it deems necessary and appropriate to achieve effective administration and operation of the Uniform Practice Code.

Transactions Subject to Code

Sec. 3. All over-the-counter transactions in securities by members, except transactions in securities which are exempted under Section 3(a)(12) of the Act, or are municipal securities as defined in Section 3(a)(29) of the Act, are subject to the provisions of the Uniform Practice Code and to the provisions of Section 2 [of this Article] unless exempted therefrom by the terms of the Uniform Practice Code.

Article [XIII] ***XV***

Limitation of Powers

Prohibitions

Sec. 1. Under no circumstances shall the Board [of Governors] or any officer, employee, or member of the [Corporation] *NASD* have the power to:

(a) make any donation or contribution from the funds of the [Corporation] *NASD* or to commit the [Corporation] *NASD* for the payment of any donations or contributions for political or charitable purposes; or

(b) use the name of the facilities of the [Corporation] *NASD* in aid of any political party or candidate for any public office.

Use of Name of [Corporation] ***the NASD*** **by Members**

Sec. 2. No member shall use the name of the [Corporation] *NASD* except to the extent that may be [authorized by the Board of Governors] *permitted by the Rules of the Association.*

[Resolution of the Board of Governors

Limitations Upon Use of the Association Name

Members are permitted, in conformity with Article XVI, Section 2 of the Association's By-Laws, and within the limitations prescribed by this Resolution, to indicate membership in the Association in the following manner:

1. Solely as a matter of record in recognized trade directories or other similar types of business listings.

2. Solely in conjunction with the identifying use of the firm name on letterheads, booklet covers, sales literature headings, in the masthead of market letters and on other similar types of circular material, so long as this use is exclusively for identification purposes, is separate and apart from the regular text of the literature and is always in a smaller size type and with lesser emphasis than that used for the firm name.

3. The Association's name may be used in institutional or any other type of general print and/or electronic advertising media so long as such use is solely and exclusively for identifying the firm as a member, used only in proximity to and in conjunction with the firm name, carries no implied or specific indication of Association approval of the securities or services discussed in the advertisement, is separate and apart from the primary text material in the advertisement, and is always in a smaller size type and of lesser emphasis than that used for the firm name.

4. The following language may be used on confirmation forms, ''this transaction (if over-the-counter) has been executed in conformity with the rules and regulations of the Uniform Practice Code of the National Association of Securities Dealers, Inc.''

5. The name of the Association may be used on the door or entrance way of a member's principal office or any registered branch office in the following manner: ''Member, (of the) National Association of Securities Dealers, Inc.''

6. Each member shall be entitled to receive upon request to the Association an appropriate certification of membership which may be displayed in the principal office or any registered branch office of the member. Such certification shall be and remain the property of the Association and shall be returned by a member upon request of the Board of Governors or the President of the Association.

No member or person associated with a member shall use the name of the Association in a fraudulent or misleading manner in connection with the promotion or sale of any specific security or in connection with any other aspect of the member's business; or imply orally, visually or in writing that the Association endorses, indemnifies or guarantees any member's business practices, selling methods or class or type of securities offered.

Any improper, fraudulent or misleading use of the Association's name by a member or person associated with a member shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Article III, Section 1 of the Association's Rules of Fair Practice.]

Unauthorized Expenditures

Sec. 3. No officer, employee, member of the Board [of Governors] or of any committee[,] shall have any power to

incur or contract any liability on behalf of the [Corporation] *NASD* not authorized by the Board [of Governors]. The Board may delegate to the Chief Executive Officer of the [Corporation or his delegate] *NASD or the Chief Executive Officer's delegate*, such authority as it deems necessary to contract on behalf of the [Corporation] *NASD* or to satisfy unanticipated liabilities during the period between Board meetings.

Conflicts of Interest

Sec. 4. [A]*(a) A Governor or a* member of [the Board of Governors or of any] *a* committee [of the Corporation] shall not directly or indirectly participate in any adjudication of the interests of any party if such [participation would violate the] *Governor or committee member has a* conflict of interest [provisions of the Procedural Rules of the Corporation.] *or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Governor or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association. (b) No contract or transaction between the NASD and one or more of its Governors or officers, or between the NASD and any other corporation, partnership, association, or other organization in which one or more of its Governors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Governor's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Governors. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction.*

Municipal Securities

Sec. 5. The provisions of the By-Laws conferring rulemaking authority upon the Board [of Governors] shall not be applicable to the municipal securities activities of members or persons associated with members to the extent that the application of such authority would be inconsistent with Section 15B of the Act.

[Government Securities

Sec. 6. The provisions of the By-Laws governing qualifications of members and persons associated with members and conferring rulemaking authority upon the Board of Governors shall not be applicable to the Government securities activities of members or persons associated with members to the extent that the application of such provisions or authority would be inconsistent with Section 15A(f) of the Act.]

Article [XIV] ***XVI***

Procedure for Adopting Amendments to By-Laws

[Any member of the Board of Governors by resolution, any District Committee by resolution, or any twenty-five members of the Corporation by petition signed by such members,] *A Governor, a committee of the Board, the NASD Regulation Board, and the Nasdaq Board by resolution* may propose amendments to these By-Laws. [Every proposed amendment shall be presented in writing to the Board of Governors and a record shall be kept thereof. The board of Governors may adopt any proposed amendment to these By-Laws by affirmative vote of a majority of the members of the Board of Governors then in office. The Board of Governors, upon adoption of any such amendment to these By-Laws, except as otherwise provided in these By-Laws shall forthwith cause a copy to be sent to and voted upon by each member of the Corporation.] *Any 25 members of the NASD by petition signed by such members may propose amendments to these By-Laws. The Chief Executive Officer of the NASD, the President of NASD Regulation, and the President of Nasdaq may propose amendments to these By-Laws. Every proposed amendment shall be presented in writing to the Board and a record shall be kept thereof. The Board may adopt any proposed* amendment to these By-Laws [is approved by]*by affirmative vote of* a majority of the members [voting within thirty (30)] *of the Board then in office. The Board, upon adoption of any such amendment to these By-Laws, except as otherwise provided in these By-Laws, shall forthwith cause a copy to be sent to and voted upon by each member of the NASD. If such amendment to these By-Laws is approved by a majority of the members voting within 30* days after the date of submission to the membership, and is approved by the Commission as provided in the Act, it shall become effective as of such date as the Board [of Governors] may prescribe.

Article [XV] ***XVII***

Corporate Seal

[Sec. 1.] The corporate seal shall have inscribed thereon the name of the [Corporation] *NASD*, the year of its organization and the words ''Corporate Seal, Delaware.'' Said seal may be used by causing it or a facsimile thereof to be imposed or affixed or reproduced or otherwise.

Article [XVI] ***XVIII***

Checks

All checks or demands for money and notes of the [Corporation] *NASD* shall be signed by such officer or officers or such other person or persons as the Board [of Governors] may from time to time designate.

Article [XVII] ***XIX***

Annual Financial Statement

As soon as practicable after the end of each fiscal year, the Board [of Governors] shall send to each member of the [Corporation] *NASD* a reasonably itemized statement of receipts and expenditures of the [Corporation] *NASD* for such preceding fiscal year.

* * * * *

By-Laws of NASD Regulation, Inc.

Article I

Definitions

When used in these By-Laws, unless the context otherwise requires, the term:

(a) ''Act'' means the Securities Exchange Act of 1934, as amended;

(b) ''Board'' means the Board of Directors of NASD Regulation;

(c) ''broker'' means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

(d) ''Commission'' means the Securities and Exchange Commission;

(e) ''day'' means calendar day;

(f) ''dealer'' means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual's or entity's own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person's own

account, either individually or in some fiduciary capacity, but not as part of a regular business;

(g) ''Delaware law'' means the General Corporation Law of the State of Delaware;

(h) ''Delegation Plan'' means the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries'' as approved by the Commission, and as amended from time to time;

(i) ''Director'' means a member of the Board, excluding the Chief Executive Officer of the NASD;

(j) ''district'' means a district established by the Board pursuant to Article VIII, Section 8.1 of these By-Laws;

(k) ''District Committee'' means a District Committee elected pursuant to Article VIII of these By-Laws;

(l) ''District Director'' means an NASD Regulation staff member who heads a district office;

(m) ''District Nominating Committee'' means a District Nominating Committee elected pursuant to Article VIII of these By-Laws;

(n) ''district office'' means an office of NASD Regulation located in a district;

(o) ''Executive Representative'' means the executive representative of an NASD member appointed pursuant to Article IV, Section 3 of the NASD By-Laws;

(p) ''Independent Agent'' means a corporation or entity selected by the Secretary of NASD Regulation to assist NASD Regulation with nomination and election procedures under Articles VI and VIII of these By-Laws and the representatives of such corporation or entity;

(q) ''Industry Director'' or ''Industry committee member'' means a Director (excluding the President of NASD Regulation) or a committee member who (1) is an officer, director, or employee of a broker or dealer or has been employed in any such capacity at any time within the prior three years; or (2) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

(r) ''NASD'' means the National Association of Securities Dealers, Inc.;

(s) ''NASD Board'' means the NASD Board of Governors;

(t) ''NASD member'' means any broker or dealer admitted to membership in the NASD;

(u) ''NASD Regulation'' means NASD Regulation, Inc.;

(v) ''National Nominating Committee'' means the National Nominating Committee appointed pursuant to Article VII, Section 9 of the NASD By-Laws;

(w) ''Non-Industry Director'' or ''Non-Industry committee member'' means a Director or a committee member who is (1) a Public Director or committee member; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; (3) a person affiliated with a broker or dealer that operates solely to assist the securities-related activities of the business of a non-member affiliate (such as a broker or dealer established to (i) distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate); (4) an employee of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-member entity; or (5) any other individual who would not be an Industry Director or committee member;

(x) ''Public Director'' or ''Public committee member'' means a Director or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq;

(y) ''Regional Nominating Committee'' means a Regional Nominating Committee that nominates to the National Nominating Committee a candidate for the Board to represent a geographical region as provided in Article VI of these By-Laws; and

(z) ''Rules of the Association'' or ''Rules'' means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as hereafter amended or supplemented.

Article [I] ***II***

Offices

Location

Sec. [1.1] *2.1* The address of the registered office of [the Corporation] *NASD Regulation* in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange [St.,] *Street,* Wilmington, [DE] *Delaware* 19801. [The Corporation may] *NASD Regulation* also *may* have offices at such other places both within and without the State of Delaware as the Board [of Directors] may from time to time designate or the business of [the Corporation] *NASD Regulation* may require.

Change of Location

Sec. [1.2] *2.2* In the manner permitted by law, the Board [of Directors] or the registered agent may change the address of [the Corporation's] *NASD Regulation's* registered office in the State of Delaware and the Board [of Directors] may make, revoke, or change the designation of the registered agent.

Article [II] ***III***

Meetings of Stockholders

[Annual Meeting

Sec. 2.1 The annual meeting of stockholders of the Corporation for the election of Directors and for the transaction of such other business as may properly come before the meeting shall be held on such date, and at such time, and place, within or without the State of Delaware, as may be fixed, from time to time, by the Board of Directors.]

[Special Meetings

Sec. 2.2 Special meetings of stockholders of the Corporation, unless otherwise prescribed by law, may be called at any time by the Chair of the Board, by the President or by order of a majority of the Board of Directors. Special meetings of stockholders prescribed by law for the election of directors shall be called by the Board of Directors, the President, or the Secretary. Special meetings of stockholders shall be held at such place within or without the State of Delaware as shall be designated in the notice of meeting.]

[Notice of Meetings

Sec. 2.3 (a) Whenever stockholders are required or permitted to take any action at a meeting, they shall be given written notice stating the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes thereof. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, written notice shall be delivered or mailed at least ten but not more than sixty days before such meeting date to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deposited in the United States mail, postage prepaid, directed to each stockholder at the address that appears on the records of the Corporation.

[(b) When a meeting of stockholders is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting. If, however, the adjournment is for more than thirty days from the date of the

original meeting, or if, after the adjournment, a new record date is set for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting in the manner prescribed above in subsection (a).]

[Quorum

Sec. 2.4 Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, at each meeting of stockholders the presence in person or by proxy of the holders of record of a majority of the outstanding shares of capital stock entitled to vote or act at such a meeting shall constitute a quorum for the transaction of any business. In the absence of a quorum, the stockholders so present may by majority rule, adjourn any meeting until a quorum shall be present. When a quorum is once present to organize a meeting, the quorum cannot be destroyed by the subsequent withdrawal or revocation of the proxy of any stockholder.]

[Voting

Sec. 2.5 (a) At any meeting of stockholders, each stockholder as of the record date is entitled to one vote for each such share of stock having voting power, upon the matter in question, except as otherwise provided in the Certificate of Incorporation. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, provided that no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by delivering a proxy in accordance with applicable law bearing a later date to the Secretary of the Corporation.]

[(b) Directors of the Corporation shall be elected by a plurality of the votes cast at a meeting of stockholders pursuant to Sec. 2.5 of these By-Laws. Corporate action other than the election of directors shall be authorized by a majority of the votes cast at a meeting of stockholders, except as otherwise required by law, the Certificate of Incorporation or these By-Laws.]

[(c) Upon the demand of any stockholder entitled to vote, the election of directors or a vote on any other matter at a meeting of stockholders shall be by written ballot; otherwise, the method of voting and the manner in which votes are counted at such a meeting shall be discretionary with the presiding officer of the meeting.]

[Presiding Officer and Secretary

Sec. 2.6 At every meeting of stockholders, the Chair, or in his/her absence, the President, or in his/her absence, the appointee of the meeting, shall preside. The Secretary, or in his/her absence, the appointee of the presiding officer of the meeting, shall act as Secretary of the meeting.]

Action by Consent of Stockholder[s]

Sec. [2.7] *3.1* Any action required[,] or permitted by law to be taken at any meeting of *the* stockholder[s] of [the Corporation] *NASD Regulation* may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holder[s] of the outstanding stock. [having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of corporate action without a meeting and by less than unanimous written consent shall be given to those stockholders who have not consented in writing.]

Article [III] *IV*

Board of Directors

General Powers

Sec. [3.1] *4.1* The property, business, and affairs of [the Corporation] *NASD Regulation* shall be managed by or under the direction of the Board [of Directors]. The Board [of Directors] may exercise all such powers of [the Corporation] *NASD Regulation* and have the authority to perform all such lawful acts as are permitted by law, the *Restated* Certificate of Incorporation [or], these By-Laws, *or the Delegation Plan* to assist the [National Association of Securities Dealers, Inc.] *NASD* in fulfilling its self-regulatory responsibilities as set forth in Section 15A of the [Securities Exchange Act of 1934, and] *Act, and to* support such other initiatives as the Board [of Directors] may deem appropriate. *To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.14 or to NASD Regulation staff in a manner not inconsistent with the Delegation Plan.*

Number of Directors

Sec. [3.2] *4.2* [The Board of Directors of the Corporation shall consist of one or more members; the exact number of directors that shall constitute the whole Board of Directors shall be fixed from time to time by resolution adopted by the whole Board of Directors. After fixing the number of directors constituting the whole Board of Directors, the Board of Directors may, by resolution adopted by the whole Board of Directors, from time to time change the number of directors constituting the whole Board of Directors; provided that such determination shall be consistent with the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (the ''Delegation Plan'').] *The Board shall be composed of at least 21 and not more than 25 Directors, the number thereof to be determined by the Board prior to the annual election of Directors. Any new Director position created as a result of an increase in the size of the Board shall be filled as part of the annual election conducted under Section 4.4.*

Qualifications

Sec. [3.3]*4.3 (a)* Directors need not be stockholders of [the Corporation. The Board of Directors shall include at all times the President of the Corporation and such Industry, Non-Industry, and Public Governors as shall be determined from time to time by the Board of Directors, which determination shall be consistent with the Delegation Plan. The criteria for the categories of Industry, Non-Industry, and Public Directors, as used herein, shall be established by the Board of Directors from time to time, which criteria shall be consistent with the Delegation Plan.] *NASD Regulation. The President of NASD Regulation shall be a Director, and the remaining Directors shall be equally balanced between Industry and Non-Industry Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-Industry Directors. The Board shall include at least ten Industry Directors, who shall represent a geographic region designated by the Board pursuant to Article VI, Section 6.1, or who shall represent the industry at-large. The Board shall include at least ten Non-Industry Directors, including at least three Public Directors. In the event that the Board shall consist of more than 22 Directors, at least four shall be Public Directors. The Board shall include representatives of an issuer of*

investment company shares or an affiliate of such an issuer and an insurance company or an affiliated NASD member. The Chief Executive Officer of the NASD shall be an ex-officio non-voting member of the Board.

(b) As soon as practicable, following the annual election of Directors, the Board shall elect from its members a Chair and a Vice Chair, and such other persons having such titles as it shall deem necessary or advisable, to serve until the next annual election or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

(c) Each Director shall update the information submitted to the Secretary of NASD pursuant to Article VII, Section 9(e) of the NASD By-Laws regarding the Director's classification as an Industry, Non-Industry, or Public Director at least annually and upon request of the Secretary of the NASD, and shall report immediately to the Secretary of the NASD any change in such classification.

Election

Sec. [3.4]*4.4* (a) Except as otherwise provided by law [or], these By-Laws, *or the Delegation Plan,* after the first meeting of [the Corporation] *NASD Regulation* at which [directors] *Directors* are elected, [directors of the Corporation] *Directors of NASD Regulation* shall be elected each year at the annual meeting of [stockholders] *the stockholder,* or at a special meeting called for such purpose in lieu of the annual meeting[, by a plurality of the votes cast at such meeting]. If the annual election of [directors] *Directors* is not held on the date designated [therefore,] *therefor,* the [directors] *Directors* shall cause such election to be held as soon thereafter as convenient.

(b) The National Nominating Committee shall nominate Industry, Non-Industry, and Public Directors for each vacant or new Director position on the Board to the NASD Board in accordance with Article VII of the NASD By-Laws. The Regional Nominating Committees shall nominate Industry Directors to represent geographical regions for consideration by the National Nominating Committee as provided in Article VI of these By-Laws.

Term

Sec. [3.5]*4.5* (a) Each Director shall hold office for a term of three years or until [his] *a* successor is duly elected and qualified, except in the event of earlier termination from office by reason of death, resignation, removal[,] with or without cause, *disqualification,* or other reason.

(b) The Board [of Directors] shall be divided into three classes. *The term of office of those of the first class shall expire at the January 1997 meeting of the Board, of the second class one year thereafter, and of the third class two years thereafter. At each annual election, commencing January 1997, Directors shall be elected for a term of three years to replace those whose terms expire.*

(c) The President of [of the Corporation] NASD Regulation shall serve as a [member of the Board] *Director* until a [his] successor is selected and qualified, or until [his] death, resignation, or removal.

(d) Except for the President, no Director may serve more than two consecutive terms; provided, however, that if a Director is appointed to fill a term of less than one year, such Director may serve up to two consecutive terms following the expiration of such Director's [current term] *initial term.*

[(e) Each director chosen to fill a newly created directorship shall serve until the next succeeding annual meeting of stockholders.]

Resignation

Sec. [3.6]*4.6* Any [director] *Director* may resign at any time either upon written notice of resignation to the Chair of the Board, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time [be] *is* not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. [3.7]*4.7* Any or all of the [directors] *Directors* may be removed from office at any time, with or without cause, [by the stockholders] *only by a majority vote of the NASD Board.*

Disqualification

Sec. 4.8 A Director shall immediately resign or be automatically removed from office if the NASD Board determines by majority vote that (a) the Director no longer satisfies the definition for the category (Industry, Non-Industry or Public Director) for which the Director was elected; (b) failure to remove the Director would violate the compositional requirements for the Board set forth in Section 4.3(a); and (c) the Director has a remaining term of office of more than six months.

Filling of Vacancies

Sec. 4.9 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the NASD Board shall elect by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director) for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required. If the remaining term of office for the vacant Director position is more than one year, and the Director who vacated the position was nominated pursuant to Article VI, the Director elected by the Board to fill such position shall stand for election in the next annual election pursuant to Article VI.

Quorum and Voting

Sec. [3.8]*4.10* (a) At all meetings of the Board [of Directors, one-third of the total number of directors shall constitute], *unless otherwise set forth in these By-Laws or required by law,* a quorum for the transaction of business *shall consist of a majority of the Board, including not less than 50 percent of the Non-Industry Directors.* In the absence of a quorum, a majority of the [directors] *Directors* present may adjourn the meeting until a quorum [be present] *is present.*

(b) [A director interested in a matter to be acted upon by the Board of Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors that determines the Corporation's action.]

(c) Subject to the restrictions of Section 3.12] *Except as provided in Section 4.15(b),* the vote of a majority of the [directors] *Directors* present at a meeting at which a quorum is present shall be the act of the Board [of Directors].

Regulation

Sec. [3.9]*4.11* The Board [of Directors] may adopt such rules, regulations, and requirements for the conduct of the business and management of [the Corporation,] *NASD Regulation* not inconsistent with the law, the *Restated* Certificate of Incorporation, these By-Laws, [or the rules and By-Laws of the National Association of Securities Dealers, Inc., as the Board of Directors may deem proper. A member of the Board of Directors] *the Rules of the Association, or the By-Laws of the NASD, as the Board may deem proper. A Director*

shall, in the performance of [his or her] *such Director's* duties, be fully protected in relying in good faith upon the books of account or reports made to [the Corporation] *NASD Regulation* by any of its officers, [or] by an independent certified public accountant, [or] by an appraiser selected with reasonable care by the Board [of Directors] or any committee of the Board [of Directors] or by any agent of [the Corporation] *NASD Regulation,* or in relying in good faith upon other records of [the Corporation] *NASD Regulation.*

Meetings

Sec. [3.10]*4.12* (a) An annual meeting of the Board [of Directors] shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of [stockholders] *the stockholder,* no notice of the annual meeting of the Board [of Directors] need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section [3.11 of these By-Laws] *4.13.*

(b) Regular meetings of the Board [of Directors] may be held at such time and place, within or without the State of Delaware, as determined from time to time by the Board [of Directors]. After such determination has been made, notice shall be given in accordance with Section [3.11 of these By-Laws] *4.13.*

(c) Special meetings of the Board [of Directors] may be called by the Chair of the Board, [or] by the President, or by at least one-third of the [directors at that time being] *Directors then* in office. Notice of any special meeting of the Board [of Directors] shall be given to each [director] *Director* in accordance with Section [3.11 of these By-Laws.] *4.13.*

(d) [Members of the Board of Directors, or any committee designated by the Board of Directors,] *A Director or member of any committee appointed by the Board* may participate in a meeting of the Board [of Directors] or of such committee through the use of *a conference telephone or similar* communications [facilities that ensure] *equipment by means of which* all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Notice of Meetings; Waiver of Notice

Sec. [3.11]*4.13* (a) Notice of any meeting of the Board [of Directors] shall be deemed to be duly given to a [director] *Director if:* (i) [if] mailed to the address last made known in writing to [the Corporation] *NASD Regulation* by such [director] *Director* as the address to which such notices are to be sent, at least [two] *seven* days before the day on which such [special] meeting is to be held[, or]*;* (ii) [if] sent to the [director] *Director* at such address by telegraph, telefax, cable, radio, or wireless, not later than the day before the day on which such meeting is to be held[,]*;* or (iii) [if] delivered to the [director] *Director* personally or orally, by telephone or otherwise, not later than the day before the day on which such [special] meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board [of Directors] need not be given to any [director] *Director* if waived by that [director] *Director* in writing (or by telegram, telefax, cable, radio, or wireless and subsequently confirmed in writing) whether before or after the holding of such meeting, or if such [director] *Director* is present at such meeting, subject to [Section 7.3(b) hereof.] *Article XI, Section 11.3(b).*

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat.

Committees [of the Board of Directors]

Sec. [3.13] *4.14* (a) The Board [of Directors] may, by resolution or resolutions adopted by a majority of the whole Board [of Directors, designate], *appoint* one or more committees[, each committee to consist of one or more directors of the Corporation]. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board [of Directors]. The Board [of Directors] may designate one or more [directors] *Directors* as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not [he, she,] *such member* or [they] *members* constitute a quorum, may unanimously appoint another [member of the Board of Directors] *Director* to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board [of Directors], subject, however, to removal, with or without cause, at any time *only* by the vote of a majority of the whole Board [of Directors].

(b) [Any committee, to the extent permitted by law and to the extent provided in the] *The Board may, by* resolution or resolutions [creating such committee, shall have and may exercise all the powers and authority of the Board of Directors] *adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to NASD Regulation by the NASD under the Delegation Plan. Such delegations shall be in conformance with applicable law, the Restated Certificate of Incorporation, these By-Laws, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board* in the management of the business and affairs of [the Corporation, and] *NASD Regulation to the extent permitted by law and not inconsistent with the Delegation Plan. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee,* may authorize the seal of [the Corporation] *NASD Regulation* to be affixed to all papers that may require it.

(c) Except as otherwise permitted by applicable law, no [such] committee shall have the power or authority *of the Board* with regard to: amending the *Restated* Certificate of Incorporation or the By-Laws of [the Corporation,] *NASD Regulation;* adopting an agreement of merger or consolidation; recommending to the [stockholders] *stockholder* the sale, lease, or exchange of all or substantially all [the Corporation's] *NASD Regulation's* property and assets; or recommending to the [stockholders] *stockholder* a dissolution of [the Corporation] *NASD Regulation* or a revocation of a dissolution. Unless the resolution of the Board [of Directors] expressly so provides, no [such] committee shall have the power or authority to authorize the issuance of stock.

[(c)] *(d)* Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its proceedings and report the same to the Board [of Directors] when required.

[(d)] *(e)* Unless otherwise provided by the Board [of Directors, a majority of any such committee], *a majority of committee, excluding the President if the President is a member of the committee,* shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(f) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of NASD Regulation between meetings of the Board, and which may authorize the seal of NASD Regulation to be affixed to all papers that may require it. The Executive Committee shall be composed of at least seven and not more than nine Directors, a majority of whom shall be Non-Industry Directors (including at least one Public Director). In the event that the Executive Committee shall consist of nine members, at least two shall be Public Directors. The President of NASD Regulation shall be a member of the Executive Committee.

(g) The Board may appoint a Finance Committee. The Finance Committee shall be composed of eight or more Directors. The President of NASD Regulation shall serve as a member of the Committee, and the Vice Chair of the Board shall be the Committee Chair. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of NASD Regulation, including recommendations for NASD Regulation's annual operating and capital budgets and proposed changes to the rates and fees charged by NASD Regulation.

(h) The Board may appoint a National Business Conduct Committee. The National Business Conduct Committee shall be composed of at least eight Directors equally balanced between Industry and Non-Industry Directors (including at least two Public Directors). If at any time there shall be an odd number of committee members, a majority of the members shall be Non-Industry Directors. Each National Business Conduct Committee member shall be elected to serve a one-year term. The National Business Conduct Committee may be authorized and directed to act for the Board in a manner consistent with these By-Laws, the Rules of the Association, and the Delegation Plan with respect to: (1) An appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; and (6) such other proceedings or actions authorized by the Rules of the Association.

(i) Upon request, each prospective committee member who is not a Director shall provide to the Secretary of the NASD such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member, and the Secretary of the NASD shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this Section at least annually and upon request of the Secretary of the NASD, and shall report immediately to the Secretary of the NASD any change in such classification.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. [3.12] *4.15* (a) [No member of the Board of Directors or of any committee of the Corporation shall] *A Director or a member of any committee shall not* directly or indirectly participate in any adjudication of the interests of any party [that would at the same time substantially affect his interest or the interests of any person in whom he is directly or indirectly interested] *if that Director or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned*. In any such case, the [member shall disqualify himself or shall be disqualified by the Chairman of the Board or Committee] *Director or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association*.

(b) No contract or transaction between [the Corporation] *NASD Regulation* and one or more of its [directors] *Directors* or officers, or between [the Corporation] *NASD Regulation* and any other corporation, partnership, association, or other organization in which one or more of its [directors] *Directors* or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason[, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or the committee thereof which] *if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith* authorizes the contract or transaction[, or solely because his, her, or their votes are counted for such purposes if: (i) the material facts pertaining to such director's or officer's relationship or interest and] *by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after* the contract or transaction [are disclosed or are known to the Board of Directors or the committee, and the Board] *is entered into, and the Board* or committee in good faith [authorizes] *ratifies* the contract or transaction by the affirmative vote of a majority of the disinterested [directors, even though the disinterested directors be less than a quorum; or (ii)] *Directors; or (iii)* the material facts pertaining to the [director's] *Director's* or officer's relationship or interest and the contract or transaction are disclosed or are known to the [stockholders] *stockholder* entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the [stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors] *stockholder. Only disinterested Directors* may be counted in determining the presence of a quorum at *the portion of* a meeting of the Board [of Directors,] or of a committee that authorizes the contract or transaction.

Action Without Meeting

Sec. [3.14]*4.16* Any action required or permitted to be taken at [any] *a* meeting of the Board [of Directors or any] *or of a* committee [thereof] may be taken without a meeting if all *Directors or all* members of [the Board of Directors or] such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board [of Directors or such] *or the* committee.

Article V

Compensation

Compensation of Board and Committee Members

Sec. [4.6]*5.1* The Board [of Directors] may provide for reasonable compensation of the [Chairman] *Chair* of the Board, the Directors, and the members of any committee of the Board or any District Committee [from the

Corporation]. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of [the Corporation] *NASD Regulation*.

[Article V

Indemnification

Indemnification of Directors, Officers, Employees and Agents Right to Indemnification

Sec. 5.1 The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a ''proceeding''), by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans (an ''indemnitee''), against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such indemnitee, notwithstanding the foregoing, but subject to Section 5.3 hereof, the corporation shall be required to indemnify an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if the initiation of such proceeding (or part thereof) by the indemnitee was authorized by the Board of Directors.]

[Payment of Expenses

Sec. 5.2 The corporation shall pay the expenses (including attorneys' fees) incurred by the persons set forth in Section 5.1 in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article or otherwise.]

[Nonexclusivity of Rights

Sec. 5.3 The rights conferred on any person by this Article shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.]

[Other Indemnification

Sec. 5.4 The corporation's obligation, if any, to indemnify or advance expenses to any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise or nonprofit entity.]

[Amendment or Repeal

Sec. 5.5 Any repeal or modification of the foregoing provisions of this Article shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.]

[Indemnification Insurance

Sec. 5.6 The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise, or nonprofit entity against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this section.]

Article VI

Regional Nominating Committees

Establishment of Regions

Sec. 6.1 The Board shall establish boundaries for geographical regions within the United States for the purpose of nominating candidates for Industry Directors to the National Nominating Committee to represent such regions on the Board pursuant to Article IV, Sections 4.3(a) and 4.4(b). The Board may make changes from time to time in the number or boundaries of the regions as the Board deems necessary or appropriate. The Board shall prescribe such policies and procedures as are necessary or appropriate to address the implementation of a new region configuration in the event of a change in the number or boundaries of the regions.

Composition

Sec. 6.2 (a) A Regional Nominating Committee shall be elected for each region designated by the Board under Section 6.1. Each District Nominating Committee for a district located in the region shall elect two District Committee members from the district to serve on the Regional Nominating Committee. If a region shall consist of one district, the District Nominating Committee for the district shall elect four District Committee members from the district to serve on the Regional Nominating Committee.

(b) In the event of the refusal, failure, neglect, or inability of a member of a Regional Nominating Committee to discharge his or her duties, or for any cause affecting the best interests of NASD Regulation, the sufficiency of which shall be decided by the Regional Nominating Committee, the Regional Nominating Committee may remove the member by the affirmative vote of two-thirds of the members of the Regional Nominating Committee then in office and declare the member's position vacant. The Regional Nominating Committee shall notify the Regional Nominating Committee member of his or her removal within seven days after the vote. The member's position shall be filled pursuant to Section 6.4. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified in writing of the removal. The Board may affirm, reverse, or modify the determination of the Regional Nominating Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the Regional Nominating Committee.

Term of Office

Sec. 6.3 Each regularly elected member of a Regional Nominating Committee shall hold office for a term of one year, and until a successor is elected and qualified, or until death, resignation, or removal. A member of a Regional Nominating Committee may not serve more than three consecutive terms.

Filling of Vacancies

Sec. 6.4 In the event of a vacancy on a Regional Nominating Committee caused by the departure of a member prior to the expiration of the member's term of office, the District Nominating Committee who elected the member shall appoint by majority vote another member of the District Committee to fill the vacancy. The appointment shall be effective until the next regularly

scheduled election occurs pursuant to this Article.

Meetings

Sec. 6.5 Meetings of a Regional Nominating Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as each Regional Nominating Committee in its discretion may determine. A quorum of a Regional Nominating Committee shall consist of a majority of its members, and any action taken by a majority at any meeting, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. Action by a Regional Nominating Committee may be taken by mail, telephonic, or telegraphic vote, in which case any action taken by a majority of the Committee shall constitute the action of the Committee. Action taken by telephonic vote shall be confirmed in writing at a regular meeting of the Regional Nominating Committee.

Election of Officers

Sec. 6.6 Following the annual election of members of the Regional Nominating Committees pursuant to this Article, each Regional Nominating Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws.

Expenses

Sec. 6.7 Funds to meet the regular expenses of each Regional Nominating Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Notice to Chair

Sec. 6.8 On or before August 1 of each year, the Secretary of NASD Regulation shall send a written notice to the Chair of a Regional Nominating Committee if the term of office of the Industry Director representing the region shall expire in the next calendar year. The notice shall describe the nomination procedures for filling the office.

Solicitation of Candidates

Sec. 6.9 NASD Regulation staff shall provide the Regional Nominating Committee with a description of the NASD membership in the region. The Regional Nominating Committee shall identify and solicit candidates to nominate to the National Nominating Committee for the Industry Director vacancy on the Board. The Regional Nominating Committee Chair shall send a written notice of the upcoming vacancy to the Executive Representative and each branch office of the NASD members in the region and request that such NASD members submit names of candidates to the Regional Nominating Committee or the Secretary of NASD Regulation for consideration.

Secretary's Notice to NASD Members

Sec. 6.10 The Secretary of NASD Regulation shall send a written notice to NASD members in the region describing the nomination procedures.

Regional Nominating Committee Candidate

Sec. 6.11 The Regional Nominating Committee shall review the background of the candidates and the description of the NASD membership provided by NASD Regulation staff and shall propose one or more candidates for nomination to the National Nominating Committee. In proposing a candidate for nomination, the Regional Nominating Committee shall endeavor to secure appropriate and fair representation of the region.

Notice of Regional Nominating Committee Candidate

Sec. 6.12 The Regional Nominating Committee shall send to the Executive Representatives and branch offices of the NASD members in the region a written notice of the name of the candidate or candidates the Regional Nominating Committee proposes for nomination to the National Nominating Committee.

Designation of Additional Candidates

Sec. 6.13 If an officer, director, or employee of an NASD member in the region is not proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she shall send a written notice to the Regional Nominating Committee Chair or the Secretary of NASD Regulation within 14 calendar days after the mailing date of the Regional Nominating Committee's notice under Section 6.12. The Regional Nominating Committee Chair or the Secretary of NASD Regulation shall make a written record of the time and date of the receipt of the officer's, director's, or employee's notice. The officer, director, or employee shall be designated as an ''additional candidate.''

Communication of Views

Sec. 6.14 If the Regional Nominating Committee proposes more than one candidate for nomination, or if an additional candidate is designated pursuant to Section 6.13, NASD Regulation, the Board, the Regional Nominating Committee, any other committee, and NASD Regulation staff shall not take a position publicly or with an NASD member or person associated with or employed by an NASD member with respect to any candidate for the nomination. A Director or a member of the Regional Nominating Committee or any other committee may communicate his or her views with respect to any candidate for the nomination if the Director or committee member acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of NASD Regulation, the Board, the Regional Nominating Committee, or any other committee. Except as provided herein, any candidate and his or her representatives may communicate support for the candidate to an NASD member or a person associated with or employed by an NASD member.

List of NASD Members Eligible to Vote

Sec. 6.15 (a) The Secretary of NASD Regulation shall mail a list of all NASD members eligible to vote in the region and their Executive Representatives to the additional candidate immediately following receipt of the additional candidate's notice by the Regional Nominating Committee Chair or the Secretary of NASD Regulation.

(b) An NASD member that has its principal office, one or more registered branch offices, or a principal office and one or more registered branch offices in the region shall be eligible to cast one vote on the nomination through the NASD member's Executive Representative.

Requirement for Petition Supporting Additional Candidate

Sec. 6.16 An additional candidate shall be proposed for nomination if a petition signed by at least ten percent of the NASD members eligible to vote in the region is filed with the Regional Nominating Committee within 30 calendar days after the date of mailing of the list to the additional candidate pursuant to Section 6.15. Only an Executive Representative may sign a petition on behalf of an NASD member.

Uncontested Nomination

Sec. 6.17 If the Regional Nominating Committee proposes one candidate for nomination and no additional candidate is proposed for nomination pursuant to Section 6.16, the Regional Nominating Committee shall nominate its candidate to the National Nominating Committee.

Notice of Contested Nomination

Sec. 6.18 If the Regional Nominating Committee proposes more than one candidate for nomination, or if an additional candidate is proposed for nomination pursuant to Section 6.16, the Regional Nominating Committee shall send a written notice to the Executive Representatives of the NASD members eligible to vote in the region announcing the names of the candidates and describing contested nomination procedures.

Administrative Support

Sec. 6.19 The Secretary of NASD Regulation shall designate a district office in the region to provide administrative support to all candidates by sending to NASD members eligible to vote in the region up to two mailings of materials prepared by the candidates. NASD Regulation shall pay the postage for the mailings. Each candidate may prepare material for the mailing on his or her personal stationery, and the material shall state that it represents the opinion of the candidate. A candidate proposed for nomination by the Regional Nominating Committee may identify himself or herself as such in his or her materials. Any candidate may send additional mailings to NASD members at the candidate's own expense. Except as provided in this Article, NASD Regulation, the Board, the Regional Nominating Committee, any other committee, and NASD Regulation staff shall not provide any other administrative support to a candidate for the nomination or any candidate in a contested election conducted under Article VII of the NASD By-Laws.

Ballots

Sec. 6.20 With the assistance of the Secretary of NASD Regulation and an Independent Agent, the Regional Nominating Committee shall prepare a ballot with the name or names of its candidate and any additional candidates proposed for nomination pursuant to Section 6.16. The ballot shall list the candidates in alphabetical order and shall identify the candidate or candidates proposed for nomination by the Regional Nominating Committee. The Regional Nominating Committee shall send a ballot to the Executive Representative of each NASD member eligible to vote in the region. Instructions on the ballot shall direct the Executive Representative to return the ballot to the Independent Agent and state that the ballot envelope must be postmarked on or before the return date specified on the ballot. The return date specified on the ballot shall be at least 30 but not more than 45 days after the date of mailing of the ballot.

Vote Qualification List

Sec. 6.21 Eligibility to vote on a regional nomination shall be based on the NASD's membership records as of a date designated by the Secretary of NASD Regulation that is not more than 30 days before the date of mailing of the ballot. The Secretary of NASD Regulation shall prepare a list of NASD members eligible to vote in the region and their Executive Representatives, which shall be used for vote qualification purposes, and shall provide the list to the candidates.

Ballots Returned As Undelivered

Sec. 6.22 The Independent Agent shall open any ballot envelope returned undelivered and shall determine whether it was sent to the NASD member's address of record. If incorrectly addressed, the Independent Agent shall send a new ballot to the NASD member's address of record.

General Procedures for Qualification and Accounting of Ballots

Sec. 6.23 After the voting period, on a date or dates designated by the Secretary of NASD Regulation, the qualification and accounting of ballots shall take place. The date or dates designated shall be not later than 14 calendar days after the return date specified on the ballot pursuant to Section 6.20. Candidates and their representatives shall be allowed to observe the qualification and accounting of ballots. Representation for each candidate shall be limited to two individuals. The Independent Agent shall bring to a specified district office in the region all ballots timely received. Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall open and count the ballots. For ballot qualification purposes, the Independent Agent shall identify to the candidates the NASD members that timely returned ballots and inform the candidates of the Independent Agent's determination of whether or not a ballot is qualified for voting purposes. The determination shall be based on a comparison of ballots received against the list of NASD members eligible to vote in the region and their Executive Representatives as prepared by the Secretary of NASD Regulation under Section 6.21. The Secretary of NASD Regulation or the Secretary's designee shall make the final determination of the qualification of a ballot. Upon the qualification of a ballot, the Independent Agent shall record the vote indicated on the ballot. The candidates and their representatives shall not be allowed to see the vote of an NASD member.

Ballots Set Aside

Sec. 6.24 The Independent Agent shall set aside a ballot if: (a) the ballot is received from an NASD member eligible to vote in the region and the ballot is signed by a person who is not the Executive Representative listed on the vote qualification list prepared under Section 6.21, and the Secretary of the NASD has not received proper notice of a change in Executive Representative pursuant to the NASD By-Laws; or (b) two or more properly executed ballots are received from an NASD member eligible to vote in the region. If the Independent Agent determines that the ballots set aside are material to the outcome of the nomination, the Secretary of NASD Regulation and the Independent Agent shall make reasonable efforts to resolve each ballot set aside. With respect to a ballot not signed by an Executive Representative of record, the Secretary of NASD Regulation shall contact the NASD member to request that the NASD member send proper written notice of any change in Executive Representative by facsimile so that the ballot may be counted. With respect to multiple ballots from an NASD member, the Independent Agent shall contact the Executive Representative of the NASD member to obtain the NASD member's vote. The Secretary of NASD Regulation shall keep a list of NASD members that reported their ballot was lost or not received and that were provided with a duplicate ballot. The Secretary of NASD Regulation shall provide the list to the Independent Agent and, upon request, to the candidates.

Invalid Ballots

Sec. 6.25 The Independent Agent shall declare a ballot invalid if one or more of the following conditions exists:

(a) the ballot is not signed by the Executive Representative (unless Section 6.24 applies);

(b) a vote is not indicated on the ballot; or

(c) a vote for more than one candidate is indicated on the ballot.

Certification of Nomination

Sec. 6.26 Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall count the votes received for each candidate. The candidate receiving the largest number of votes cast in the region shall be declared the nominee from the region and the Regional

Nominating Committee shall nominate such candidate to the National Nominating Committee. In the event of a tie, there shall be a run-off vote for the nomination. The Regional Nominating Committee shall send a written certification of the nomination results to the National Nominating Committee. The certification shall state the number of votes received by each candidate and the number of ballots set aside.

Rejection of Regional Nominating Committee Nominee

Sec. 6.27 If the National Nominating Committee rejects the nominee of the Regional Nominating Committee, the Regional Nominating Committee shall repeat the nomination procedures in Section 6.9 through Section 6.26.

Extension of Time and Additional Procedures

Sec. 6.28 The Secretary of NASD Regulation may extend a time period under this Article for good cause shown. In extraordinary circumstances, the Secretary of NASD Regulation, with the approval of the Executive Committee or the Board, may adopt additional procedures for nominations under this Article.

Article VII

Officers, Agents, and Employees

Officers

Sec. [4.1]*7.1* The Board [of Directors] shall elect the officers of [the Corporation] *NASD Regulation,* which shall include a President, *a Secretary,* and such [for] other executive or administrative officers as it shall deem necessary or advisable, including, but not limited to: Executive Vice [-]President, Senior Vice [-]President, Vice [-]President, General Counsel, [Secretary] and Treasurer of [the Corporation] *NASD Regulation.* All such officers shall have such titles, powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board [of Directors]. The terms of office of such officers shall be at the pleasure of the Board [of Directors], which by affirmative vote of a majority of the [members] *Board,* may remove any such officer at any time. One person may hold the offices and perform the duties of any two or more of said offices, except the offices and duties of President and Vice President or of President and Secretary. None of the officers, except the President, need be [directors of the Corporation] *Directors of NASD Regulation.*

Absence of the President

Sec. 7.2 In the case of the absence or inability to act of the President of NASD Regulation, or in the case of a vacancy in such office, the Board may appoint its Chair or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the President.

Agents and Employees

Sec. [4.2]*7.3* In addition to the officers, [the Corporation] *NASD Regulation* may employ such agents and employees as the Board [of Directors] may deem necessary or advisable, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board [of Directors], the President, or any officer designated by the Board [of Directors,] may from time to time determine. [The Board of Directors at any time may appoint and remove, or may delegate to any principal officer the power to appoint and to remove, any agent or employee of the Corporation.] *Agents and employees of NASD Regulation shall be under the supervision and control of the officers of the NASD Regulation, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.*

Delegation of Duties of Officers

Sec. [4.3]*7.4* The Board [of Directors] may delegate the duties and powers of any officer of [the Corporation] *NASD Regulation* to any other officer or to any [director] *Director* for a specified period of time and for any reason that the Board [of Directors] may deem sufficient.

Resignation and Removal of Officers

Sec. [4.4]*7.5* (a) Any officer may resign at any time upon written notice of resignation to the Board [of Directors], the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer[, agent or employee of the Corporation] *of NASD Regulation* may be removed, with or without cause, by resolution adopted by a majority of the [directors] *Directors* then in office at any regular or special meeting of the Board [of Directors] or by a written consent signed by all of the [directors] *Directors* then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, [agent, or employee,] if any, with [the Corporation] *NASD Regulation.*

Bond

Sec. [4.5]*7.6* [The Corporation] *NASD Regulation* may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

Article VIII

District Committees and District Nominating Committees

Establishment of Districts

Sec. 8.1 The Board shall establish boundaries for 11 districts within the United States to assist NASD Regulation in administering its affairs in a manner that is consistent with applicable law, the Restated Certificate of Incorporation, these By-Laws, the Delegation Plan, and the Rules of the Association. The Board may make changes from time to time in the number or boundaries of the districts as it deems necessary or appropriate. The Board shall prescribe such policies and procedures as are necessary or appropriate to address the implementation of a new district configuration in the event of a change in the number or boundaries of the districts.

Composition of District Committees

Sec. 8.2 (a) A district created under Section 8.1 shall elect a District Committee pursuant to this Article. A District Committee shall be composed of not more than 12 members, unless otherwise provided by resolution of the Board. A District Committee shall determine the number of its members to be elected each year. Members of the District Committees shall serve as panelists in disciplinary proceedings in accordance with the Rules of the Association. The District Committees shall consider and recommend policies and rule changes to the Board. The District Committees shall endeavor, in such manner as they deem appropriate, to educate NASD members and other brokers and dealers in their respective districts as to the objects, purposes, and work of the NASD, NASD Regulation, and Nasdaq in order to foster NASD members' interest and cooperation.

(b) In the event of the refusal, failure, neglect, or inability of a member of a District Committee to discharge his or her duties, or for any cause affecting the best interests of NASD Regulation, the sufficiency of which shall be decided by the District Committee, the District Committee may remove the member by the affirmative vote of two-thirds of the members of the District Committee then in office and declare the member's position vacant. The District Committee shall notify the District Committee member of his or her removal within

seven days after the vote. The member's position shall be filled pursuant to Section 8.4. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified of the removal. The Board may affirm, reverse, or modify the determination of the District Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Committee.

Term of Office of District Committee Members

Sec. 8.3 Each regularly elected member of a District Committee shall hold office for a term of three years, and until a successor is elected and qualified, or until death, resignation, or removal. A member of a District Committee may not serve more than two consecutive terms.

Filling of Vacancies on District Committees

Sec. 8.4 In the event of a vacancy on a District Committee caused by the departure of a Committee member prior to the expiration of the member's term of office, the District Committee shall appoint by majority vote a representative of an NASD member eligible to vote in the district to fill the vacancy. The appointment shall be effective until the next regularly scheduled election occurs. Following the election, the newly elected Committee member shall serve only the duration of the departed Committee member's term.

Meetings of District Committees

Sec. 8.5 Meetings of a District Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as each District Committee in its discretion may determine. A quorum of a District Committee shall consist of a majority of its members, and any action taken by a majority at any meeting at which a quorum is present, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. Action by a District Committee may be taken by mail, telephonic, or telegraphic vote, in which case any action taken by a majority of the Committee shall constitute the action of the Committee. Any action taken by telephonic vote shall be confirmed in writing at a regular meeting of the District Committee.

Election of District Officers

Sec. 8.6 Following the annual election of members of the District Committees pursuant to this Article, each District Committee shall elect from its members a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws, and shall prescribe their powers and duties.

Advisory Council

Sec. 8.7 (a) The Chairs of the District Committees, elected pursuant to Section 8.6, shall constitute an Advisory Council to the Board.

(b) The Advisory Council shall be advised of and entitled to attend such meetings of the Board as the Board may designate for such Advisory Council's attendance, and the Board shall designate at least one such meeting annually. The Advisory Council shall not be entitled to vote at meetings of the Board.

Expenses of District Committees

Sec. 8.8 Funds to meet the regular expenses of each District Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Composition of District Nominating Committees

Sec. 8.9 (a) Each district created under Section 8.1 shall elect a District Nominating Committee pursuant to this Article. A District Nominating Committee shall consist of five members, unless the Board by resolution increases a District Nominating Committee to a larger number. Members of a District Nominating Committee shall be representatives of NASD members eligible to vote in the district, but shall not be members of the District Committee. A District Nominating Committee shall include a majority of persons who previously have served on a District Committee or who are current or former Directors or current or former Governors of the NASD Board, and shall include at least one current or former Director or Governor.

(b) In the event of the refusal, failure, neglect, or inability of a member of a District Nominating Committee to discharge his or her duties, or for any cause affecting the best interests of NASD Regulation, the sufficiency of which shall be decided by the District Nominating Committee, the District Nominating Committee may remove the member by the affirmative vote of two-thirds of the members of the District Nominating Committee then in office and declare the member's position vacant. The member's position shall be filled pursuant to Section 8.11. The District Nominating Committee shall notify the District Nominating Committee member of his or her removal within seven days after the vote. A member who is removed may submit a written appeal of the removal to the Board within 30 days after the date he or she is notified in writing of the removal. The Board may affirm, reverse, or modify the determination of the District Nominating Committee. A vote of a majority of the Directors then in office shall be required to reverse or modify the action of the District Nominating Committee.

Term of Office of District Nominating Committee Members

Sec. 8.10 Each regularly elected member of a District Nominating Committee shall hold office for a term of one year, and until a successor is elected and qualified, or until death, resignation, or removal. A member of a District Nominating Committee may not serve more than two consecutive terms.

Filling of Vacancies for District Nominating Committees

Sec. 8.11 In the event of a vacancy on a District Nominating Committee caused by the departure of a Committee member prior to the expiration of the member's term of office, the District Nominating Committee shall appoint by majority vote a representative of an NASD member eligible to vote in the district to fill the vacancy. The appointment shall be effective until the next regularly scheduled election occurs pursuant to this Article.

Meetings of District Nominating Committees

Sec. 8.12 Meetings of a District Nominating Committee shall be held at such times and places, upon such notice, and in accordance with such procedures as each District Nominating Committee in its discretion may determine. A quorum of a District Nominating Committee shall consist of a majority of its members, and any action taken by a majority of the entire Committee at any meeting, except as otherwise provided in these By-Laws, shall constitute the action of the Committee. Action by a District Nominating Committee may be taken by mail, telephonic, or telegraphic vote, in which case any action taken by a majority of the Committee shall constitute the action of the Committee. Action taken by telephonic vote shall be confirmed in writing at a regular meeting of the District Nominating Committee.

Election of District Nominating Committee Officers

Sec. 8.13 Following the annual election of members of the District Nominating Committees pursuant to this Article, each District Nominating Committee shall elect from its members

a Chair and such other officers as it deems necessary for the proper performance of its duties under these By-Laws, and shall prescribe their powers and duties.

Expenses of District Nominating Committees

Sec. 8.14 Funds to meet the regular expenses of each District Nominating Committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Notice to Chair

Sec. 8.15 On or before May 1 of each year, the Secretary of NASD Regulation shall send a written notice to the Chair of each District Nominating Committee and each District Committee identifying the members of the District Nominating Committee and the District Committee whose terms of office shall expire in the next calendar year. The notice shall describe election procedures for filling the offices.

Solicitation of Candidates

Sec. 8.16 NASD Regulation staff shall provide the District Nominating Committee with a description of the NASD membership in the region. The District Nominating Committee shall identify and solicit candidates to nominate for the vacancies on the District Committee and the District Nominating Committee. The District Nominating Committee Chair shall send a written notice of the upcoming election to the Executive Representative and each branch office of the NASD members in the district and request that such NASD members submit names of candidates to the District Nominating Committee or the District Director for consideration.

Secretary's Notice to NASD Members

Sec. 8.17 The Secretary of NASD Regulation shall send a written notice to NASD members in the district describing the election procedures.

District Nominating Committee Slate

Sec. 8.18 (a) The District Nominating Committee shall review the background of proposed candidates and the description of the NASD membership provided by NASD Regulation staff and shall nominate a slate of candidates for the election. The slate shall include one or more candidates for each vacancy. In nominating candidates for the office of member of the District Committee and the office of member of the District Nominating Committee, the District Nominating Committee shall endeavor to secure appropriate and fair representation on the District Committee and on the District Nominating Committee of the various sections of the district and all classes and types of NASD members engaged in the investment banking or securities business within the district. In nominating candidates for the office of member of the District Nominating Committee, a District Nominating Committee shall assure that the composition of the District Nominating Committee meets the standards in Section 8.9(a).

(b) A District Nominating Committee shall not nominate an incumbent member of the District Committee to succeed himself or herself unless the District Nominating Committee first takes appropriate action by a written ballot of the entire NASD membership within the district to ascertain that such nomination is acceptable to a majority of the NASD members in the district, unless the incumbent member of the District Committee is serving pursuant to the provisions of Section 8.4. A District Nominating Committee may not nominate more than two incumbent members of the District Nominating Committee to succeed themselves.

Certification of Nomination

Sec. 8.19 The District Nominating Committee shall certify to the District Committee each candidate nominated by the District Nominating Committee. Within five calendar days after the certification, the District Committee shall send to the Executive Representatives of NASD members in the district a copy of the certification.

Designation of Additional Candidates

Sec. 8.20 If an officer, director, or employee of an NASD member is not nominated by the District Nominating Committee and wants to be considered for a vacancy on the District Committee or the District Nominating Committee, he or she shall send a written notice to the District Director within 14 calendar days after the mailing date of the certification to the Executive Representatives pursuant to Section 8.19. The District Director shall make a written record of the time and date of the receipt of the officer's, director's, or employee's notice. The officer, director, or employee shall be designated as an ''additional candidate.''

Communication of Support

Sec. 8.21 If the District Nominating Committee nominates more than one candidate for a vacancy, or if an additional candidate is designated pursuant to Section 8.20, NASD Regulation, the Board, the District Nominating Committee, any other committee, and NASD Regulation staff shall not take any position publicly or with an NASD member or person associated with or employed by an NASD member with respect to any candidate. A Director or a member of the Regional Nominating Committee or any other committee may communicate his or her views with respect to any candidate if the Director or committee member acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of NASD Regulation, the NASD Regulation Board, the Regional Nominating Committee, or any other committee. Except as provided herein, any candidate and his or her representatives may communicate support for the candidate to an NASD member or person associated with or employed by an NASD member.

List of NASD Members Eligible to Vote

Sec. 8.22 (a) The Secretary of NASD Regulation shall prepare a list of all NASD members eligible to vote in the district and their Executive Representatives to the additional candidate immediately following receipt of the additional candidate's notice by the District Director.

(b) An NASD member that has its principal office, one or more registered branch offices, or its principal office and one or more registered branch offices in the district shall be eligible to cast one vote through the NASD member's Executive Representative for each vacancy to be filled in the election.

Requirement for Petition Supporting Additional Candidate

Sec. 8.23 An additional candidate shall be nominated if a petition signed by at least ten percent of the NASD members eligible to vote in the district is filed with the District Nominating Committee within 30 calendar days after the date of mailing of the list to the additional candidate pursuant to Section 8.22. Only an Executive Representative may sign a petition on behalf of an NASD member.

Uncontested Election

Sec. 8.24 If the District Nominating Committee nominates one candidate for each vacancy and no additional candidate is nominated pursuant to Section 8.23, the candidates nominated by the District Nominating Committee shall be considered duly elected and the District Committee shall certify the election to the Board.

Notice of Contested Election

Sec. 8.25 If the District Nominating Committee nominates more than one

candidate for a vacancy, or if an additional candidate is nominated pursuant to Section 8.23, the election shall be considered a contested election. The District Committee shall send a notice to the Executive Representatives of the NASD members eligible to vote in the district announcing the names of the candidates and describing contested election procedures.

Administrative Support

Sec. 8.26 The District Office shall provide administrative support to all candidates by sending mailings to NASD members eligible to vote in the district up to two mailings of materials prepared by the candidates. NASD Regulation shall pay the postage for the mailings. Each candidate may prepare material for the mailing on his or her personal stationery, and the material shall state that it represents the opinion of the candidate. Candidates nominated by the District Nominating Committee may identify themselves as such in their materials. Any candidate may send additional mailings at the candidate's own expense. Except as provided in this Article, NASD Regulation, the Board, the Regional Nominating Committee, any other committee, and NASD Regulation staff shall not provide any other administrative support to a candidate in the election.

Ballots

Sec. 8.27 With the assistance of the Secretary of NASD Regulation and an Independent Agent, the District Nominating Committee shall prepare a ballot with the names of the District Nominating Committee's candidates and any additional candidate nominated pursuant to Section 8.23. The ballot shall list the candidates in alphabetical order and shall identify the candidates nominated by the District Nominating Committee. The District Nominating Committee shall send a ballot to the Executive Representative of each NASD member eligible to vote in the district. Instructions on the ballot shall direct the Executive Representative to return the ballot to the Independent Agent and state that the ballot envelope must be postmarked on or before the return date specified on the ballot. The return date specified on the ballot shall be at least 30 but not more than 45 days after the date of mailing of the ballot.

Vote Qualification List

Sec. 8.28 Eligibility to vote in a district election shall be based on the NASD's membership records as of a date selected by the Secretary of NASD Regulation that is not more than 30 days before the date of mailing of the ballot. The Secretary of NASD Regulation shall prepare a list of NASD members eligible to vote in the district and their Executive Representatives, which shall be used for vote qualification purposes, and shall provide the list to the candidates.

Ballots Returned As Undelivered

Sec. 8.29 The Independent Agent shall open any ballot envelope returned undelivered and shall determine whether it was sent to the NASD member's address of record. If incorrectly addressed, the Independent Agent shall send a new ballot to the address of record.

General Procedures for Qualification and Accounting of Ballots

Sec. 8.30 After the voting period, on a date or dates designated by the Secretary of NASD Regulation, the qualification and accounting of ballots shall take place. The date or dates designated shall be not later than 14 calendar days after the return date specified on the ballot pursuant to Section 8.27. Candidates and their representatives shall be allowed to observe the qualification and accounting of ballots. Representation for each candidate shall be limited to two individuals. The Independent Agent shall bring to the district office all ballots timely received. Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall open and count the ballots. For ballot qualification purposes, the Independent Agent shall identify to the candidates the NASD members that timely returned ballots and inform the candidates of the Independent Agent's determination of whether or not a ballot is qualified for voting purposes. The determination shall be based on a comparison of ballots received against the list of NASD members eligible to vote in the district and their Executive Representatives as prepared by the Secretary of NASD Regulation pursuant to Section 8.28. The Secretary of NASD Regulation or the Secretary's designee shall make the final determination of the qualification of a ballot. Upon the qualification of a ballot, the Independent Agent shall record the vote indicated on the ballot. The candidates and their representatives shall not be allowed to see the vote of an NASD member.

Ballots Set Aside

Sec. 8.31 The Independent Agent shall set aside a ballot if: (a) the ballot is received from an NASD member eligible to vote in the district and the ballot is signed by a person who is not the Executive Representative listed on the vote qualification list prepared under Section 8.28, and the Secretary of the NASD has not received proper notice of a change in Executive Representative pursuant to the NASD By-Laws; or (b) if two or more properly executed ballots are received from an NASD member eligible to vote in the district. If the Independent Agent determines that the ballots set aside are material to the outcome of the election, the Secretary of NASD Regulation and the Independent Agent shall make reasonable efforts to resolve each ballot set aside. With respect to a ballot not signed by an Executive Representative of record, the Secretary of NASD Regulation shall contact the NASD member to request that the NASD member send written notice of any change in Executive Representative by facsimile so that the ballot may be counted. With respect to multiple ballots from an NASD member, the Independent Agent shall contact the Executive Representative of the NASD member to obtain the NASD member's vote. The Secretary of NASD Regulation shall keep a list of NASD members that reported their ballot was lost or not received and that were provided with a duplicate ballot. The Secretary of NASD Regulation shall provide the list to the Independent Agent and, upon request, to the candidates.

Invalid Ballots

Sec. 8.32 The Independent Agent shall declare a ballot invalid if one or more of the following conditions exist:

(a) the ballot is not signed by the Executive Representative (unless Section 8.31 applies);

(b) a vote is not indicated on the ballot; or

(c) the ballot indicates votes for more candidates than there are vacancies for an office.

Certification of Election

Sec. 8.33 Under the direction of the Secretary of NASD Regulation or the Secretary's designee, the Independent Agent shall count the votes received for each candidate in a district. The candidates for the office of member of the District Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of candidates declared elected equals the number of vacancies on the District Committee. The candidates for the office of member of the District Nominating Committee receiving the largest number of votes cast in the district for the office shall be declared elected such that the number of

candidates declared elected equals the number of vacancies on the District Nominating Committee. In the event of a tie, there shall be a run-off election. Each District Committee shall send a written certification of the election results to the Board. The certification shall state the number of votes received by each candidate and the number of ballots set aside.

Extensions of Time and Additional Procedures

Sec. 8.34 The Secretary of NASD Regulation may extend a time period under this Article for good cause shown. In extraordinary circumstances, the Secretary of NASD Regulation, with the approval of the Executive Committee or the Board, may adopt additional procedures for elections under this Article.

Article IX

Indemnification

Indemnification of Directors, Officers, Employees, and Agents

Sec. 9.1 (a) NASD Regulation shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of NASD Regulation, or is or was a Director, officer, or employee of NASD Regulation who is or was serving at the request of NASD Regulation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of NASD Regulation) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of NASD Regulation to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) NASD Regulation shall advance expenses (including attorneys' fees and disbursements) to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) NASD Regulation may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of NASD Regulation or is or was an agent of NASD Regulation who is or was serving at the request of NASD Regulation as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) NASD Regulation may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by NASD Regulation to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) the person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of NASD Regulation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to NASD Regulation.

(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), NASD Regulation shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) NASD Regulation's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the foregoing provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by NASD Regulation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, NASD Regulation shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

Indemnification Insurance

Sec. 9.2 NASD Regulation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee,

or agent of NASD Regulation, or is or was serving at the request of NASD Regulation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not NASD Regulation would have the power to indemnify such person against such liability hereunder.

Article X

Capital Stock

Sole Stockholder

Sec. 10.1 The NASD shall be the sole stockholder of the capital stock of NASD Regulation.

Certificates

Sec. [6.1]*10.2* [Each]*The* stockholder [in the Corporation] shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock in [the Corporation] *NASD Regulation* owned by [such] *the* stockholder.

Signatures

Sec. [6.2]*10.3* (a) Certificates for shares of capital stock of [the Corporation] *NASD Regulation* shall be signed in the name of [the Corporation] *NASD Regulation* by two officers with one being the Chair of the Board, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board [of Directors]. Such certificates may be sealed with the corporate [Seal] *seal* of [the Corporation] *NASD Regulation* or a facsimile thereof.

(b) If any such certificates are countersigned by a transfer agent other than [the Corporation] *NASD Regulation* or its employee, or by a registrar other than [the Corporation] *NASD Regulation* or its employee, any other signature on the certificate may be a facsimile. In [case] *the event that* any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall [have ceased] *cease* to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by [the Corporation] *NASD Regulation* with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Stock Ledger

Sec. [6.3]*10.3* (a) A record of all certificates for capital stock issued by [the Corporation] *NASD Regulation* shall be kept by the Secretary or any other officer, employee, or agent designated by the Board [of Directors]. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates that have been canceled, the date of cancellation thereof.

(b) [The Corporation] *NASD Regulation* shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. Except as otherwise required by applicable law, [the Corporation] *NASD Regulation* shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not [the Corporation] *NASD Regulation* shall have express or other notice thereof.

Transfers of Stock

Sec. [6.4]*10.4* (a) The Board [of Directors] may make such rules and regulations as it may deem expedient, not inconsistent with law, the *Restated* Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for [share] *shares of* capital stock of [the Corporation] *NASD Regulation*. The Board [of Directors] may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of [the Corporation] *NASD Regulation* only upon delivery to [the Corporation] *NASD Regulation* or its transfer agent of*:* (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing[,]*;* (ii) the certificate for the shares of capital stock being transferred[,]*;* and (iii) a written assignment of the shares of capital stock evidenced thereby.

Cancellation

Sec. [6.5]*10.5* Each certificate for capital stock surrendered to [the Corporation] *NASD Regulation* for exchange or transfer shall be cancelled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to [Sec. 6.6] *Section 10.6* until such existing certificate shall have been canceled.

Lost, Stolen, Destroyed, and Mutilated Certificates

Sec. [6.6]*10.6* In the event that any certificate for shares of capital stock of [the Corporation] *NASD Regulation* shall be mutilated, [the Corporation] *NASD Regulation* shall issue a new certificate in place of such mutilated certificate. In [case] *the event that* any such certificate shall be lost, stolen, or destroyed [the Corporation] *NASD Regulation* may, in the discretion of the Board [of Directors] or a committee [designated] *appointed* thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board [of Directors] or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or [his] *such owner's* representatives, to furnish to [the Corporation] *NASD Regulation* a bond with an acceptable surety or sureties and in such sum as [will] *shall* be sufficient to indemnify [the Corporation] *NASD Regulation* against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board [of Directors], it is proper to do so.

Fixing of Record Date

Sec. [6.7]*10.7 The Board may fix a record date in accordance with Delaware law.* [(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent or dissent to corporate action in writing without a meeting, or to exercise any rights with respect to any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, pursuant to and in accordance with Section 213 of the General Corporation Law of the State of Delaware. Only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or any adjournment thereof, or to give such consent or dissent, or to exercise such rights with respect to any such change, conversion or exchange of stock, or to

participate in any such action, notwithstanding the transfer of any stock on the books of the Corporation after any record date so fixed.]

[(b) If no record date is fixed by the Board of Directors:

(i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the date on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held;

(ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be at the close of business on the day on which the first written consent is expressed; and

(iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.]

[(c) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.]

Article XI

Miscellaneous Provisions

Corporate Seal

Sec. [7.1]*11.1* The seal of [the Corporation] *NASD Regulation* shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board [of Directors], the name of [the Corporation] *NASD Regulation*, the year of its incorporation, and the words ''Corporate Seal'' and ''Delaware['']*.*'' The seal may be used by causing it to be affixed or impressed, or a facsimile thereof may be reproduced or otherwise used in such manner as the Board [of Directors] may determine.

Fiscal Year

Sec. [7.2]*11.2* The fiscal year of [the Corporation] *NASD Regulation* shall begin *on* the [1st] *first* day of January in each year, or such other month as the Board [of Directors] may determine by resolution.

Waiver of Notice

Sec. [7.3]*11.3* (a) Whenever notice is required to be given by law, the *Restated* Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the [stockholders, directors] *stockholder, Directors,* or members of a committee of [directors] *Directors* need be specified in any written waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Execution of Instruments, Contracts, Etc.

Sec. [7.4]*11.4 (a)* All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of [the Corporation] *NASD Regulation* by such officer or officers or person or persons[,] as the Board [of Directors], or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board [of Directors], any committee given specific authority in the premises by the Board [of Directors], or any committee given authority to exercise generally the powers of the Board [of Directors] during intervals between meetings of the Board [of Directors], may authorize any officer, employee, or agent, in the name of and on behalf of [the Corporation] *NASD Regulation*, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of [the Corporation] *NASD Regulation* by any principal officer or subordinate officer of [the Corporation] *NASD Regulation*, or, to the extent designated for such purpose from time to time by the Board [of Directors], by an employee or agent of [the Corporation] *NASD Regulation.* Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Form of Records

Sec. [7.5]*11.5* Any records maintained by [the Corporation] *NASD Regulation* in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Article [VIII] *XII*

Amendments; Emergency By-Laws

By Stockholder[s]

Sec. [8.1]*12.1* These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of [stockholders] *the stockholder*, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

By Directors

Sec. [8.2]*12.2* To the extent permitted by the *Restated* Certificate of Incorporation, these By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any regular or special meeting of the Board [of Directors].

Emergency By-Laws

Sec. [8.3]*12.3* The Board [of Directors] may adopt emergency By-Laws subject to repeal or change by action of the [stockholders] *stockholder* that shall, notwithstanding any different provision of law, the *Restated* Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which [the Corporation] *NASD Regulation* conducts its business or customarily holds meetings of the Board [of Directors or stockholders] *or stockholder*, any catastrophe, or other emergency condition, as a result of which a quorum of the Board [of Directors] or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary [for] *under* the circumstances of the emergency.

* * * * *

By-Laws of the NASDAQ Stock Market, Inc.

Article I

Definitions

When used in these By-Laws, unless the context otherwise requires, the term:

(a) ''Act'' means the Securities Exchange Act of 1934, as amended;

(b) ''Board'' means the Board of Directors of Nasdaq;

(c) ''broker'' means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;

(d) ''Commission'' means the Securities and Exchange Commission;

(e) ''day'' means calendar day;

(f) ''dealer'' means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual's or entity's own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person's own account, either individually or in some fiduciary capacity, but not as part of a regular business;

(g) ''Delaware law'' means the General Corporation Law of the State of Delaware;

(h) ''Delegation Plan'' means the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries'' as approved by the Commission, and as amended from time to time;

(i) ''Director'' means a member of the Board, excluding the Chief Executive Officer of the NASD;

(j) ''Industry Director'' or ''Industry committee member'' means a Director (excluding the President of Nasdaq) or committee member who (1) is an officer, director, or employee of a broker or dealer or has been employed in any such capacity at any time within the prior three years; or (2) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years;

(k) ''NASD'' means the National Association of Securities Dealers, Inc.;

(l) ''NASD Board'' means the NASD Board of Governors;

(m) ''NASD Regulation'' means NASD Regulation, Inc.;

(n) ''Nasdaq'' means The Nasdaq Stock Market, Inc.;

(o) ''National Nominating Committee'' means the National Nominating Committee appointed pursuant to Article VII, Section 9 of the NASD By-Laws;

(p) ''Non-Industry Director'' or ''Non-Industry committee member'' means a Director or committee member who is (1) a Public Director or committee member; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; (3) a person affiliated with a broker or a dealer that operates solely to assist the securities-related activities of the business of a non-member affiliate (such as a broker or dealer established to (i) distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate; (4) an employee of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-member entity; or (5) any other individual who would not be an Industry Director or committee member;

(q) ''Public Director'' or ''Public committee member'' means a Director or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq; and

(r) ''Rules of the Association'' or ''Rules'' means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as hereafter amended or supplemented.

Article [I] ***II***

Offices

Location

Sec. [1.1]*2.1* The address of the registered office of [the Corporation] *Nasdaq* in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange [St.,] *Street,* Wilmington, [DE] *Delaware* 19801. [The Corporation] *Nasdaq also* may [also] have offices at such other places both within and without the State of Delaware as the Board [of Directors] may from time to time designate or the business of [the Corporation] *Nasdaq* may require.

Change of Location

Sec. [1.2]*2.2* In the manner permitted by law, the Board [of Directors] or the registered agent may change the address of [the Corporation's] *Nasdaq's* registered office in the State of Delaware and the Board [of Directors] may make, revoke, or change the designation of the registered agent.

Article[II] ***III***

Meetings of Stockholder[s]

[Annual Meeting

Sec. 2.1 The annual meeting of stockholders of the Corporation for the election of Directors and for the transaction of such other business as may properly come before the meeting shall be held on such date, and at such time, and place, within or without the State of Delaware, as may be fixed, from time to time, by the Board of Directors.]

[Special Meetings

Sec. 2.2 Special meetings of stockholders of the Corporation, unless otherwise prescribed by law, may be called at any time by the Chair of the Board, by the President or by order of a majority of the Board of Directors. Special meetings of stockholders prescribed by law for the election of directors shall be called by the Board of Directors, the President, or the Secretary. Special meetings of stockholders shall be held at such place within or without the State of Delaware as shall be designated in the notice of meeting.]

[Notice of Meetings

Sec. 2.3 (a) Whenever stockholders are required or permitted to take any action at a meeting, they shall be given written notice stating the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes thereof. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, written notice shall be delivered or mailed at least ten but not more than sixty days before such meeting date to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deposited in the United States mail, postage prepaid, directed to each stockholder at the address that appears on the records of the Corporation.]

[(b) When a meeting of stockholders is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If, however, the adjournment is for more than thirty days from the date of the original meeting, or if, after the adjournment, a new record date is set for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting in the manner prescribed above in subsection (a).]

[Quorum

Sec. 2.4 Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, at each meeting of stockholders the presence in person or by proxy of the holders of

record of a majority of the outstanding shares of capital stock entitled to vote or act at such a meeting shall constitute a quorum for the transaction of any business. In the absence of a quorum, the stockholders so present may by majority rule, adjourn any meeting until a quorum shall be present. When a quorum is once present to organize a meeting, the quorum cannot be destroyed by the subsequent withdrawal or revocation of the proxy of any stockholder.]

[Voting

Sec. 2.5 (a) At any meeting of stockholders, each stockholder as of the record date is entitled to one vote for each such share of stock having voting power, upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, provided that no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest, whether in the stock itself or in the Corporation, sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by delivering a proxy in accordance with applicable law bearing a later date to the Secretary of the Corporation.]

[(b) Directors of the Corporation shall be elected by a plurality of the votes cast at a meeting of stockholders pursuant to Sec. 2.5 of these By-Laws. Corporate action other than the election of directors shall be authorized by a majority of the votes cast at a meeting of stockholders, except as otherwise required by law, the Certificate of Incorporation or these By-Laws.]

[(c) Upon the demand of any stockholder entitled to vote, the election of directors or a vote on any other matter at a meeting of stockholders shall be by written ballot; otherwise, the method of voting and the manner in which votes are counted at such a meeting shall be discretionary with the presiding officer of the meeting.]

[Presiding Officer and Secretary

Sec. 2.6 At every meeting of stockholders, the Chair, or in his/her absence, the President, or in his/her absence, the appointee of the meeting, shall preside. The Secretary, or in his/her absence, the appointee of the presiding officer of the meeting, shall act as Secretary of the meeting.]

Action by Consent of Stockholder[s]

Sec. [2.7]*3.1* Any action required[,] or permitted by law to be taken at any meeting of *the stockholder* [stockholders] of [the Corporation] *Nasdaq* may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the [holders] *holder* of the outstanding stock [having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of corporate action without a meeting and by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who would be entitled to vote thereon at a meeting].

Article [III] *IV*

Board of Directors

General Powers

Sec. [3.1]*4.1* The property, business, and affairs of [the Corporation] *Nasdaq* shall be managed by *or under the direction of* the Board [of Directors]. The Board [of Directors] may exercise all such powers of [the Corporation] *Nasdaq* and have the authority to perform all such lawful acts as are permitted by law, the *Restated* Certificate of Incorporation [or], these By-Laws, *or the Delegation Plan* for the organization, development, and operation of electronic data processing and communications facilities, including computer hardware and software, for the purposes of: [(i)]*(a)* supporting the operation, regulation, and surveillance of The Nasdaq Stock Market and other organized securities markets established for trading equity securities, debt securities, derivative instruments, or other financial products that may be developed; [(ii)]*(b)* supporting the efficient clearance and settlement of securities transactions; [(iii)]*(c)* supporting various elements of the national market system pursuant to Section 11A of the [Securities Exchange Act of 1934 (''Exchange Act'')] *Act* and the rules thereunder; [(iv)]*(d)* assisting the [National Association of Securities Dealers, Inc.] *NASD* in fulfilling its self-regulatory responsibilities as set forth in Section 15A of the [Exchange] Act[,]; and [(v)]*(e)* supporting such other initiatives as the Board [of Directors] may deem appropriate. *To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.14 or to Nasdaq staff in a manner not inconsistent with the Delegation Plan.*

Number of Directors

Sec. [3.2]*4.2* [The Board of Directors of the Corporation shall consist of one or more members; the exact number of directors which shall constitute the whole Board of Directors shall be fixed from time to time by resolution adopted by a majority of the whole Board of Directors. After fixing the number of directors constituting the whole Board of Directors, the Board of Directors may, by resolution adopted by a majority of the whole Board of Directors, from time to time change the number of directors constituting the whole Board of Directors.] *The Board shall be composed of at least 11 and not more than 15 Directors, the number thereof to be determined by the Board prior to the annual election of Directors. Any new Director position created as a result of an increase in the size of the Board shall be filled as part of the annual election conducted under Section 4.4.*

Qualifications

Sec. [3.3]*4.3 (a)* Directors need not be stockholders of [the Corporation] *Nasdaq. The President of Nasdaq shall be a Director, and the remaining Directors shall be equally balanced between Industry and Non-Industry Directors, including at least two Public Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-Industry Directors. In the event that the Board shall consist of more than 12 Directors, at least three shall be Public Directors. The Chief Executive Officer of the NASD shall be an ex-officio non-voting member of the Board.*

(b) Each Director shall update the information submitted to the Secretary of the NASD pursuant to Article VII, Section 9(e) of the NASD By-Laws regarding the Director's classification as an Industry, Non-Industry, or Public Director at least annually and upon request of the Secretary of the NASD, and shall report immediately to the Secretary of the NASD any change in such classification.

Election

Sec. [3.4]*4.4 (a)* Except as otherwise provided by law [or], these By-Laws, *or the Delegation Plan*, after the first meeting of [the Corporation] *Nasdaq* at which [directors] *Directors* are elected,

[directors of the Corporation] *Directors of Nasdaq* shall be elected each year at the annual meeting of [stockholders] *the stockholder,* or at a special meeting called for such purpose in lieu of the annual meeting[, by a plurality of the votes cast at such meeting]. If the annual election of [directors] *Directors* is not held on the date designated [therefore,] *therefor,* the [directors] *Directors* shall cause such election to be held as soon thereafter as convenient.

(b) The National Nominating Committee shall nominate Industry, Non-Industry, and Public Directors for each vacant or new Director position on the Board to the NASD Board in accordance with Article VII of the NASD By-Laws.

Term

Sec. [3.5]*4.5* (a) Each [director] *Director* shall hold office for a term of three years or until [his] *a* successor is duly elected and qualified, except in the event of earlier termination from office by reason of death, resignation, removal[,] with or without cause, *disqualification,* or other reason.

(b) The Board [of Directors] shall be divided into three classes. *The term of office of those of the first class shall expire at the January 1998 meeting of the Board, of the second class one year thereafter, and of the third class two years thereafter. At each annual election, commencing January 1998, Directors shall be elected for a term of three years to replace those whose terms expire.*

(c) The President of [the Corporation] *Nasdaq* shall serve as a [member of the Board] *Director* until [his] *a* successor is selected and qualified, or until [his] death, resignation, or removal.

(d) Except for the President, no Director may serve more than two consecutive terms; provided, however, that if a Director is appointed to fill a term of less than one year, such Director may serve up to two consecutive terms following the expiration of such Director's [current term] *initial term*.

[(e) Each Director chosen to fill newly created directorship shall serve until the next succeeding annual meeting of stockholders.]

Resignation

Sec. [3.6]*4.6* Any [director] *Director* may resign at any time either upon written notice of resignation to the Chair of the Board, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time [be] *is* not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

Sec. [3.7]*4.7* Any or all of the [directors] *Directors* may be removed from office at any time, with or without cause, *only* by a majority vote of the [stockholders] *NASD Board*.

Disqualification

Sec. 4.8 A Director shall immediately resign or be automatically removed from office if the NASD Board determines by majority vote that (a) the Director no longer satisfies the definition for the category (Industry, Non-Industry or Public Director) for which the Director was elected; (b) failure to remove the Director would violate the compositional requirements for the Board set forth in Section 4.3(a); and (c) the Director has a remaining term of office of more than six months.

Filling of Vacancies

Sec. 4.9 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the NASD Board shall elect by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director) for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

Quorum and Voting

Sec. [3.8]*4.10* (a) At all meetings of the Board [of Directors, one-third of the total number of directors shall constitute]*, unless otherwise set forth in these By-Laws or required by law,* a quorum for the transaction of business *shall consist of a majority of the Board, including not less than 50 percent of the Non-Industry Directors.* In the absence of a quorum, a majority of the [directors] *Directors* present may adjourn the meeting until a quorum be present.

(b) [A director interested in a contract or transaction may be counted in determining the presence of a quorum at a meeting of the Board of Directors which authorizes the contract or transaction.] *Except as provided in Section 4.15(b), the vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.*

[(c) The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.]

Regulation

Sec. [3.9]*4.11* The Board [of Directors] may adopt such rules, regulations, and requirements for the conduct of the business and management of [the Corporation] *Nasdaq,* not inconsistent with law, the *Restated* Certificate of Incorporation, these By-Laws, [or the rules and By-Laws of the National Association of Securities Dealers, Inc., as the Board of Directors may deem proper. A member of the Board of Directors] *the Rules of the Association, or the By-Laws of the NASD, as the Board may deem proper. A Director shall,* in the performance of [his or her] *such Director's* duties, be fully protected in relying in good faith upon the books of account or reports made to [the Corporation] *Nasdaq* by any of its officers, [or] by an independent certified public accountant, [or] by an appraiser selected with reasonable care by the Board [of Directors] or any committee of the Board [of Directors] or by any agent of [the Corporation] *Nasdaq,* or in relying in good faith upon other records of [the Corporation] *Nasdaq.*

Meetings

Sec. [3.10]*4.12* (a) An annual meeting of the Board [of Directors] shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of [stockholders] *the stockholder,* no notice of the annual meeting of the Board [of Directors] need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section [3.11 of these By-Laws] *4.13.*

(b) Regular meetings of the Board [of Directors] may be held at such time and place, within or without the State of Delaware, as determined from time to time by the Board [of Directors]. After such determination has been made, notice shall be given in accordance with Section [3.11 of these By-Laws] *4.13.*

(c) Special meetings of the Board [of Directors] may be called by the Chair of the Board, [or] by the President, or by at least one-third of the [directors at that time being] *Directors then* in office. Notice of any special meeting of the Board [of Directors] shall be given to each [director] *Director* in accordance with Section [3.11 of these By-Laws.] *4.13.*

(d) [Members of the Board of Directors, or any committee designated by the Board of Directors,] *Directors or members of any committee appointed*

by the Board may participate in a meeting of the Board [of Directors] or of such committee through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Notice of Meetings; Waiver of Notice

Sec. [3.11]*4.13* (a) Notice of any meeting of the Board [of Directors] shall be deemed to be duly given to a [director (i) if]*Director if: (i)* mailed to the address last made known in writing to [the Corporation] *Nasdaq* by such [director] *Director* as the address to which such notices are to be sent, at least [two] *seven* days before the day on which such [special] meeting is to be held[, or]*;* (ii) [if] sent to the [director] *Director* at such address by telegraph, telefax, cable, radio, or wireless, not later than the day before the day on which such meeting is to be held[,]*;* or (iii) [if] delivered to the [director] *Director* personally or orally, by telephone or otherwise, not later than the day before the day on which such [special] meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board [of Directors] need not be given to any [director] *Director* if waived by that [director] *Director* in writing (or by telegram, telefax, cable, radio, or wireless and subsequently confirmed in writing) whether before or after the holding of such meeting, or if such [director] *Director* is present at such meeting*, subject to Article IX, Section 9.3(b).*

(c) Any meeting of the Board [of Directors] shall be a legal meeting without any prior notice if all [directors] *Directors* then in office shall be present thereat.

Committees [of the Board of Directors]

Sec. [3.13]*4.14* (a) The Board [of Directors] may, by resolution or resolutions adopted by a majority of the whole Board [of Directors, designate], *appoint* one or more committees[, each committee to consist of one or more directors of the Corporation]. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board [of Directors]. The Board [of Directors] may designate one or more [directors] *Directors* as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not [he, she,] *such member* or [they] *members* constitute a quorum, may unanimously appoint another [member of the Board of Directors] *Director* to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board [of Directors], subject, however, to removal, with or without cause, at any time *only* by the vote of a majority of the whole Board [of Directors].

(b) [Any committee, to the extent permitted by law and to the extent provided in the] *The Board may, by* resolution or resolutions [creating such committee, shall have and may exercise all the powers and authority of the Board of Directors] *adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to Nasdaq by the NASD under the Delegation Plan. Such delegations shall be in conformance with applicable law, the Restated Certificate of Incorporation, these By-Laws, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board* in the management of the business and affairs of [the Corporation, and]*Nasdaq to the extent permitted by law and not inconsistent with the Delegation Plan. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee,* may authorize the seal of [the Corporation] *Nasdaq* to be affixed to all papers [which] *that* may require it.

(c) Except as otherwise provided by applicable law, no [No such] committee shall have the power or authority *of the Board* with regard to: amending the *Restated* Certificate of Incorporation or the By-Laws of [the Corporation,] *Nasdaq;* adopting an agreement of merger or consolidation; recommending to the [stockholders] *stockholder* the sale, lease, or exchange of all or substantially all [the Corporation's] *Nasdaq's* property and assets; or recommending to the [stockholders] *stockholder* a dissolution of [the Corporation] *Nasdaq* or a revocation of a dissolution. Unless the resolution of the Board [of Directors] expressly so provides, no [such] committee shall have the power or authority to authorize the issuance of stock.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of Nasdaq between meetings of the Board, and which may authorize the seal of Nasdaq to be affixed to all papers that may require it. The President of Nasdaq shall be a member of the Executive Committee, and with respect to the remaining members, the Executive Committee shall have a percentage of Non-Industry Directors at least as great as the percentage of Non-Industry Directors on the whole Board, and a percentage of Public Directors at least as great as the percentage of Public Directors on the whole Board.

(e)[(c)] Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its proceedings and report the same to the Board [of Directors] when required.

(f) [(d)]Unless otherwise provided by the Board [of Directors, a majority of any such committee]*, a majority of a committee, excluding the President if the President is a member of the committee,* shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(g) Upon request, each prospective committee member who is not a Director shall provide to the Secretary of the NASD such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member, and the Secretary of the NASD shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this Section at least annually and upon request of the Secretary of the NASD, and shall report immediately to the Secretary of the NASD any change in such classification.

***Conflicts of Interest;* Contracts and Transactions Involving Directors**

Sec. [3.12.]*4.15* (a) A Director or a member of any committee shall not directly or indirectly participate in any

adjudication of the interests of any party if that Director or committee member has a conflict of interest or bias, or if circumstances otherwise exists where his or her fairness might reasonably be questioned. In any such case, the Director or committee member shall recuse himself or herself or shall be disqualified.

(b) No contract or transaction between [the Corporation] *Nasdaq* and one or more of its [directors] *Directors* or officers, or between [the Corporation] *Nasdaq* and any other corporation, partnership, association, or other organization in which one or more of its [directors] *Directors* or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason[, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or the committee thereof which] *if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith* authorizes the contract or transaction[, or solely because his, her, or their votes are counted for such purposes if: (i) the material facts pertaining to such director's or officer's relationship or interest and] *by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after* the contract or transaction [are disclosed or are known to the Board of Directors or the committee, and the Board] *is entered into, and the Board* or committee in good faith [authorizes] *ratifies* the contract or transaction by the affirmative vote of a majority of the disinterested [directors, even though the disinterested directors be less than a quorum; or (ii)] *Directors; or (iii)* the material facts pertaining to the [director's] *Director's* or officer's relationship or interest and the contract or transaction are disclosed or are known to the [stockholders] *stockholder* entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the [stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors] *stockholder. Only disinterested Directors* may be counted in determining the presence of a quorum at *the portion of* a meeting of the Board [of Directors,] or of a committee *that* [which] authorizes the contract or transaction.

Communication of Views Regarding NASD or NASD Regulation Election or Nomination

Sec. 4.16 Nasdaq, the Board, any committee, and Nasdaq staff shall not take any position publicly or with an NASD member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to the NASD By-Laws or the NASD Regulation By-Laws. A Director or committee member may communicate his or her views with respect to a candidate if such Director or committee member acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of Nasdaq, the Board, or any committee. Nasdaq, the Board, any committee, and the Nasdaq staff shall not provide any administrative support to any candidate in a contested election or nomination conducted pursuant to the NASD By-Laws or the NASD Regulation By-Laws.

Action Without Meeting

Sec. [3.14]*4.17* Any action required or permitted to be taken at [any] *a* meeting of the Board [of Directors or any] *or of a* committee [thereof] may be taken without a meeting if all *Directors or all* members of [the Board of Directors or] such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board [of Directors or such committee] *or the committee.*

Article V

Compensation

Compensation of Board and Committee Members

Sec. 5.1 The Board may provide for reasonable compensation of the Chair of the Board, the Directors, and the members of any committee. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of Nasdaq.

Article [IV]*VI*

Officers, Agents, and Employees

Principal Officers

Sec. [4.1]*6.1* The principal officers of [the Corporation] *Nasdaq* shall be elected by the Board [of Directors] and shall include a Chair, a President, a Secretary, a Treasurer, and such other officers as may be designated by the Board [of Directors]. One person may hold the offices and perform the duties of any two or more of said principal offices, except the offices and duties of President and Vice President or of President and Secretary. None of the principal officers, except the Chair of the Board and the President, need be [directors of the Corporation] *Directors of Nasdaq.*

Election of Principal Officers; Term of Office

Sec. [4.2]*6.2* (a) The principal officers of [the Corporation] *Nasdaq* shall be elected annually by the Board [of Directors] at the annual meeting of the Board [of Directors] convened pursuant to Section [3.10(a) of these By-Laws] *4.12(a).* Failure to elect any principal officer annually shall not dissolve [the Corporation] *Nasdaq.*

(b) If the Board [of Directors] shall fail to fill any principal office at an annual meeting, or if any vacancy in any principal office shall occur, or if any principal office shall be newly created, such principal office may be filled at any regular or special meeting of the Board [of Directors].

(c) Each principal officer shall hold office until [his or her] *a* successor is duly elected and qualified, or until [his or her earlier] death, resignation, or removal.

Subordinate Officers, Agents, or Employees

Sec. [4.3]*6.3* In addition to the principal officers, [the Corporation] *Nasdaq* may have one or more subordinate officers, agents, and employees as the Board [of Directors] may deem necessary, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board [of Directors], the President, or any officer designated by the Board [of Directors], may from time to time determine. [The Board of Directors at any time may appoint and remove, or may delegate to any principal officer the power to appoint and to remove, any subordinate officer, agent, or employee of the Corporation.] *Agents and employees of Nasdaq shall be under the supervision and control of the officers of Nasdaq, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.*

Delegation of Duties of Officers

Sec. [4.4]*6.4* The Board [of Directors] may delegate the duties and powers of any officer of [the Corporation] *Nasdaq* to any other officer or to any [director] *Director* for a specified period of time and for any reason that the Board [of Directors] may deem sufficient.

Resignation and Removal of Officers

Sec. [4.5]*6.5* (a) Any officer may resign at any time upon written notice of resignation to the Board [of Directors], the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer[, agent or employee of the Corporation] *of Nasdaq* may be removed, with or without cause, by resolution adopted by a majority of the [directors] *Directors* then in office at any regular or special meeting of the Board [of Directors] or by a written consent signed by all of the [directors] *Directors* then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, [agent, or employee,] if any, with [the Corporation] *Nasdaq.*

Bond

Sec. [4.6]*6.6* [The Corporation] *Nasdaq* may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

Chair of the Board

Sec. [4.7]*6.7* The Chair of the Board shall preside at all meetings of the Board [of Directors] at which [he or she] *the Chair* is present. The Chair shall exercise such other powers and perform such other duties as may be assigned to [him or her] *the Chair* from time to time by the Board [of Directors].

President

Sec. [4.8]*6.8* The President shall, in the absence of the Chair of the Board, preside at all meetings of the Board [of Directors] at which [he or she] *the President* is present. The President shall be the [chief executive officer of the Corporation] *Chief Executive Officer of Nasdaq* and shall have general supervision over the business and affairs of [the Corporation] *Nasdaq.* The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board [of Directors]. The President shall exercise such other powers and perform such other duties as may be assigned to [him or her] *the President* from time to time by the Board [of Directors].

Vice President

Sec. [4.9]*6.9 The Board shall elect one or more Vice Presidents.* In the absence or disability of the President or if the office of President [be] *becomes* vacant, the Vice Presidents in the order determined by the Board [of Directors], or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board [of Directors] at any time to extend or restrict such powers and duties or to assign them to others. Any Vice President may have such additional designations in [his or her] *such Vice President's* title as the Board [of Directors] may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to [him or her] *such Vice President* from time to time by the Board [of Directors] or the President. The term ''Vice President'' used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

Secretary

Sec. [4.10]*6.10* Secretary shall act as Secretary of all meetings of [stockholders] *the stockholder* and of the Board [of Directors] at which [he or she] *the Secretary* is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of [the Corporation] *Nasdaq,* and shall have supervision over the care and custody of the corporate records and the corporate seal of [the Corporation] *Nasdaq.* The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of [the Corporation] *Nasdaq* under its seal, is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically [listed] *limited* by a resolution of the Board [of Directors]. The Secretary shall exercise such other powers and perform such other duties as may be assigned to [him or her] *the Secretary* from time to time by the Board [of Directors] or the President.

Assistant Secretary

Sec. [4.11]*6.11* In the absence of the Secretary or in the event of [his or her] *the Secretary's* inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to [him or her] *such Assistant Secretary* from time to time by the Board [of Directors] or the Secretary.

Treasurer

Sec. [4.12]*6.12* The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of [the Corporation] *Nasdaq* and shall cause the funds of [the Corporation] *Nasdaq* to be deposited in the name of [the Corporation] *Nasdaq* in such banks or other depositories as the Board [of Directors] may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of [the Corporation] *Nasdaq.* The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board [of Directors]. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to [him] *the Treasurer* from time to time by the Board [of Directors] or the President.

Assistant Treasurer

Sec. [4.13]*6.13* In the absence of the Treasurer or in the event of [his or her] *the Treasurer's* inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to [him or her] *such Assistant Treasurer* from time to time by the Board [of Directors] or the Treasurer.

Article [V] ***VII***

Indemnification

Indemnification of Directors, Officers, Employees, and Agents

Sec. [5.1]*7.1* (a) [The Corporation] *Nasdaq* shall indemnify, and hold harmless, to the fullest extent permitted by *Delaware* law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a [director or] *Director,* officer [of the Corporation], *or employee of Nasdaq,* or is or was a [director or] *Director,* officer, *or employee of Nasdaq* who is or was serving at the request of [the Corporation] *Nasdaq* as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust [or other enterprise,], *enterprise, or non-profit entity, including service with respect to employee benefit plans,* is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of [the Corporation)]

Nasdaq) against expenses (including attorneys' fees *and disbursements*), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or (ii) any threatened, pending, or completed action or suit by or in the right of [the Corporation] *Nasdaq* to procure a judgment in its favor against expenses (including attorneys' fees *and disbursements)* actually and reasonably incurred by such [persons] *person* in connection with the defense or settlement of such action or suit.

(b) Nasdaq shall advance expenses (including attorneys' fees and disbursements) to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

[(b)](*c*) [The Corporation] *Nasdaq* may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by *Delaware* law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an [employee or agent of the Corporation, or] *agent of Nasdaq or is or was an agent of Nasdaq who* is or was serving at the request of [the Corporation] *Nasdaq* as a director, officer, employee, or agent of another corporation, partnership, trust [or other enterprise] *enterprise, or non-profit entity, including service with respect to employee benefit plans,* was or is a party, or is threatened to be made a party to any action or proceeding described [above] in subsection (a).

[(c)](*d*) [The Corporation] *Nasdaq* may, in its discretion, pay the expenses (including attorneys' fees *and disbursements*) reasonably and actually incurred *by an agent* in defending any action, suit, or proceeding in advance of its final disposition[,]*;* provided, however, that the payment of expenses incurred by [a director, officer, or employee] *such person* in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by [the officer, director, or employee] *that person* to repay all amounts advanced if it should be ultimately determined that [such] *the* person is not entitled to be indemnified under this Section [5.1 or otherwise] *or otherwise.*

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by Nasdaq to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) the person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of Nasdaq; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to Nasdaq.

[(d)] (*f*) The indemnification provided by this [section] *Section* in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled [under any by-law, agreement, vote of stockholders or disinterested directors or otherwise], both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a [director] *Director,* officer, employee, or agent and shall inure to the benefit of [his or her] *such person's* heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), Nasdaq shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

[(e)](*h*) [The Corporation's] *Nasdaq's* obligation, if any, to indemnify *or advance expenses to* any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust [or other], enterprise, *or non-profit entity* shall be reduced by any amount such person may collect as indemnification *or advancement* from such other corporation, partnership, joint venture, trust, [or other] enterprise, *or non-profit entity.*

[(f)] (*i*) Any repeal or modification of the foregoing provisions of this Section [5.1] shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by Nasdaq, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, Nasdaq shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

Indemnification Insurance

Sec. [5.2]*7.2* [The Corporation] *Nasdaq* shall have power to purchase and maintain insurance on behalf of any person who is or was a [director] *Director,* officer, employee, or agent of [the Corporation] *Nasdaq,* or is or was serving at the request of [the Corporation] *Nasdaq* as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust [or other], enterprise, *or non-profit entity* against any liability asserted against [him or her] *such person* and incurred by [him or her] *such person* in any such capacity, or arising out of [his or her] *such person's* status as such, whether or not [the Corporation] *Nasdaq* would have the power to indemnify [him or her] *such person* against such liability [under the provisions of this section] *hereunder.*

Article [VI] ***VIII***

Capital Stock

Sole Stockholder

Sec. 8.1 The NASD shall be the sole stockholder of the capital stock of Nasdaq.

Certificates

Sec. [6.1]*8.2* [Each] *The* stockholder [in the Corporation] shall be entitled to a certificate or certificates in such form as shall be approved by the Board [of Directors], certifying the number of shares of capital stock in [the Corporation] *Nasdaq* owned by [such] *the* stockholder.

Signatures

Sec. [6.2]*8.3* (a) Certificates for shares of capital stock of [the Corporation] *Nasdaq* shall be signed in the name of [the Corporation] *Nasdaq* by two officers with one being the Chair of the Board, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other

officer that may be authorized by the Board [of Directors]. Such certificates may be sealed with the corporate [Seal] *seal* of [the Corporation] *Nasdaq* or a facsimile thereof.

(b) If any such certificates are countersigned by a transfer agent other than [the Corporation] *Nasdaq* or its employee, or by a registrar other than [the Corporation] *Nasdaq* or its employee, any other signature on the certificate may be a facsimile. In [case] *the event that* any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall [have ceased] *cease* to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by [the Corporation] *Nasdaq* with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Stock Ledger

Sec. [6.3]*8.4* (a) A record of all certificates for capital stock issued by [the Corporation] *Nasdaq* shall be kept by the Secretary or any other officer, employee, or agent designated by the Board [of Directors]. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates which have been canceled, the date of cancellation thereof.

(b) [The Corporation] *Nasdaq* shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. [The Corporation] *Nasdaq* shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not [the Corporation] *Nasdaq* shall have express or other notice thereof.

Transfers of Stock

Sec. [6.4]*8.5* (a) The Board [of Directors] may make such rules and regulations as it may deem expedient, not inconsistent with law, the *Restated* Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for [share] *shares* of capital stock of [the Corporation] *Nasdaq*. The Board [of Directors] may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of [the Corporation] *Nasdaq* only upon delivery to [the Corporation] *Nasdaq* or its transfer agent of*:* (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing[,]*;* (ii) the certificate for the shares of capital stock being transferred[,]*;* and (iii) a written assignment of the shares of capital stock evidenced thereby.

Cancellation

Sec. [6.5]*8.6* Each certificate for capital stock surrendered to [the Corporation] *Nasdaq* for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to [Sec. 6.6. of these By-Laws] *Section 8.7* until such existing certificate shall have been canceled.

Lost, Stolen, Destroyed, and Mutilated Certificates

Sec. [6.6]*8.7* In the event that any certificate for shares of capital stock of [the Corporation] *Nasdaq* shall be mutilated, [the Corporation] *Nasdaq* shall issue a new certificate in place of such mutilated certificate. In [case] *the event that* any such certificate shall be lost, stolen, or destroyed [the Corporation], *Nasdaq* may, in the discretion of the Board [of Directors] or a committee [designated] *appointed* thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board [of Directors] or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or [his] *the owner's* representatives, to furnish to [the Corporation] *Nasdaq* a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify [the Corporation] *Nasdaq* against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board [of Directors], it is proper to do so.

Fixing of Record [Dates] ***Date***

Sec.[6.7]*8.8* The Board may fix a record date in accordance with Delaware law. [(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent or dissent to corporate action in writing without a meeting, or to exercise any rights with respect to any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of any meeting of stockholders, nor more than sixty days prior to any other action. Only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting or any adjournment thereof, or to give such consent or dissent, or to exercise such rights with respect to any such change, conversion or exchange of stock, or to participate in any such action, notwithstanding the transfer of any stock on the books of the Corporation after any record date so fixed.]

[(b) If no record date is fixed by the Board of Directors:

(i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the date on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held;

(ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be at the close of business on the day on which the first written consent is expressed; and

(iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.]

[(c) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.]

Article [VII] ***IX***

Miscellaneous Provisions

Corporate Seal

Sec. [7.1]*9.1* The seal of [the Corporation] *Nasdaq* shall be circular in

form and shall bear, in addition to any other emblem or device approved by the Board [of Directors], the name of [the Corporation] *Nasdaq*, the year of its incorporation, and the words ''Corporate Seal'' and ''Delaware[''].'' The seal may be used by causing it to be affixed or impressed, or a facsimile thereof may be reproduced or otherwise used in such manner as the Board [of Directors] may determine.

Fiscal Year

Sec. [7.2]*9.2* The fiscal year of [the Corporation] *Nasdaq* shall begin the 1st day of January in each year, or such other month as the Board [of Directors] may determine by resolution.

Waiver of Notice

Sec. [7.3]*9.3* (a) Whenever notice is required to be given by law, the *Restated* Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the [stockholders, directors] *stockholder, Directors,* or members of a committee of [directors] *Directors* need be specified in any written waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Execution of Instruments, Contracts, Etc.

Sec. [7.4.]*9.4 (a)* All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of [the Corporation] *Nasdaq* by such officer or officers or person or persons[,] as the Board [of Directors], or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board [of Directors], any committee given specific authority in the premises by the Board [of Directors], or any committee given authority to exercise generally the powers of the Board [of Directors] during intervals between meetings of the Board [of Directors], may authorize any officer, employee, or agent, in the name of and on behalf of [the Corporation] *Nasdaq*, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of [the Corporation] *Nasdaq* by any principal officer or subordinate officer of [the Corporation] *Nasdaq*, or, to the extent designated for such purpose from time to time by the Board [of Directors], by an employee or agent of [the Corporation] *Nasdaq*. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Form of Records

Sec. [7.5]*9.5* Any records maintained by [the Corporation] *Nasdaq* in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Article [VIII] ***X***

Amendments; Emergency By-Laws

By [Stockholders] ***Stockholder***

Sec. [8.1]*10.1* These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of [stockholders by the vote of the holders of not less than a majority of the outstanding shares of stock entitled to vote thereat] *the stockholder*, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

By Directors

Sec. [8.2]*10.2* To the extent permitted by the *Restated* Certificate of Incorporation, these By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any regular or special meeting of the Board [of Directors] by a resolution adopted by a vote of a majority of the whole Board [of Directors].

Emergency By-Laws

Sec. [8.3]*10.3* The Board [of Directors] may adopt emergency By-Laws subject to repeal or change by action of the [stockholders] *stockholder* which shall, notwithstanding any different provision of law, the *Restated* Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which [the Corporation] *Nasdaq* conducts its business or customarily holds meetings of the Board [of Directors or stockholders] *or the stockholder*, any catastrophe, or other emergency condition, as a result of which a quorum of the Board [of Directors] or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary [for] *under* the circumstances of the emergency.

* * * * *

Plan of Allocation and Delegation of Functions by NASD to Subsidiaries

I. NASD, Inc.

The NASD, Inc. (referenced as ''NASD''), the Registered Section 15A Association, is the parent company of the wholly-owned Subsidiaries NASD Regulation, Inc. (referenced individually as [''NASDR'')]''NASD Regulation'') and The Nasdaq Stock Market, Inc. (referenced individually as ''Nasdaq'') (referenced collectively as the ''Subsidiaries''). The term ''Association'' shall refer to the NASD and the Subsidiaries collectively.

A. Governors, Directors and Committee Members

The *terms ''Industry Governors,'' ''Non-Industry Governors,'' ''Public Governors,'' ''Industry Directors,'' ''Non-Industry Directors,'' ''Public Directors,'' ''Industry committee members,'' ''Non-Industry committee members,'' and ''Public committee members,'' as used herein, shall have the meanings set forth in the By-Laws of the NASD, NASD Regulation and Nasdaq, as applicable.* [following definitions are applicable to Governors of the NASD, Directors of the Subsidiaries, and Members of Committees of the NASD and the Subsidiaries.

1. ''Industry'' Governors, Directors or Committee Members shall include (a) officers, directors and employees of brokers and dealers and persons who have been employed in any such capacity at any time within the prior three years; and (b) persons who have consulting or employment relationships with or provided professional services to the Association and persons who have had any such relationship or provided any such services at any time within the prior three years.

2. ''Non-industry'' Governors, Directors or Committee Members shall be (a) Public Governors; (b) officers and employees of issuers of securities listed on The Nasdaq Stock Market or traded

in the over-the-counter market; (c) persons affiliated with brokers and dealers that operate solely to assist the securities-related activities of the business of non-member affiliates (such as a broker or dealer established to (i) distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate); (d) employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of the non-member entity; and (e) other individuals who would not be Industry Governors, Directors or Committee Members.

3. ''Public'' Governors, Directors or Committee Members shall be non-industry persons who have no material business relationship with a broker, dealer or the Association.]

B. Functions and Authority of the NASD

The NASD shall have ultimate responsibility for the rules and regulations of the Association and its operation and administration. As set forth below in Sections II.A. and III.A., the NASD has delegated certain authority and functions to its [subsidiaries] *Subsidiaries.* Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the NASD Board in accordance with procedures established by that Board. Any function or responsibility as a registered securities association under the *Securities* Exchange Act *of 1934 (''Act''),* or as set forth in the [articles of incorporation] *Restated Certificate of Incorporation* or the by-laws is hereby reserved, except as expressly delegated to the [subsidiaries] *Subsidiaries.* In addition, the NASD expressly retains the following authority and functions:

1. To exercise overall responsibility for ensuring that the Association's statutory and self-regulatory obligations and functions are fulfilled.

2. To delegate authority to the Subsidiaries to take actions on behalf of the NASD.

3. To elect the Subsidiary Boards of Directors.

4. To review the rulemaking and disciplinary decisions of the Subsidiaries (See Sections [II.C.] *II.B.* and [III.C] *III.B.* below).

5. To coordinate actions of the Subsidiary Boards as necessary.

6. To resolve any disputes between the Subsidiaries.

7. To administer common overhead and technology of the Subsidiaries.

8. To administer the Office of Internal Review as provided in Section [I.D.4] *I.C.4.* below.

9. To manage external Association relations on major policy issues.

10. To direct the Subsidiaries to take action necessary to effectuate the purposes and functions of the Association.

[C. Board of Governors

1. Composition: The NASD Board of Governors (''NASD Board'') shall be composed of at least Nine (9) and no more than Thirteen (13) Governors, a majority of whom shall be Non-industry (including at least Two (2) Public Governors). The Chief Executive Officer (''CEO'') of NASD shall be a Governor. In the event that the NASD Board shall consist of Eleven (11) or more Governors, at least Three (3) shall be Public Governors.

2. Election Procedures

a. Commencing with the selection of Governors to take office in April of 1997, Governors (except the CEO of NASD) shall be elected by a majority vote of those members of the NASD casting ballots on a slate of nominees presented to the NASD membership by the National Nominating Committee for election by secret ballot.

b. National Nominating Committee.

(1) The National Nominating Committee shall be composed of at least Six (6) and not more than Nine (9) members, equally balanced between Industry and Non-industry Committee Members (including at least Two (2) Public Committee Members). In the event that the Nominating Committee shall consist of Seven (7) or more members at least Three (3) shall be Public Committee Members. If at any time there shall be an odd number of members of the National Nominating Committee, Non-industry Committee Members shall be in the majority. No officer or employee of the Association shall serve as a member of the National Nominating Committee in any voting or non-voting capacity. Two members of the National Nominating Committee shall be selected by each of the Subsidiaries and the NASD. No more than three of the Committee Members and no more than two of the Industry Committee Members shall be current members of the NASD Board or of the Board of Directors of one of the Subsidiaries (collectively the ''Association Boards''). Any member of the National Nominating Committee who is a current member of any Association Board shall be in his/her final year of service on any Association Board.

(2) Members of the National Nominating Committee shall be appointed annually by the NASD Board and may be removed for cause by a majority vote of the NASD Board.

(3) The National Nominating Committee shall propose to the NASD Board one or more nominees for each vacant or new Governor position, and for each Director position on the Boards of Directors of the Subsidiaries.

3. Contested Elections

a. A candidate for the NASD Board who has not been nominated pursuant to Section 2.b(3) above may be nominated by petition, for the term of office specified by the Board for the vacant governorship, if the candidate presents duly executed petitions to the National Nominating Committee demonstrating that such candidate has the support of Two (2) percent of the members of the NASD.

b. A candidate for the NASD Board may be included on the ballot only if the Committee certifies that the candidate's petitions are duly executed by the requisite number of members of the NASD and that the candidate meets the qualifications for the position to be filled, as defined in Section I.A. above.

4. Term of Office

a. Each Governor shall hold office for a term of not more than three years, or until a successor is elected and qualified, or until death, disqualification, resignation, or removal. Except as provided in paragraph (b) and (c), Governors may not serve more than two consecutive terms of office on any Association Board.

b. The CEO of the NASD shall serve as a member of the NASD Board until a successor is selected and qualified, or until death, resignation, disqualification, or removal.

c. Where a Governor is appointed to fill a term of less than one year, such Governor shall not be precluded from serving two additional terms of office.

5. Vacancies

a. If a Governor position becomes vacant before the expiration of the Governor's term of office, the National Nominating Committee shall recommend, and the NASD Board shall elect by majority vote of the remaining Governors, a person satisfying the criteria for a Governor position of the type (Industry, Non-industry or Public), vacated as defined in Section I.A. above, unless such Governor has a remaining term of office of no more than six months, in which case no replacement will be required.

b. If a Governor no longer satisfies the criteria for the category in which he or she was elected (Industry, Non-industry or Public) and has a remaining term of office of more than six months, such Governor shall be automatically removed from office unless the remaining members of the NASD Board determine otherwise by a majority vote and the failure to remove the Governor does not affect the proportional representation set forth in Section I.C.1. above.

D. Audit Committee

1. The Audit Committee shall be a committee of the NASD Board and shall include the following functions:

a. To ensure the existence of adequate controls and the integrity of the financial reporting process of the Association.

b. To recommend to the NASD Board, and to monitor the independence and performance of, the certified public accountants retained as outside auditors by the NASD.

c. To direct and oversee all the activities of the Association's internal review function, including but not limited to management's responses to the internal review function.

2. Composition: The Audit Committee shall be composed of Four (4) or Five (5) members of the NASD Board, none of whom are officers or employees of the Association. The Committee shall include at least one Public Committee Member who shall serve as Chairperson of the Committee. The Committee shall have no more than two Industry Committee Members. If the Committee shall have Four (4) members it shall have not more than One (1) Industry Committee Member. In the event that the size of the NASD Board shall at any time consist of Eleven (11) or more members, the Audit Committee shall include Two (2) Public Committee Members. In addition, each Subsidiary shall designate a Public Member of its Board as a liaison to the Audit Committee. The Audit Committee may consult with that person on issues relating to the functions of the Subsidiary, but neither the liaison nor any officer or employee of the Association shall serve on the Audit Committee in any voting or non-voting capacity.

3. No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular NASD member, company or individual if he or she has a material interest in, or a professional, business or personal relationship with, that member, company or individual or if such participation shall create an appearance of impropriety. Committee members shall consult with the General Counsel of NASD to determine if recusal is necessary. In the event that a member of the Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Committee.

4. Office of Internal Review: The Audit Committee shall have exclusive authority: (a) to hire or terminate the Director of Internal Review, (b) to determine the compensation of the Director of Internal Review, and (c) to determine the budget for the Office of Internal Review. The Office of Internal Review shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Office of Internal Review also report to senior management of the NASD on matters it deems appropriate and may request that senior NASD management perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal review function.]

C.[E.] Management Compensation Committee

1. The Management Compensation Committee shall be a Committee of the NASD Board and shall have the following functions: To consider and recommend compensation policies, programs, and practices for employees of the Association.

2. Composition: The Management Compensation Committee shall be composed of [Four (4)] *four* or more [Members] *members* of the NASD Board, equally balanced between Industry and Non[-industry]-*Industry* Governors. If at any time there shall be an odd number of members of the Management Compensation Committee, Non[-industry Committee Members]-*Industry committee members* shall be in the majority.

D.[F.] Access to and Status of Officers, Directors, Employees, Books, Records, and Premises of Subsidiaries

Notwithstanding the delegation of authority to the Subsidiaries, as set forth in Sections II.A. and III.A. below, the staff, books, records, and premises of the Subsidiaries are the staff, books, records, and premises of the NASD subject to oversight pursuant to the [Securities Exchange Act of 1934 (''Act'')] *Act*, and all officers, directors, employees, and agents of the Subsidiaries are officers [and], directors, employees, and agents of the NASD for purposes of the Act.

II. NASD Regulation, Inc. [''NASDR'')](''*NASD Regulation*'')

A. Delegation of Functions and Authority

1. The NASD hereby delegates to [the NASDR and the NASDR] *NASD Regulation and NASD Regulation* assumes the following responsibilities *of* and functions as a registered securities association:

a. To establish rules and regulations for NASD members including, but not limited to fees [and], membership requirements [and the Code of Arbitration and Mediation Procedure.], *and arbitration procedures.*

b. To determine Association policy, including developing and adopting necessary or appropriate rule changes, relating to the business and sales practices of NASD members and associated persons with respect to, but not limited to, (i) arbitration of disputes among and between NASD members, associated persons and customers, (ii) public and private sale or distribution of securities including underwriting arrangements and compensation, (iii) financial responsibility, (iv) qualifications for NASD membership and association with NASD members, (v) clearance and settlement of securities transactions, (vi) NASD member advertising practices, (vii) administration, interpretation and enforcement of Association rules, (viii) administration and enforcement of Municipal Securities Rulemaking Board (''MSRB'') rules, the federal securities laws, and other laws, rules and regulations the Association has the authority to administer or enforce, and (ix) standards of proof for violations and sanctions imposed on NASD members and associated persons in connection with disciplinary actions.

c. To take necessary or appropriate action to assure compliance with Association policy, Association and MSRB rules, the federal securities laws, and other laws, rules and regulations the Association has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.

d. To administer programs and systems for the surveillance and enforcement of rules governing NASD members' conduct and trading activities in The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, the third market for securities listed on a registered exchange, and the over[-]-the[-]-counter market.

e. To examine and investigate NASD members and associated persons to determine if they have violated

Association or MSRB rules, the federal securities laws, and other laws, rules, and regulations the Association has the authority to administer, interpret [or enforce.], *or enforce.*

f. *To establish and maintain procedures for the consideration and determination regarding complaints by members, associated persons, and members of the public who request investigative or disciplinary actions by the Association.*

g. To administer Association enforcement and disciplinary programs, including investigation, adjudication of cases and the imposition of fines and other sanctions.

[g] *h.* To administer the Association's office of professional hearing officers.

[h] *i.* To conduct arbitrations, mediations, and other dispute resolution programs.

[i] *j.* To conduct qualification examinations and continuing education programs.

[j] *k.* To operate the Central Registration Depository[(''CRD'')].

[k] *l.* To determine whether applicants for NASD membership have met the requirements for membership established by the Association.

[l] *m.* To place restrictions on the business activities of NASD members consistent with the public interest, the protection of investors and the federal securities laws.

[m] *n.* To determine whether persons seeking to register as associated persons of NASD members have met such qualifications for registration as may be established by the Association, including whether statutorily disqualified persons will be permitted to associate with particular NASD members and the conditions of such association.

[n] *o.* To oversee all District Office activities.

[o] *p.* To establish the annual budget and business plan for [NASDR.] *NASD Regulation.*

[p] *q.* To determine allocation of [NASDR] *NASD Regulation* resources.

[q] *r.* To establish and assess fees and other charges on NASD members, persons associated with NASD members, and others using the services or facilities of [NASDR.] *NASD Regulation.*

[r] *s.* To manage external relations on enforcement, regulatory, and other policy issues with Congress, the Securities and Exchange Commission [(''SEC'')]*(''Commission''),* state regulators, other self-regulatory organizations, business groups, and the public.

t. To operate Stockwatch in conjunction with Nasdaq pursuant to Section IV.

2. All action taken pursuant to authority delegated pursuant to (1) shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

[B. Board of Directors

1. Subsequent to January of 1997, the NASDR Board of Directors (''NASDR Board'') shall be composed of at least Twenty-one (21) and no more than Twenty-five (25) Directors. The President of NASDR shall be a member of the NASDR Board and the remaining members shall be equally balanced between Industry and Non-industry Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-industry. The NASDR Board shall include Seven (7) representatives of NASD members representing geographical regions defined by the NASDR Board, and at least Three (3) at-large industry representatives. The NASDR Board shall include at least Ten (10) Non-industry Directors, including at least Three (3) Public Directors. In the event that the NASDR Board shall consist of more than Twenty-two (22) Members, at least Four (4) shall be Public Directors. The NASDR Board shall include representatives of an issuer of investment company shares or an affiliate of such an issuer and an insurance company or an affiliated NASD member. The CEO of NASD shall be an ex-officio non-voting member of the NASDR Board.

2. Election Procedures

a. The National Nominating Committee shall propose to the NASD Board nominees for each position on the NASDR Board.

b. The Seven (7) Industry Members of the NASDR Board shall be nominated by Regional Nominating Committees for consideration by the National Nominating Committee. A Regional Nominating Committee shall consist of equal numbers of members from each district comprising the regions and members shall be selected by the District Committee for that District.

c. Any officer, director or employee of a NASD member who has not otherwise been nominated by the Regional Nominating Committee may seek nomination if the candidate presents duly executed petitions to the Regional Nominating Committee for the appropriate geographical region demonstrating that such candidate has the support of at least Ten (10) percent of the NASD members in that region. The Regional Nominating Committee shall submit the names of its nominees and of all the candidates presenting qualifying petitions to the members in that region for nomination by secret ballot. The Regional Nominating Committee shall nominate to the National Nominating Committee the candidate receiving the most votes.

d. Terms of Office and Vacancies: The terms of office of Directors and the procedures for the filling of vacancies shall be the same as those set forth under Section I.C.4. and 5. above.]

[C. NASDR] *B. NASD Regulation* Board Procedures

1. [Disciplinary Actions—]Any initial disciplinary decision of the Association, including dismissals, may be appealed to [the NBCC within 15 calendar days,] or called for review by the NBCC [within 45 calendar days, as] *in accordance with the procedures* set forth in the [Code of Procedure. A] *Rules of the Association. Any disciplinary* decision of the NBCC *and any decision of the NBCC with respect to statutory disqualification* may be called for review by [any member of the NASDR Board not later than its meeting next following the NBCC's decision. A] *the NASD Regulation Board in accordance with the procedures set forth in the Rules of the Association. Any disciplinary* decision of the NBCC or [the NASDR Board] *NASD Regulation Board and any decision of the NBCC or NASD Regulation Board with respect to statutory disqualification* may be called for review by [any member of the NASD Board not later than its meeting next following the decision of the NBCC or NASDR Board but which is 15 calendar days or more following the decision of the NBCC or NASD Board. Any disciplinary decision not appealed or called for review shall become the final action of the Association upon the expiration of the time allowed for appeal or call for review] *the NASD Board in accordance with the procedures set forth in the Rules of the Association.* A respondent has the right to appeal a final action of the Association taken by the NBCC, [NASDR or NASD to the SEC.] *NASD Regulation or NASD to the Commission.*

[2. Statutory Disqualification Decisions—Any decision of the NBCC with respect to statutory disqualification may be called for review by any member of the NASDR Board not later than its meeting next following the NBCC's decision. A decision of the NBCC or the NASDR Board may be called for review by any member of the NASD Board not

later than its meeting next following the decision of the NBCC or NASDR Board but which is 15 calendar days or more following the decision of the NBCC or the NASDR Board. Any decision that is not called for review shall]

2. Rule Filings—Any rule change adopted by the NASD Regulation Board that imposes fees or other charges on persons or entities other than NASD members or that the NASD Regulation Board refers to the NASD Board because in the view of the NASD Regulation Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association. If the NASD Regulation Board does not refer a rule change to the NASD Board for review, the NASD Regulation Board action will become the final action of the Association [upon expiration of the time allowed for appeal or call for review. A respondent has the right to appeal a final action of the Association taken by the NBCC, NASDR or NASD to the SEC.

3. Rule Filings—Any rule change adopted by the NASDR Board that imposes fees or other charges on persons or entities other than NASD members or that the NASDR Board refers to the NASD Board because in the view of the NASDR Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association. If the NASDR Board does not refer a rule change to the NASD Board for review, the NASDR Board action will become the final action of the Association] unless called for review by any member of the NASD Board not later than its meeting next following the [NASDR] *NASD Regulation* Board's action but which is 15 calendar days or more following the action of the [NASDR Board.] *NASD Regulation Board. Notwithstanding the 15 day requirement, the NASD Board may determine it is advisable to call or not call for review any rule change within the 15 calendar day period following the decision of the NASD Regulation Board.* During the process of developing rule proposals, [NASDR] *NASD Regulation* staff shall consult with and seek the advice of Nasdaq staff before presenting any rule proposal to the [NASDR Board.] *NASD Regulation Board.*

[4. Notwithstanding the requirements set forth in paragraphs 1 through 3 of this Section, the NASD Board may determine it is advisable to call or not call for review any disciplinary action, statutory disqualification decision, or rule change within the 15 calendar day period following the decision of the NBCC or the NASDR Board, as applicable.

D] *C.* Supplemental Delegation Regarding [the Formation of Committees] *Committees*

[1. The NASDR board may designate one or more committees and delegate to such committees such powers and authority, as necessary and appropriate, to act on behalf of the NASDR Board in carrying out the functions and authority delegated to the NASDR by the NASD. Such delegations shall be in conformance with law, the charter and the by-laws and the requirements as set forth below as part of this Plan of Allocation and Delegation. Any action taken by a committee pursuant to delegated authority shall be subject to review, ratification or rejection by the NASDR Board in accordance with procedures established by the NASDR Board.]

1. Market Regulation Committee

[(a) National Business Conduct Committee—A National Business Conduct Committee may be created for the purpose of:]

a. The Market Regulation Committee shall advise the NASD Regulation board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting the trading practices; advise the NASD Regulation Board in its administration of programs and systems for the surveillance and enforcement of rules governing NASD members' conduct and trading activities in The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, the third market for securities listed on a registered exchange, and the over-the-counter market; provide a pool of panelists for those hearing panels that the Chief Hearing Officer or his or her designees determines should include a member of the Market Regulation Committee pursuant to the Rules of the Association; participate in the training of hearing panelists on issues relating to quotations, executions, trade reporting, and trading practices; and review the recommend to the National Business Conduct Committee changes to the Association's Sanction Guidelines.

[(i) Hearing and deciding appeals of initial disciplinary decisions of the Association.

(ii) Considering and recommending to the NASDR Board policy and rule changes relating to the business and sales practices of NASD members and associated persons.

(iii) Considering and recommending Association enforcement policies, including policies with respect to fines and other sanctions.

(b) The NBCC shall be composed of at least Eight (8) members of the NASDR Board equally]

b. The NASD Regulation Board shall appoint the Market Regulation Committee by resolution. The members of the Market Regulation Committee shall be balanced between Industry and Non-*Industry committee members.* [industry Committee Members (including at least one Public Member). If at any time there shall be an odd number of Committee Members, a majority of the Members shall be Non-industry. Each NBCC Member shall be elected to serve a one-year term.]

[2. Other Committees—With respect to any other committees that may be formed pursuant to this Section D for purposes other than those set forth in (1) above, such committee shall be created in accordance with the by-laws by resolution or resolutions adopted by a majority of the whole NASDR Board.]

2. National Arbitration and Mediation Committee

a. The National Arbitration and Mediation Committee shall have the powers and authority pursuant to the Rules of the Association to advise the NASD Regulation Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and Association members, to monitor rules and procedures governing the conduct of dispute resolution, and to have such other powers and authority as is necessary to effectuate the purposes of the Rules of the Association.

b. The NASD Regulation Board shall appoint the National Arbitration and Mediation Committee by resolution. The members of the National Arbitration and Mediation Committee shall be equally balanced between Industry and Non-Industry committee members.

III. Delegation to Nasdaq

A. Delegation of Functions and Authority

1. The NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. To operate The Nasdaq Stock Market, automated systems supporting The Nasdaq Stock Market, and other markets or systems for non-Nasdaq securities.

b. To provide and maintain a telecommunications network infrastructure linking market participants for the efficient processing

and handling of quotations, orders, transaction reports, and comparisons of transactions.

c. To collect, process, consolidate, and provide to [NASDR] *NASD Regulation* the information requisite to operation of the surveillance audit trail.

d. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on The Nasdaq Stock Market, on other markets operated by The Nasdaq Stock Market, in the third market for securities listed on a registered exchange, and in the over[-]-the[-]-counter market, (ii) for Nasdaq[-]-operated trading systems for these securities, and (iii) establishing trading practices with respect to these securities.

e. To develop and adopt rules, interpretations, policies, and procedures to maintain and enhance the integrity, fairness, efficiency, and competitiveness of The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

f. To act as a Securities Information Processor for quotations and transaction information related to securities traded on The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

g. To act as processor under the Nasdaq/Unlisted Trading Privileges Plan to collect, consolidate, and disseminate quotation and transaction reports in eligible securities from all Plan Participants in a fair and non[-]-discriminatory manner.

h. To administer the Association's involvement in National Market System Plans related to Nasdaq/Unlisted Trading Privileges or the trading in the third market for securities listed on a registered exchange.

i. To develop, adopt, and administer rules governing listing standards applicable to securities traded on The Nasdaq Stock Market and the issuers of those securities.

j. To establish standards for participation in The Nasdaq Stock Market[,] *and* other markets or systems operated by Nasdaq, and determine in accordance with Association and Nasdaq procedures if: (i) persons seeking to participate in any of such markets and systems have met the standards established for participants; and (ii) persons participating in any of the markets or systems continue to meet the standards established for participants.

k. To establish and assess listing fees upon issuers and fees for the products and services offered by Nasdaq.

l. To establish the annual budget and business plan for Nasdaq.

m. To determine allocation of Nasdaq resources.

n. To manage external relations on matters related to trading on and the operation and functions of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market and systems operated by the Nasdaq Stock Market with Congress, the [SEC] *Commission*, state regulators, other self-regulatory organizations, business groups, and the public.

o. To operate Stockwatch in conjunction with NASD Regulation pursuant to Section IV.

2. All action taken pursuant to authority delegated pursuant to (1) shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

[B. Board of Directors

1. Composition—As of January of 1997 the Nasdaq Board of Directors (''Nasdaq Board'') shall be composed of at least Eleven (11) and not more than Fifteen (15) Directors. The President of Nasdaq shall be a member of the Nasdaq Board and the remaining Members shall be equally balanced between Industry and Non-industry Directors, including at least two (2) Public Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-industry. In the event that the Nasdaq Board shall consist of more than Twelve (12) Members, at least Three (3) shall be Public Directors. The CEO of NASD shall be an ex-officio non-voting member of the Nasdaq Board.

2. Election Procedures

a. The National Nominating Committee shall propose to the NASD Board nominees for each position on the Nasdaq Board.

b. Terms of Office and Vacancies: The terms of office of Directors and the procedures for the filling of vacancies shall be the same as those set forth under I.C.4. and 5. above.]

[C.] *B.* Nasdaq Board Procedures

1. Listing/Delisting Decisions—Any initial decision of Nasdaq staff concerning the listing or delisting of securities on The Nasdaq Stock Market may be appealed to the Nasdaq Listing and Hearing Review Committee (''Listing Committee'') within 15 calendar days, or called for review by any member of the Listing Committee within 45 days, as set forth in the Code of Procedure. A decision of the Listing Committee may be called for review by any member of the Nasdaq Board not later than its meeting next following the Listing Committee's decision. A decision of the Nasdaq Board may be called for review by any member of the NASD Board not later than its meeting next following the Nasdaq Board's decision but which is 15 calendar days or more following the decision of the Listing Committee or the Nasdaq Board. Any decision not appealed or called for review shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. An issuer has the right to appeal a final action of the Association taken by the Listing Committee, Nasdaq Board or NASD to the SEC.

2. Rule Filings—Any rule change adopted by the Nasdaq Board that imposes fees or other charges on persons or entities other than NASD members or issuers or that the Nasdaq Board determines to refer to the NASD Board because in the view of the Nasdaq Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association. If the Nasdaq Board does not refer a rule change to the NASD Board for review, the Nasdaq Board action will become the final action of the Association unless called for review by any member of the NASD Board not later than its meeting next following the Nasdaq Board's action but which is 15 calendar days or more following the action of the Nasdaq Board. During the process of developing rule proposals, Nasdaq staff shall consult with and seek the advice of NASDR staff before presenting any rule proposal to the Nasdaq Board.

3. Notwithstanding the requirements set forth in paragraphs 1 and 2 of this Section, the NASD Board may determine it is advisable to call for review any listing/delisting decision or rule change within the 15 calendar day period following the decision of the Listing Committee or the Nasdaq Board, as applicable.

[D.] *C.* Supplemental Delegation Regarding [the Formation of Committees] *Committees*

[The Nasdaq Board may designate one or more committees and delegate to such committees such powers and authority, as necessary and appropriate, to act on behalf of the Nasdaq Board in carrying out the functions and authority delegated to Nasdaq by the NASD. Such delegations shall be in conformance with law, the charter and the by-laws and the requirements as set forth below as part of this Plan of Allocation and Delegation. Any action taken by a

committee pursuant to delegated authority shall be subject to review, ratification or rejection by the Nasdaq Board.

1. Specific Committees

a.] *1.* Quality of Markets Committee (''QOMC'')

[(1)]*(a)* The QOMC shall be a committee appointed by the Nasdaq Board and shall have the following functions:

[(i)]*(1)* To provide advice and guidance to the Nasdaq Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling and execution mechanisms of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, and systems operated by The Nasdaq Stock Market from the perspective of investors, both individual and institutional, retail firms, market making firms, Nasdaq[-]-listed companies, and other participants in The Nasdaq Stock Market.

[(ii)]*(2)* To advise the Nasdaq Board with respect to national market systems plans and linkages between the facilities of Nasdaq and registered exchanges.

[(2)]*(b)* The QOMC will have broad representation that is equally balanced between [industry] *Industry* and [non-industry] *Non-Industry* committee members. The committee members shall include broad representation of participants in The Nasdaq Stock Market, including investors, market makers, integrated retail firms, and order entry firms.

[b] *2.* Market Operations Review Committee (''MORC'')

[(1)]*(a)* The MORC shall be a committee appointed by the Nasdaq Board and shall exercise the functions contained in [Section 70] *Rule 11890* of the [Uniform Practice Code (''UPC''),] *Rules of the Association* in accordance with the procedures specified therein. [NASDR] *NASD Regulation* shall receive weekly reports of all determinations made by the staff or MORC under [Section 70 of the UPC] *Rule 11890* for regulatory review.

[(2)]*(b)* The MORC shall be appointed by resolution of the Nasdaq Board and shall have no more than [Fifty (50)] *50* percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed 10 [%] *percent* of its total revenues.

[c] *3.* Firm Operations and Clearance Committee (''FOCC'')

[(1)]*(a)* The FOCC shall be a committee appointed by the Nasdaq Board and shall have the following functions:

[(i)]*(1)* To issue interpretations or rulings with respect to [Sections 4–10, 12, 46, 67–68 and 71 of the UPC] *Rules 11130–11180, 11200–11220, 11320, 11620, 11830, 11880 of the Rules of the Association,* as well as any other provision of the [UPC] *Rule 11000 Series* pertaining to transactions and post execution processing.

[(ii)]*(2)* To advise the Nasdaq Board with respect to modifications to the [UPC] *Rule 11000 Series* dealing with the transactions and post execution processing.

[d] *4.* Nasdaq Listing and Hearing Review Committee (''Listing Committee'')

[(1)]*(a)* The Listing Committee shall be a committee appointed by the Nasdaq Board and shall have the following functions:

[(i)]*(1)* To advise the Nasdaq Board on the formulation or modification of initial or maintenance eligibility criteria and fees applicable to securities listed on The Nasdaq Stock Market or traded on other markets operated by The Nasdaq Stock Market.

[(ii)]*(2)* To exercise the functions set forth in [Article IX] *the Rules* of the [Code of Procedure] *Association,* in accordance with the procedures specified therein.

[(2)]*(b)* The Listing Committee shall be appointed by resolution of the Nasdaq Board and shall have no more than [Fifty (50)] *50* percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed 10[%] *percent* of its total revenues.

[2. Other Committees

With respect to any other committees that may be formed pursuant to this Section D for purposes other than those set forth in (1) above, such committee shall be created in accordance with the By-laws by resolution or resolutions adopted by a majority of the whole Nasdaq Board.

E.] *IV.* Stockwatch

The Stockwatch section handles the trading halt functions for The Nasdaq Stock Market and exchange-listed securities traded in the over-the-counter market (i.e., the Third Market). Review of all questionable market activity, possible rule infractions or any other matters that require any type of investigative or regulatory follow-up will be referred to and conducted by [NASDR] *NASD Regulation,* which will assume sole responsibility for the matter until resolution. This responsibility will include examinations, investigations, document requests, and any enforcement actions that [the NASDR] *NASD Regulation* may deem necessary. [NASDR] *NASD Regulation* staff at all times will have access to all records and files of the Stockwatch function.

* * * * *

Restated Certificate of Incorporation of National Association of Securities Dealers, Inc.

The present name of the corporation is National Association of Securities Dealers, Inc. [(the ''Corporation''). The Corporation] *(''NASD''). The NASD* was originally incorporated as a nonstock corporation under the name of Investment Bankers Conference, Inc., and its original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on September 3, 1936. This Restated Certificate of Incorporation of the [Corporation] *NASD,* which both restates and further amends the provisions of the [Corporation's] *NASD's* Certificate of Incorporation as heretofore amended, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

Name

First: The name of the [Corporation] *corporation* is National Association of Securities Dealers, Inc.

Delaware Office and Agent

Second: The registered office of the [Corporation] *NASD* in the State of Delaware is located at 1209 Orange Street, in the City of Wilmington, County of New Castle. The name and address of its registered agent is the Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware.

Objects or Purposes

Third: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, and, without limiting the generality of the foregoing, the business or purposes to be conducted or promoted shall include the following:

(1) To promote through cooperative effort the investment banking and securities business, to standardize its principles and practices, to promote therein high standards of commercial honor, and to encourage and promote among members observance of Federal and [State] *state* securities laws;

(2) To provide a medium through which its membership may be enabled to confer, consult, and cooperate with governmental and other agencies in the solution of problems affecting investors, the public, and the investment banking and securities business;

(3) To adopt, administer, and enforce rules of fair practice and rules to prevent fraudulent and manipulative acts and practices, and in general to promote just and equitable principles of trade for the protection of investors;

(4) To promote self-discipline among members, and to investigate and adjust grievances between the public and members and between members;

(5) To establish, and to register with the Securities and Exchange Commission as, a national securities association pursuant to Section 15A of the Securities Exchange Act of 1934, as amended, and thereby to provide a medium for effectuating the purposes of said [section;] *Section; and*

(6) To transact business and to purchase, hold, own, lease, mortgage, sell, and convey any and all property, real and personal, necessary, convenient, or useful for the purposes of the [Corporation;] *NASD.*

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, not be limited or restricted by reference to, or inference from, the terms of any other clause in this [certificate of incorporation] *Restated Certificate of Incorporation*, but the objects and purposes specified in each of the foregoing clauses of this [article] *Article* shall be regarded as independent objects and purposes.

Form of Organization

Fourth: [This Corporation] *The NASD* shall be a membership corporation and shall have no capital stock. The [Corporation] *NASD* is not organized and shall not be conducted for profit, and no part of its net revenues or earnings shall inure to the benefit of any individual, subscriber, contributor, or member.

Except as may be otherwise provided by [applicable law] *the General Corporation Law of the State of Delaware* or this Restated Certificate of Incorporation, the members of the [Corporation] *NASD* shall have no voting rights. Notwithstanding the foregoing, the members shall be entitled to vote for the election of Governors and on any amendment to the By-Laws of the [Corporation] *NASD* in accordance with the procedures for such a vote as provided in the By-Laws.

Except as may be otherwise provided by *the General Corporation Law of the State of Delaware, other* applicable law or this Restated Certificate of Incorporation, the conditions, method of admission, qualifications and classifications of membership, the limitations, rights, powers and duties of members, the dues, assessments, and contributions of members, the method of expulsion from and termination of membership, and all other matters pertaining to the membership and the conduct, management, and control of the business, property, and affairs of the [Corporation] *NASD* shall be as provided from time to time in the By-Laws of the [Corporation] *NASD and the Rules of the Association*.

Indemnification; Governor Liability

Fifth: (a) [To] *The NASD shall indemnify, and hold harmless, to* the fullest extent permitted by [applicable law] *the General Corporation Law of the State of Delaware* as it presently exists or may [hereafter be amended, the Corporation shall indemnify any person who was or is made] *thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Governor, officer, or employee of the NASD, or is or was a Governor, officer, or employee of the NASD who is or was serving at the request of the NASD as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party,* or is threatened to be made a party [or is otherwise involved in any]*to:*

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative [or investigative,]*, or investigative (other than an action by or in the right of the NASD) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or*

(ii) any threatened, pending, or completed action or suit by or in the right of the NASD to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

[(b) A Governor of the Corporation shall not be liable to the Corporation or its members for monetary damages for breach of fiduciary duty as a Governor, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law as the same exists or may hereafter by amended.]

(b) The NASD shall advance expenses (including attorneys' fees and disbursements) to persons described in Article Fifth (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article Fifth or otherwise.

(c) The NASD may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by the General Corporation Law of the State of Delaware as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he[, or a person for whom he is the legal representative, is or was a Governor or officer of the Corporation or] *or she is or was an agent of the NASD or is or was an agent of the NASD who* is or was serving at the request of the [Corporation] *NASD* as a director, officer, employee, or agent of another corporation [or of a], partnership, [joint venture,] trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, [against all expenses, liability, and loss reasonably incurred or suffered by such person, and the Corporation shall advance expenses (including attorneys' fees) to such person.] *was or is a party, or is threatened to be made a party to any action or proceeding described in Article Fifth (a).*

(d) The NASD may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article Fifth or otherwise.

(e) Notwithstanding the foregoing[, the Corporation shall be required to indemnify a person and advance expenses to such person in connection with a proceeding (or part thereof) commenced by such person only if the commencement of such proceeding (or part thereof) was authorized by the

Board of Governors. The Board of Governors may indemnify and/or advance expenses to any employee or agent of the Corporation to the extent it deems appropriate and to the extent permitted by applicable law. The rights conferred on any person by this Article Fifth(a) shall not be] *or any other provision of these By-Laws, no advance shall be made by the NASD to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Governors who have not been named parties to the action, even though less than a quorum, or, if there are no such Governors or if such Governors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of the NASD; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to the NASD.*

(f) The indemnification provided by this Article Fifth in a specific case shall not be deemed exclusive of any other rights [which such person may have or hereafter acquire under any statute, provision of this Restated Certificate of Incorporation, By-Law, agreement, vote of members or disinterested Governors or otherwise.] *to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Governor, officer, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.*

(g) Notwithstanding the foregoing, but subject to Article Fifth (j), the NASD shall be required to indemnify any person identified in Article Fifth (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) The NASD's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the [first sentence] *foregoing provisions* of this Article Fifth[(b)] shall not adversely affect any right or protection [of a Governor of the Corporation existing hereunder with respect to] *hereunder of any person respecting* any act or omission occurring prior to *the time of* such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article Fifth is not paid in full within 60 days after a written claim therefore by an indemnified person has been received by the NASD, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the NASD shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under the General Corporation Law of the State of Delaware.

(k) The NASD shall have power to purchase and maintain insurance on behalf of any person who is or was a Governor, officer, employee, or agent of the NASD, or is or was serving at the request of the NASD as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the NASD would have the power to indemnify such person against such liability hereunder.

(l) A Governor shall not be liable to the NASD or its members for monetary damages for breach of fiduciary duty as a Governor, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as it presently exists or may hereafter be amended.

Perpetual Existence

Sixth: The [Corporation] *NASD* shall have perpetual existence.

Members' Liability

Seventh: The private property of the members shall not be subject to the payment of corporate debts to any extent whatever.

Governors

Eighth: To the fullest extent permitted by Sections 141(a), 141(j), and 215 of the General Corporation Law of the State of Delaware and other applicable law, the business and affairs of the [Corporation] *NASD* shall be managed and the election of Governors shall be conducted in the manner provided in this Restated Certificate of Incorporation and the By-Laws of the [Corporation] *NASD.* To the extent there is any inconsistency between the provisions of this Restated Certificate of Incorporation and the By-Laws relating to such matters and the General Corporation Law, the provisions of this Restated Certificate of Incorporation and the By-Laws shall govern to the fullest extent permitted by the General Corporation Law and other applicable law. To the fullest extent permitted by the General Corporation Law of the State of Delaware and other applicable law, the Board of Governors may delegate such powers, authority, and functions as it shall determine *from time to time, in a manner not inconsistent with the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries,'' approved by the Securities and Exchange Commission, as amended* from time to time.

The [Corporation] *NASD* shall be managed under the direction of a Board of Governors having such powers and duties as shall be provided from time to time in this Restated Certificate of Incorporation or the By-Laws of the [Corporation] *NASD.* The Board of Governors shall be the governing body of the [Corporation] *NASD.* The members of the Board of Governors shall be elected by a plurality of the votes of the members of the [Corporation] *NASD* present in person or represented by proxy at the annual meeting of the members of the [Corporation] *NASD* and entitled to vote thereat. Elections shall be by written ballot. Any Governor so elected must be nominated by the National Nominating Committee *or certified by the Secretary of the NASD* (as provided in the By-[laws)] *Laws*) and must satisfy the other qualifications for Governors set forth in the By-Laws or established by resolution of the Board of Governors from time to time, which qualifications shall be consistent with the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries[''] as approved by the Securities and Exchange Commission, as amended from time to time.].'' The By-Laws may also provide for such assistants to the Board of Governors, and such officers, agents, and employees, as may be deemed necessary to administer affairs of the [Corporation] *NASD.*

The Board of Governors shall be divided into three classes. Each Governor shall hold office for a term of not more than three years, such term to

be fixed by the Board at the time of the nomination *or certification* of such Governor, or until [his] *a* successor is duly elected and qualified, or until [his] death, resignation, disqualification, or removal. Except for the Chief Executive Officer, no Governor may serve more than two consecutive terms, provided, however, that if a Governor is appointed to fill a term of less than one year, such Governor may serve up to two consecutive terms following the expiration of such Governor's [current] *initial* term. The Chief Executive Officer of the [Corporation] *NASD* shall serve as a member of the Board until [his] *a* successor is selected and qualified, or until [his] death, resignation, disqualification, or removal.

In furtherance and not in limitation of the powers granted by [applicable law] *the General Corporation Law of the State of Delaware*, the Board of Governors is expressly authorized unless the By-Laws otherwise provide, to make, alter, or repeal the By-Laws of the [Corporation] *NASD*.

In the event of the refusal, failure, neglect, or inability of any member of the Board of Governors to discharge [his] *such member's* duties, or for any cause affecting the best interest of the [Corporation] *NASD* the sufficiency of which the Board of Governors shall be the sole judge, the Board shall have the power, by the affirmative vote of two-thirds of the Governors then in office, to remove such member and declare [his] *such member's* position vacant and that it shall be filled in accordance with the provisions of the By-Laws.

The [Corporation] *NASD* may, in its By-Laws, confer powers upon its Board of Governors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon them by [applicable law.] *the General Corporation Law of the State of Delaware.*

Meetings and Offices

Ninth: Both members and the Board of Governors shall have power, if the By-Laws so provide, to hold their meetings and to have one or more offices within or without the State of Delaware and to keep the books of the [Corporation] *NASD* (subject to the provision of the statutes), outside the State of Delaware at such places as may be from time to time designated by the Board of Governors.

Right to Amend Certificate of Incorporation

Tenth: The [Corporation] *NASD* reserves the right to amend, alter, change, or repeal any provisions contained in this [certificate of incorporation] *Restated Certificate of Incorporation*, in the manner now or hereafter prescribed by statute, and all rights conferred upon members herein are granted subject to this reservation.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed under the seal of the [Corporation] NASD this _____ day of[, 1996] _____, 1997.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

By: _____
[signature]

_____
[printed name]

_____
[title]

Attest: _____
[title]

* * * * *

***Restated* Certificate of Incorporation of NASD Regulation, Inc.**

The undersigned, Mary Schapiro, President of NASD Regulation, Inc. (''NASD Regulation''), a Delaware corporation, does hereby certify:

FIRST: *That* [The] *the* name of the corporation is NASD Regulation, Inc. *The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was January 25, 1996. The name under which NASD Regulation was originally incorporated was NASD Regulation, Inc.*

SECOND: [The address of the Corporation's] *That the Certificate of Incorporation of NASD Regulation has been amended and restated in its entirety as follows:*

Article First

The name of the corporation is NASD Regulation, Inc.

Article Second

The address of NASD Regulation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, 19801. The name of [the Corporation's] *NASD Regulation's* registered agent at such address is The Corporation Trust Company.

Article Third

[THIRD:] The purpose of [the Corporation] *NASD Regulation* is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware[.], *and, without limiting the generality of the forgoing business or purposes to be conducted or promoted, shall include the responsibilities and functions set forth in the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries,'' as approved by the Securities and Exchange Commission, as amended from time to time. NASD Regulation* [The Corporation] is not organized for profit and no part of the net earnings of [the Corporation] *NASD Regulation* shall inure to the benefit of any private stockholder or individual.

Article Fourth

[FOURTH:] The total number of shares of stock which [the Corporation] *NASD Regulation* shall have authority to issue is 2,000, par value $0.01 per share, all of which shall be shares of common stock.

Article Fifth

[FIFTH:] (a) The business and affairs of [the Corporation] *NASD Regulation* shall be managed by or under the direction of the Board of Directors. The qualifications, number, tenure, powers, and duties of the members of the Board of Directors shall be provided in the By-Laws. Except as otherwise provided in this *Restated* Certificate of Incorporation, the By-Laws shall specify the manner by which directors of [the Corporation] *NASD Regulation* shall be nominated and elected.

(b) Unless and except to the extent that the By-Laws of *NASD Regulation* [the Corporation] shall so require, the election of directors of [the Corporation] *NASD Regulation* need not be by written ballot.

[SIXTH: To the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, the Corporation shall indemnify any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he, or a person for whom he is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all expenses, liability, and loss reasonably incurred or suffered by such person, and the Corporation shall advance expenses (including attorneys' fees) to such person. Notwithstanding the foregoing, the Corporation shall be required to indemnify a person and advance expenses to such person in connection with a proceeding (or part thereof)

commenced by such person only if the commencement of such proceeding (or part thereof) was authorized by the Board of Directors. The rights conferred on any person by this Article SIXTH shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, By-Law, agreement, vote of stockholders or disinterested directors or otherwise.]

Article Sixth

[SEVENTH:] A director of [the Corporation] *NASD Regulation* shall not be liable to [the Corporation] *NASD Regulation* or its [stockholders] *stockholder* for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law as the same exists or may hereafter be amended. Any repeal or modification of the first sentence of this Article [SEVENTH] *SIXTH* shall not adversely affect any right or protection of a director of [the Corporation] *NASD Regulation* existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

Article Seventh

[EIGHTH:] In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized and empowered to make, alter, and repeal the By-Laws of [the Corporation] *NASD Regulation*, subject to the power of the [stockholders of the Corporation] *stockholder of NASD Regulation* to alter or repeal any By-Law made by the Board of Directors.

Article Eighth

[NINTH: The Corporation] *NASD Regulation* reserves the right [at any time, and from time to time,] to amend, alter, change, or repeal any provision contained in this *Restated* Certificate of Incorporation, [and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted,] in the manner now or hereafter prescribed by [law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended] *statute, and all rights conferred herein* are granted subject to [the rights reserved in this Article NINTH.] *this reservation.*

Article Ninth

[TENTH: The Corporation] *NASD Regulation* shall have perpetual existence.

[ELEVENTH: The name and mailing address of the incorporator is Joseph R. Hardiman, c/o National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.

TWELFTH: The powers of the Incorporator shall terminate upon the filing of this] ***THIRD: That such Restated*** Certificate of Incorporation[. The names and mailing addresses of the persons who are to serve as the directors of the Corporation until the first annual meeting of the stockholders of the Corporation, or until their successors are elected and qualified are Joseph R. Hardiman, c/o National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006, Richard G. Ketchum, c/o National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006 and Mary Schapiro, c/o National Association of Securities Dealers, Inc., 1735 K Street, N. W., Washington, D. C. 20006.] *has been duly adopted by the stockholder of NASD Regulation in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.*

IN WITNESS WHEREOF, [I, the undersigned, being the sole incorporator hereinabove named, hereby acknowledge that the foregoing Certificate of Incorporation is my act and deed and further certify that the facts hereinabove stated are truly set forth, and accordingly I have hereunto set my hand this _____ day of January, 1996.] *the undersigned have executed this certificate this* _____ day of _____, 1997.

_____

[Incorporator] *Mary Schapiro*
President

Attest: _____

Alden S. Adkins
General Counsel

* * * * *

Restated Certificate of Incorporation of the NASDAQ Stock Market, Inc.

[Adopted in accordance with the provisions of Section 242 and Section 245 of the General Corporation Law of the State of Delaware]

[The undersigned, Joseph R. Hardiman] *The undersigned, Alfred Berkeley*, President of The Nasdaq Stock Market, Inc. *(''Nasdaq'')*, a Delaware corporation [(the ''Corporation'')], does hereby certify:

FIRST: That the name of the [Corporation] *corporation* is The Nasdaq Stock Market, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was November 13, 1979. The name under which [the Corporation] *Nasdaq* was originally incorporated was ''NASD Market Services, Inc.''

SECOND: That the Certificate of Incorporation of [the Corporation] *Nasdaq* has been amended and restated in its entirety as follows:

Article First

The name of the [Corporation] *corporation* is The Nasdaq Stock Market, Inc.

Article Second

The address of [the Corporation's] *Nasdaq's* registered office in the State of Delaware is 1209 Orange Street, *City of* Wilmington, [Delaware 19801,] County of New Castle, *Delaware 19801*. The name of [its] *Nasdaq's* registered agent at such address is The Corporation Trust Company.

Article Third

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, and, without limiting the generality of the foregoing business or purposes to be conducted or promoted, *shall include the responsibilities and functions set forth in the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries,'' as approved by the Securities and Exchange Commission, as amended from time to time.* [shall include the following:

(a) to investigate, study, organize, develop, maintain and operate, and to assist and contract with others for the investigation, study, organization, development, maintenance and operation of systems for collecting, processing, and preparing for distribution and publication, and otherwise assisting, participating in, and coordinating the distribution and publication of information with respect to transactions in and quotations for securities by means of an electronic data processing system or systems, as such may be required or permitted by federal statute and regulation (in particular the Securities Exchange Act of 1934 (''Exchange Act'') and the regulations thereunder, as either may be amended from time to time) on a current and continuing basis, consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets in securities, and the removal if impediments to and

perfection of the mechanism of a national market system;

(b) to organize, develop, operate and maintain securities markets and related systems that assure: (i) economically efficient execution, clearance and settlement of securities transactions; (ii) fair competition among brokers and dealers, and among exchange markets and markets other than exchange markets; (iii) the practicability of broker/dealers executing inventors' orders in the best market; (iv) the linking of all markets for qualified securities through communications and data processing facilities; and (v) appropriate regulatory oversight;

(c) to develop, organize, operate and maintain securities markets and related systems that will assist the National Association of Securities Dealers, Inc. in carrying out its regulatory responsibilities under the Exchange Act, particularly Sections 11A and 15A and all applicable rules promulgated under the Exchange Act;

(d) to establish terms, conditions, rules, regulations, orders, and schedules for the operation, maintenance, and regulation of methods, means and systems established by the Corporation; and

(e) to offer consulting services respecting the organization, development, operation, and maintenance of securities market systems and facilities, including systems and procedures for regulatory oversight of trading in securities markets.]

Article Fourth

[The Corporation] *Nasdaq* shall be authorized to issue a total of 2,000 shares of common stock with no par value.

Article Fifth

[The Corporation] *Nasdaq* shall be governed by the Board of Directors of such number and having such qualifications, powers, and duties[,] as shall be provided in the By-Laws. The Board shall be selected in such manner, and shall serve for such term, as shall be stated in the By-Laws. The Board of Directors shall have the power to adopt, alter, or repeal the By-Laws of [the Corporation] *Nasdaq* at any meeting at which a quorum is present by the affirmative vote of the majority of the whole Board of Directors.

A [Director of this Corporation] *director of Nasdaq* shall not be liable to [the Corporation] *Nasdaq* or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of [the Corporation] *Nasdaq* existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

Article Sixth

Nasdaq reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation.

Article Seventh

Nasdaq [The Corporation] shall have perpetual existence.

THIRD: That such Restated Certificate of Incorporation has been duly adopted by the [stockholders of the Corporation] *stockholder of Nasdaq* in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned have executed this certificate this _____ day of __, 199__.

_____

[Joseph R. Hardiman] *Alfred Berkeley*
President

Attest: _____
Robert E. Aber
[Secretary] *General Counsel*

* * * * *

Rule 0120

0120. Definitions

When used in these Rules, unless the context otherwise requires:

(a) "Act"

The term ''Act'' means the Securities Exchange Act of 1934, as amended.

(b) "Association"

The term ''Association'' means, *collectively, the NASD, NASD Regulation, and Nasdaq.* [National Association of Securities Dealers, Inc., (NASD) a nonprofit membership corporation organized under the laws of the State of Delaware.]

(c) "By-Laws"

The term ''By-Laws'' means the By-Laws of the Corporation.

(d) "Code of Procedure"

The term ''Code of Procedure'' means the procedural rules contained in the Rule 9000 Series.

(e) "Commission"

The term ''Commission'' means the Securities and Exchange Commission (SEC), established pursuant to the Act.

(f) "Completion of the Transaction"

The term ''the completion of the transaction'' means:

(1) In the case of a customer who purchases a security through or from a member, except as provided in subparagraph (2), the time when such customer pays the member any part of the purchase price, or, if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the member for any part of the purchase price;

(2) In the case of a customer who purchases a security through or from a member and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such member delivers the security to or into the account of such customer;

(3) In the case of a customer who sells a security through or to a member, except as provided in subparagraph (4), if any security is not in the custody of the member at the time of sale, the time when the security is delivered to the member, and if the security is in the custody of the member at the time of sale, when the member transfers the security from the account of such customer;

(4) In the case of a customer who sells a security through or to a member and who delivers such security to such member prior to the time when delivery is requested or notification is given that delivery is due, the time when such member makes payment to or into the account of such customer.

(g) "Customer"

The term ''customer'' shall not include a broker or dealer.

(h) "Fixed Price Offering"

The term ''fixed price offering'' means the offering of securities at a stated public offering price or prices, all or part of which securities are publicly offered in the United States or any territory thereof, whether or not registered under the Securities Act of 1933, except that the term does not include offerings of ''exempted securities'' or ''municipal securities'' as those terms are defined in Sections 3(a)(12) and 3(a)(29), respectively, of the Act or offerings of redeemable securities of investment companies registered pursuant to the Investment Company Act of 1940 which are offered at prices determined by the net asset value of the securities.

(i) "Member"

The term ''member'' means any individual, partnership, corporation or other legal entity admitted to

membership in the Association under the provisions of Articles II and III of the By-Laws.

(j) ''NASD''

The term ''NASD'' means NASD, Inc.

(k) ''Nasdaq''

The term ''Nasdaq'' means The Nasdaq Stock Market, Inc.

(l) ''NASD Regulation''

The term ''NASD Regulation'' means NASD Regulation, Inc.

(m) ''National Business Conduct Committee''

The term ''National Business Conduct Committee'' means the committee of the Board of Directors of NASD Regulation which may be authorized and directed to act for the Board of Directors of NASD Regulation in a manner consistent with the By-Laws of NASD Regulation, the Rules of the Association, and the Delegation Plan with respect to (1) an appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; and (6) such other proceedings or actions authorized by the Rules of the Association.

***(n)*[(j)] ''Person''**

The term ''person'' shall include any natural person, partnership, corporation, association, or other legal entity.

(o)*[(k)] ''Rules'' *or ''Rules of the Association''

The term ''Rules'' ***or ''Rules of the Association'' means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the Board of Governors of the NASD pursuant to the By-Laws of the NASD, as hereafter amended or supplemented.*** [means the Rules as adopted pursuant to Article VII of the By-laws, as the same may be hereafter amended or supplemented, as provided in the By-Laws.]

***(p)*[(l)] ''Selling Group''**

The term ''selling group'' means any group formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through members of such selling group, under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may elect to do so.

***(q)*[(m)] ''Selling Syndicate''**

The term ''selling syndicate'' means any syndicate formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through participants in such syndicate under an agreement which imposes a financial commitment upon participants in such syndicate to purchase any such securities.

* * * * *

Proposed Rule 0121

0121. Definitions in *NASD* By-Laws

Unless the context otherwise requires, or unless otherwise defined in these Rules, terms used in the Rules and interpretive material, if defined in the *NASD* By-Laws, shall have the meaning as defined in the *NASD* By-Laws.

* * * * *

Proposed Rule IM–2210–4

M–2210–4. Limitations on Use of Association's Name

(a) Use of Association Name

Members may indicate membership in the Association in conformity with Article XVI, Section 2 of the NASD By-Laws in one or more of the following ways:

(1) A member may indicate membership in the Association in recognized trade directories or other similar types of business listings.

(2) A member may indicate membership in the Association in the member's advertisements and sales literature if such use is:

(A) separate from the regular text of the advertisement or sales literature;

(B) in a smaller type size and with less emphasis than that used for the member's name; and

(C) carries no direct or implied indication of Association approval of any security or service discussed in the advertisement or sales literature.

(3) A confirmation form for an over-the-counter transaction may include the following statement: ''This transaction has been executed in conformity with the Uniform Practice Code of the National Association of Securities Dealers, Inc.''.

(4) A member may indicate membership in the Association on the door or entrance way of a member's principal office or a registered branch office in the following manner: ''Member, National Association of Securities Dealers, Inc.'' or ''Member of the National Association of Securities Dealers, Inc.''.

(b) Certification of Membership

Upon request to the Association, a member shall be entitled to receive an appropriate certification of membership, which may be displayed in the principal office or a registered branch office of the member. The certification shall remain the property of the Association and shall be returned by the member upon request of the NASD Board or the Chief Executive Officer of the Association.

(c) Fraudulent or Misleading Use Prohibited

A member or person associated with a member shall not use the name of the Association in a fraudulent or misleading manner in connection with the promotion or sale of any security or in connection with any other aspect of the member's business or imply orally, visually, or in writing that the Association endorses, indemnifies, or guarantees a member's business practices, selling methods, or class or type of securities offered.

(d) Violation of Rule 2110

An improper, fraudulent, or misleading use of the Association's name by a member or person associated with a member shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2110.

* * * * *

Membership and Registration Rules [130]

The Tables of Contents

1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

IM–1000–1. Filing of Misleading Information as to Membership or Registration

IM–1000–2. Status of Sole Proprietors and Registered Representatives Serving in the Armed Forces

IM–1000–3. Failure to Register Personnel

IM–1000–4. Appointment of Executive Representative

1010. Application for Membership

1011. Definitions

1012. General Provisions

1013. Application and Membership Interview

1014. Department Decision

1015. Review by the National Business Conduct Committee

1016. Discretionary Review by Boards

1017. Application to Commission for Review

1018. Removal or Modification of Business Restrictions

1019. Change in Ownership, Control, or Operations

* * * * *

[130] The Tables of Contents for the proposed Rule 1010 Series, the proposed Rule 8000 Series, and the proposed Rule 9000 Series are included as a convenience to guide the reader through a lengthy document, but are not part of the proposed rule change.

Rule 1010 Series

1010. Membership Proceedings

1011. Definitions

Unless otherwise provided, terms used in the Rule 1010 Series shall have the meaning as defined in Rule 0120.

(a) ''Applicant''

The term ''Applicant'' means a person or entity that applies for membership in the Association in accordance with Rule 1013 or seeks to remove or modify a restriction in accordance with Rule 1018.

(b) ''Associated Person''

The term ''Associated Person'' means a sole proprietor, partner, officer, director, branch manager, or natural person occupying a similar status or performing similar functions who will be or is anticipated to be associated with the Applicant, or any natural person engaged in the investment banking or securities business who will be or is anticipated to be directly or indirectly controlling or controlled by the Applicant, whether or not any such person is registered or exempt from registration under the NASD By-Laws or the Rules of the Association.

(c) ''Department''

The term ''Department'' means the Department of Member Regulation of NASD Regulation, Inc.

(d) Director

The term ''Director'' means a member of the NASD Regulation Board, excluding the Chief Executive Officer of the NASD.

(e) ''district''

The term ''district'' means a district established by the NASD Regulation Board under Article VIII, Section 8.1 of the NASD Regulation By-Laws.

(f) ''district office''

The term ''district office'' means an office of NASD Regulation, Inc. located in a district.

(g) ''Governor''

The term ''Governor'' means a member of the NASD Board.

(h) ''Interested Association Staff''

The term ''Interested Association Staff'' means an employee who directly participates in a decision on a membership application or in a decision under Rule 1018 or 1019, an employee who directly supervises an employee with respect to such decision, an employee who conducted an investigation or examination of a member that files an application under Rule 1018 or a notice under Rule 1019, the District Director for the relevant district, and the head of the Department.

(i) ''NASD Board''

The term ''NASD Board'' means the Board of Governors of the NASD.

(j) ''NASD Regulation Board''

The term ''NASD Regulation Board'' means the Board of Directors of NASD Regulation.

(k) ''sales practice violations''

The term ''sales practice violations'' means any conduct directed at or involving a customer that would constitute a violation of any Rule in the Rule 2000 or 3000 Series, any provision of the Act, or any state statute prohibiting fraudulent conduct in connection with the offer, sale, or purchase of a security or in connection with the rendering of investment advice.

(l) ''Subcommittee''

The term ''Subcommittee'' means a subcommittee of the National Business Conduct Committee that is constituted pursuant to Rule 1015 to conduct a review of a Department decision issued under the Rule 1010 Series.

1012. General Provisions

(a) Service of Notices and Decisions; Filing by Applicant

Except as provided in Rules 1013 and 1015, a notice or a decision issued by the Association under the Rule 1010 Series with respect to an application shall be served promptly by first-class mail on the Applicant or its counsel. Service by the Association or filing by an Applicant by mail shall be deemed complete upon mailing. Service by the Association or filing by an Applicant by commercial courier or facsimile shall be deemed complete on the date specified in the written confirmation of receipt.

(b) Ex Parte Communications

(1) Unless on notice and opportunity for an Applicant and Interested Association Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rules of the Association:

(A) an Applicant, a counsel or representative of an Applicant, or an Interested Association Staff shall not make or knowingly cause to be made an ex parte communication relevant to the merits of a membership proceeding under the Rule 1010 Series to a Governor, a Director, a member of the National Business Conduct Committee or a Subcommittee thereof, or an Association employee who is participating or advising in a decision of such a person with respect to that proceeding; and

(B) a Governor, a Director, a member of National Business Conduct Committee or a Subcommittee thereof, or an Association employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall not make or knowingly cause to be made to an Applicant, a counsel or representative of the Applicant, or an Interested Association Staff an ex parte communication relevant to the merits of that proceeding.

(2) A Governor, a Director, a member of the National Business Conduct Committee or a Subcommittee thereof, or an Association employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:

(A) all such written communications;

(B) memoranda stating the substance of all such oral communications; and

(C) all written responses and memoranda stating the substance of all oral responses to all such communications.

(3) The prohibitions against ex parte communications shall become effective when Association staff has knowledge that an Applicant intends to file a written request for review by the National Business Conduct Committee under Rule 1015.

(c) Recusal or Disqualification

A Governor, a Director, or a member of the National Business Conduct Committee or a Subcommittee thereof shall not participate in a matter governed by the Rule 1010 Series as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person shall recuse himself or shall be disqualified as follows:

(1) The Chair of the NASD Board shall have authority to direct the disqualification of a Governor, and the Vice Chair of the NASD Board shall have authority to direct the disqualification of the Chair of the NASD Board.

(2) The Chair of the NASD Regulation Board shall have authority to direct the disqualification of a Director, and the Vice Chair of the NASD Regulation Board shall have authority to direct the disqualification of the Chair of the NASD Regulation Board.

(3) The Chair of the National Business Conduct Committee shall have authority to direct the disqualification of a member of the Committee or a member of a Subcommittee appointed pursuant to Rule 1015, and the Vice Chair of the Committee shall have authority to direct the disqualification of the Chair of the National Business Conduct Committee.

(d) Separation of Review Functions

A Director shall not participate or advise in the decision of a Governor with respect to the review of a membership proceeding under the Rule 1010 Series, and a Governor shall not

participate or advise in the decision of a Director with respect to the review of a membership proceeding under the Rule 1010 Series.

(e) Computation of Time

(1) Calendar Day

In the Rule 1010 Series, ''day'' means calendar day.

(2) Formula

In computing a period of time under the Rule 1010 Series, the day of the act, event, default, or lapse from which the period of time designated begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less.

(f) Membership Application Docket

The Department shall promptly record in the Association's membership application docket each request for review filed with the National Business Conduct Committee under Rule 1015 and each subsequent event, filing, and change in the status of a membership proceeding.

1013. Application and Membership Interview

(a) Filing of Application

(1) Each Applicant for Association membership shall file a written application with the Membership Department, which shall transmit the application to the Department staff at the district office in the district in which the Applicant has or intends to have its principal place of business. An application shall include the following information and documents:

(A) a detailed business plan, in a form prescribed by the Association, that describes all material aspects of the business that will be, or are reasonably anticipated to be, performed at and after the initiation of business operations, and includes:

(i) a trial balance, balance sheet, supporting schedules, and computation of net capital, each of which has been prepared as of a date that is within 30 days before the date of application;

(ii) a monthly projection of income and expenses, with a supporting rationale, for the first twelve months of operations;

(iii) an organizational chart;

(iv) a list of the intended locations of all offices, whether or not such offices would be required to be registered under the Rules of the Association, and the names of the persons who will be in charge of each office;

(v) a list of the types of securities to be offered and sold and the types of retail or institutional customers to be solicited;

(vi) a description of the methods and media to be employed to develop a customer base and to offer and sell products and services to customers, including the use of the Internet, telephone solicitation, seminars, or mailings;

(vii) a description of the business facilities and a copy of any proposed or final lease;

(viii) the number of markets to be made, if any, the type and volatility of the products, and the anticipated maximum inventory positions;

(ix) any plan to enter into contractual commitments, such as underwritings or other securities-related activities;

(x) any plan to distribute or maintain securities products in proprietary positions, and the risks, volatility, degree of liquidity, and speculative nature of the products; and

(xi) any other activity that the Applicant may engage in that reasonably could have a material impact on capital within the first six months of business operations;

(B) a copy of the Applicant's most recent Form BD;

(C) evidence of all registrations and licenses required by the Commission, state securities authorities, the Municipal Securities Rulemaking Board, the National Securities Clearing Corporation, and self-regulatory organizations, and a copy of any decision by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

(D) a list of all Associated Persons, the most recent Form U–4 and Form U–5 for each Associated Person, any other document that discloses the disciplinary history of each Associated Person, and a list of any other persons or entities that will exercise control with respect to the Applicant's business;

(E) documentation of any:

(i) regulatory action against or investigation of the Applicant or an Associated Person by the Commission, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization that is pending, adjudicated, or settled;

(ii) investment-related civil action for damages or an injunction against the Applicant or an Associated Person that is pending, adjudicated, or settled;

(iii) investment-related customer complaint or arbitration involving sales practice violations, theft, misappropriation, conversion, or breach of fiduciary duty, against the Applicant or an Associated Person that is pending, settled, or has resulted in an award or judgement; and

(iv) criminal action (other than a minor traffic violation) against the Applicant or an Associated Person that is pending, adjudicated, or that has resulted in a guilty or no contest plea;

(F) a copy of any document evidencing a termination for cause or a permitted resignation after investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or an industry standard of conduct;

(G) a description of any remedial action, such as special training or continuing education requirements or heightened supervision, imposed on an Associated Person by a state or federal authority or self-regulatory organization;

(H) a written acknowledgment that heightened supervisory procedures and special educational programs may be required for an Associated Person whose records reflect: (i) disciplinary actions involving sales practice violations; (ii) customer complaints; or (iii) arbitrations that were resolved adversely to the Associated Person;

(I) a copy of final or proposed contracts with banks, clearing entities, or service bureaus, and a general description of any other final or proposed contracts;

(J) a description of the nature and source of Applicant's capital, including a list of all persons or entities that have contributed or plan to contribute financing to the Applicant's business, the terms and conditions of such financing arrangements, the risk to capital presented by the Applicant's proposed business activities, and any arrangement for additional capital should a business need arise;

(K) a description of the financial controls to be employed by the Applicant;

(L) a description of the Applicant's supervisory system and a copy of its written supervisory procedures, internal operating procedures (including operational and internal controls), compliance procedures, internal inspections plan, written approval process, and qualifications investigations required by Rule 3010;

(M) a description of the number, experience, and qualifications of supervisors and principals and the number, experience, and qualifications of persons to be supervised by such

personnel, the other responsibilities of the supervisors and principals with the Applicant, their full-time or part-time status, any business activities that the supervisors or principals may engage in outside of their association with the Applicant, the hours per week devoted to such activities, and an explanation of how a part-time supervisor or principal will be able to discharge his or her designated functions on a part-time basis;

(N) a description of Applicant's proposed recordkeeping system; and

(O) a copy of the Applicant's written training plan to comply with Firm Element continuing education requirements described in Rule 1120(b), including the name of the Associated Person responsible for implementation.

(2) Within 30 days after the receipt of an application, the Department shall determine whether the application is complete and, if not, shall request additional information or documents. The Department may request additional information or documents at any time during the membership application process.

(3) Unless otherwise agreed by the Department and the Applicant, the Applicant shall file any additional information and documents with the Department within 60 days after the Department's initial request and 30 days after any subsequent request.

(b) Lapse of Application

(1) Absent a showing of good cause, an application for membership shall lapse if an Applicant fails to:

(A) respond fully within 60 days after an initial request for information or documents, within 30 days after any subsequent request, or within such other time period agreed to by the Department and the Applicant; or

(B) appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (c).

(2) The lapse of an application shall require an Applicant continuing to seek membership to submit a new application under paragraph (a).

(c) Membership Interview

(1) Requirement for Interview

Before the Department issues a decision on an application for membership in the Association, the Department shall conduct a membership interview with a representative or representatives of the Applicant.

(2) Service of Notice

At least seven days before the membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the Applicant who are required to participate in the interview. The Department shall serve the notice by facsimile or commercial courier.

(3) Time

Unless the Department directs otherwise for good cause shown, a membership interview shall be scheduled to occur within 90 days after the receipt of an application or within 60 days after the receipt of all additional information or documents requested, whichever is later.

(4) Place

Unless the Department and the Applicant otherwise agree, the membership interview shall be conducted in the district office for the district in which the Applicant has or intends to have its principal place of business.

(5) Review of Standards for Admission

During the membership interview, the Department shall review the standards for admission to membership with the Applicant's representative or representatives and inform them of the Department's preliminary decision, if any, as to whether the Applicant meets each standard.

(6) Information From Other Sources

During the membership interview, the Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under Rule 1014. If the Department receives such information or document after the membership interview or decides to rely on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

1014. Department Decision

(a) Standards for Admission

After considering the application, the membership interview, other information and documents provided by the Applicant, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall determine whether the Applicant meets each of the following standards:

(1) The application and all supporting documents are complete and accurate.

(2) The Applicant and its Associated Persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations.

(3) The Applicant and its Associated Persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association, including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department may take into consideration whether:

(A) a state or federal authority or self-regulatory organization has taken permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

(B) an Applicant's or Associated Person's records reflect: (i) disciplinary actions involving sales practice violations; (ii) customer complaints; or (iii) arbitrations that were resolved adversely to the Applicant or Associated Person;

(C) an Applicant or Associated Person is the subject of a pending, adjudicated, or settled regulatory action or investigation by the Commission, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; a pending, adjudicated, or settled investment-related civil action for damages or an injunction; an investment-related customer complaint or arbitration alleging sales practice violations, theft, misappropriation, conversion, or breach of fiduciary duty that is pending, settled, or has resulted in an award or judgment; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea;

(D) an Associated Person was terminated for cause or permitted to resign after an investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or industry standard of conduct;

(E) a state or federal authority or self-regulatory organization has imposed a remedial action, such as special training or continuing education requirements or heightened supervision, on an Associated Person; and

(F) a state or federal authority or self-regulatory organization has provided information indicating that the Applicant or an Associated Person otherwise poses a threat to public investors.

(4) The Applicant has established all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus, or others necessary to: (i) initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number

of personnel; and (ii) comply with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(5) The Applicant has or has adequate plans to obtain facilities that are sufficient to: (i) initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel; and (ii) comply with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association .

(6) The Applicant is capable of maintaining a level of capital in excess of the minimum net capital requirements set forth in SEC Rule 15c3–1 adequate to support the Applicant's intended business operations on a continuing basis, based on information that is current within 30 days before the membership interview. The Department may impose a reasonably determined higher capital requirement for the initiation of operations after considering:

(A) the amount of the capital sufficient to avoid early warning level reporting requirements, such as SEC Rule 17a-11;

(B) the amount of capital necessary to meet expenses net of revenues for at least twelve months, based on reliable projections agreed to by the Applicant and the Department;

(C) any planned market making activities, the number of markets to be made, the type and volatility of products, and the anticipated maximum inventory positions;

(D) any plan to enter into other contractual commitments, such as underwritings or other securities-related activities;

(E) any plan to distribute or maintain securities products in proprietary positions, and the risks, volatility, degree of liquidity, and speculative nature of the products; and

(F) any other activity that the Applicant will engage in that reasonably could have a material impact on capital within the first six months of business operations.

(7) The Applicant has financial controls to ensure compliance with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(8) The Applicant has compliance, supervisory, operational, and internal control practices and standards that are consistent with practices and standards regularly employed in the investment banking or securities business, taking into account the nature and scope of Applicant's proposed business.

(9) The Applicant has a supervisory system, including written supervisory procedures, internal operating procedures (including operational and internal controls), and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and the Rules of the Association. In evaluating the adequacy of a supervisory system, the Department shall consider the overall nature and scope of the Applicant's intended business operations and shall consider whether:

(A) the number, experience, and qualifications of supervisory personnel are adequate in light of the number, experience, and qualifications of persons to be supervised; the disciplinary history of such persons; any criminal, civil, administrative, or arbitration actions or written customer complaints against such persons; and the number and locations of the offices that the Applicant intends to open;

(B) the Applicant has identified specific Associated Persons to supervise and discharge: (i) each of the functions in Applicant's business plan; and (ii) each of the Applicant's intended offices, whether or not such offices are required to be registered under the Rules of the Association;

(C) each Associated Person identified to discharge a supervisory function in the business plan has at least one year of direct experience or two years of related experience in the subject area;

(D) the Applicant will solicit retail or institutional business;

(E) the Applicant will recommend securities to customers;

(F) the part-time status of a supervisor or principal will affect such person's ability to be an effective supervisor;

(G) the records of an Associated Person reflect: (i) disciplinary actions involving sales practice violations; (ii) customer complaints; or (iii) arbitrations that were resolved adversely to the Associated Person;

(H) any remedial action, such as special training or continuing education requirements or heightened supervision, has been imposed on an Associated Person by a state or federal authority or self-regulatory organization; and

(I) any other condition that will have a material impact on the Applicant's ability to detect and prevent violations of the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(10) The Applicant has a recordkeeping system that enables Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements and a staff that is sufficient in qualifications and numbers to prepare and preserve required records.

(11) The Applicant has completed a training needs assessment and has a written training plan that complies with the continuing education requirements imposed by the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(12) The Association does not possess any information indicating that the Applicant may circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, or the Rules of the Association.

(13) The application and all supporting documents otherwise are consistent with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(b) Granting or Denying Application

(1) If the Department determines that the Applicant meets each of the standards in paragraph (a), the Department shall grant the application for membership.

(2) If the Department determines that the Applicant does not meet one or more of the standards in paragraph (a) in whole or in part, the Department may:

(A) grant the application subject to one or more restrictions reasonably designed to address a specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern based on the standards for admission in Rule 1014(a); or

(B) deny the application.

(c) Submission of Membership Agreement

If the Department grants an application, with or without restriction, the Applicant's approval for membership shall be contingent upon the Applicant's submission of a written membership agreement, satisfactory to the Department, undertaking to:

(1) engage only in the business set forth in the business plan and the membership agreement;

(2) abide by any restriction specified in the Department's decision;

(3) obtain the Department's prior approval of the removal or modification of such a restriction pursuant to Rule 1018; and

(4) notify and obtain the Department's approval of a change in ownership or control or a material change in business operations pursuant to Rule 1019.

The Applicant shall not waive the right to file a written request for review under Rule 1015 by executing a membership agreement under this paragraph.

(d) Decision

(1) Time

The Department shall issue a written decision on the membership application within 30 days after the conclusion of the membership interview or after the submission of additional information or documents, whichever is later.

(2) Content

If the Department denies the application, the decision shall explain the reason for denial, referencing the applicable standard or standards in paragraph (a). If the Department grants the application subject to restrictions, the decision shall explain the reason for each restriction, referencing the applicable standard or standards in paragraph (a) upon which the restriction is based and identify the specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern that the restriction is designed to address and the manner in which the restriction is reasonably designed to address the concern.

(3) Failure to Issue Decision

If the Department fails to issue a decision within 180 days after receipt of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the Department to issue a decision. Within seven days after receipt of such a request, the NASD Board shall direct the Department to serve its written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the NASD Board may extend the 180 day time limit by not more than 90 days.

(e) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National Business Conduct Committee, the NASD Regulation Board, the NASD Board, or the Commission.

(f) Effectiveness of Restriction

A restriction imposed under this Rule shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless:

(1) removed or modified by the Department under Rule 1018;

(2) removed or modified by a decision constituting final action of the Association issued under Rule 1015 or 1016; or

(3) stayed by the National Business Conduct Committee, the NASD Regulation Board, the NASD Board, or the Commission.

(g) Final Action

Unless the Applicant files a written request for a review under Rule 1015, the Department's decision shall constitute final action by the Association.

1015. Review by National Business Conduct Committee

(a) Request

Within 25 days after service of a decision under Rule 1014, an Applicant may file a written request for review with the National Business Conduct Committee. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the membership standards set forth in Rule 1014, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall send by first-class mail a copy of the request to the district office where the Applicant filed its membership application.

(b) Transmission of Documents

Within ten days after receipt of a request for review, the Department shall:

(1) transmit to the National Business Conduct Committee copies of all documents that were considered in connection with the Department's decision and an index to the documents; and

(2) serve on the Applicant a copy of such documents (other than those documents originally submitted by Applicant) and a copy of the index.

(c) Appointment of Subcommittee

The National Business Conduct Committee shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of at least two members. One member shall be a current member of the National Business Conduct Committee. The remaining member or members shall be current or past members of the NASD Regulation Board or past members of the NASD Board.

(d) Powers of Subcommittee

If a hearing is requested, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the Applicant or the Department in connection with the request for review.

(e) Hearing

(1) Notice

If a hearing is requested or directed, the hearing shall be held within 45 days after the receipt of the request or service of the notice by the National Business Conduct Committee. The National Business Conduct Committee shall send written notice of the date and time of the hearing to the Applicant by facsimile or commercial courier not later than 14 days before the hearing.

(2) Counsel

The Applicant and the Department may be represented by counsel at a hearing conducted pursuant to this Rule.

(3) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the National Business Conduct Committee. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date of this subparagraph.

(4) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. A transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The Applicant, the Department, or a witness may seek to correct its transcript. A proposed correction of the transcript shall be submitted to the Subcommittee within a reasonable period of time prescribed by the Subcommittee. Upon notice to the Applicant and the Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

(5) Failure to Appear at Hearing

If an Applicant fails to appear at a hearing for which it has notice, the National Business Conduct Committee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Association. Upon a showing of good cause, the National Business Conduct Committee may withdraw a dismissal entered pursuant to this subparagraph.

(f) Additional Information, Briefs

At any time during its consideration, the Subcommittee or the National Business Conduct Committee may direct the Applicant or the Department to submit additional information and to

file briefs. Any additional information or brief submitted shall be provided to all parties before the National Business Conduct Committee renders its decision.

(g) Subcommittee Recommendation

The Subcommittee shall present a recommended decision in writing to the National Business Conduct Committee and all other Directors within 60 days after the date of the hearing held pursuant to paragraph (e), and not later than seven days before the meeting of the National Business Conduct Committee at which the membership proceeding shall be considered.

(h) Decision

(1) Proposed Written Decision

After considering all matters presented in the review and the Subcommittee's recommended written decision, the National Business Conduct Committee may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The National Business Conduct Committee shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents

The decision shall include:

(A) a description of the Department's decision, including its rationale;

(B) a description of the principal issues raised in the review;

(C) a summary of the evidence on each issue; and

(D) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the applicable standards in Rule 1014.

(3) Issuance of Decision After Expiration of Call for Review Periods

The National Business Conduct Committee shall provide its proposed written decision to the NASD Regulation Board, and, if such decision is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation Board may call the membership proceeding for review pursuant to Rule 1016(a). The NASD Board may call the membership proceeding for review pursuant to Rule 1016(b). If neither the NASD Regulation Board nor the NASD Board calls the membership proceeding for review, the proposed written decision of the National Business Conduct Committee shall become final. The National Business Conduct Committee shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The National Business Conduct Committee shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d–3, unless the National Business Conduct Committee remands the membership proceeding.

(4) Failure to Issue Decision

If the National Business Conduct Committee fails to serve its final written decision within the time prescribed in subparagraph (3), the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the National Business Conduct Committee to serve its decision immediately or to show good cause for an extension of time. Within seven days after receipt of such a request, the NASD Board shall direct the National Business Conduct Committee to serve its written decision immediately or to show good cause for an extension of time. If the National Business Conduct Committee shows good cause for an extension of time, the NASD Board may extend the 15 day time limit by not more than 15 days.

1016. Discretionary Review by Boards

(a) Discretionary Review by the NASD Regulation Board

(1) Call For Review By Director

A Director may call a membership proceeding for review by the NASD Regulation Board if the call for review is made within the period prescribed in paragraph (2).

(2) Seven Day Period, Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 1015, a Director shall have not less than seven days to determine if the membership proceeding should be called for review. A Director shall call a membership proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(3) Review at Next Meeting

If a Director calls a membership proceeding for review within the time prescribed in subparagraph (2), the NASD Regulation Board shall review the membership proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation Board may direct the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

(4) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Regulation Board may remand the membership proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 1015(h)(2).

(5) Issuance of Decision After Expiration of Call for Review Period

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the membership proceeding for review pursuant to paragraph (b). If the NASD Board does not call the membership proceeding for review, the proposed written decision of the NASD Regulation Board shall become final. The NASD Regulation Board shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that a final written decision will be served within 15 days after such date. The NASD Regulation Board shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d–3, unless the NASD Regulation Board remands the membership proceeding.

(6) Failure to Issue Decision

If the NASD Regulation Board fails to serve its final written decision within the time prescribed in subparagraph (5), the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the NASD Regulation Board to serve its decision immediately or to show good cause for an extension of time. Within seven days after receipt of such a request, the NASD Board shall direct the NASD Regulation Board to serve its written decision immediately or to show good cause for an extension of time. If the NASD Regulation Board shows good cause for an extension of time, the NASD Board may extend the 15 day time limit by not more than 15 days.

(b) Discretionary Review by the NASD Board

(1) Call for Review by Governor

A Governor may call a membership proceeding for review by the NASD Board if the call for review is made within the period prescribed in subparagraph (2).

(2) Seven Day Period; Waiver

(A) Membership Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the membership proceeding under paragraph (a), a Governor shall make his or her call for review at the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the NASD Regulation Board.

(B) Membership Proceeding Not Called For Review By NASD Regulation Board

If no Director of the NASD Regulation Board called the membership proceeding for review under paragraph (a), a Governor shall make his or her call for review at the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(C) Waiver

By unanimous vote of the NASD Board, the NASD Board may shorten the period in subparagraph (1) or (2) to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period in subparagraph (1) or (2), vote to extend the period in subparagraph (1) or (2) to more than seven days.

(3) Review At Next Meeting

If a Governor calls a membership proceeding for review within the time prescribed in subparagraph (2), the NASD Board shall review the membership proceeding not later than the next meeting of the NASD Board. The NASD Board may order the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

(4) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse: (1) the proposed written decision of the NASD Regulation Board, or (2) if the NASD Regulation Board did not call the membership proceeding for review under paragraph (a), the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Board may remand the membership proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 1015(h)(2).

(5) Issuance of Decision

The NASD Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d–3, unless the NASD Board remands the membership proceeding.

1017. Application to Commission for Review

A person aggrieved by final action of the Association under Rule 1015 or 1016 may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of the Association, unless the Commission otherwise orders.

1018. Removal or Modification of Business Restrictions

(a) Application

(1) A member of the Association may seek modification or removal of a restriction on its business activities imposed pursuant to the Rule 1010 Series by filing a written application with the Department at the district office for the district in which the member's principal place of business is located. The application shall present facts showing that the circumstances that gave rise to the restriction have changed and state with specificity why the restriction should be modified or removed in light of the standards set forth in Rule 1014 and the articulated rationale for the imposition of the restriction. A copy of the decision pertaining to such restriction shall be appended to the application.

(2) Within 30 days after the receipt of an application to remove or modify a restriction, the Department shall determine whether the application is complete and, if not, shall request additional information or documents. Unless otherwise agreed to by the Department and the Applicant, the Applicant shall file any additional information or documents with the Department within 30 days after the Department's request. The Department may require the Applicant to participate in a membership interview pursuant to Rule 1013 within 30 days after the receipt of the application or within 30 days after the filing of any additional documents or information requested by the Department.

(3) Absent a showing of good cause, an application to modify or remove a restriction shall lapse if an Applicant fails to respond within 30 days after a request for information or documents. A lapse shall require the Applicant to submit a new application to modify or remove a restriction.

(b) Department Decision

(1) In evaluating an application submitted under paragraph (a), the Department shall consider whether maintenance of the restriction is appropriate in light of:

(A) the standards set forth in Rule 1014;

(B) the circumstances that gave rise to the imposition of the restrictions;

(C) the Applicant's operations since the restrictions were imposed;

(D) a change in ownership or control or supervisors and principals; and

(E) any new evidence submitted in connection with the application.

(2) Within 30 days after receipt of an application under paragraph (a), or within 30 days after the submission of additional information or documents, whichever is later, the Department shall issue a written decision. The decision shall state whether the application to modify or remove the restriction is granted or denied in whole or in part, and shall provide a rationale for the Department's decision, referencing the applicable standard in Rule 1014. If the Department fails to issue a decision within the such time, the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the Department to issue a decision. Within seven days after receipt of such a request, the NASD Board shall direct the Department to issue a written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the NASD Board may extend the 30 day time limit by not more than 30 days.

(3) If the Department modifies or removes a restriction on the Applicant's business activities, the membership agreement submitted under Rule 1014 shall be modified accordingly.

(c) Request for Review

An Applicant may file a written request for review of the Department's decision with the National Business Conduct Committee pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such a review, and the National Business Conduct Committee's decision shall be subject to discretionary review by the NASD Regulation Board and the NASD Board pursuant to Rule 1016.

(d) Removal or Modification of Restriction on Department's Initiative

The Department shall modify or remove a restriction on its own initiative if the Department determines such action is appropriate in light of the considerations set forth in paragraph (b)(1). The Department shall notify the member in writing of the Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph (a).

1019. Change in Ownership, Control, or Operations

(a) Notice

At least 30 days prior to the occurrence of any of the following changes in ownership, control, or operations, a member shall file a written notice of the change with the Department at the district office in the district in which the member's principal place of business is located:

(1) a merger of the member with another member;

(2) an acquisition by the member of another member;

(3) an acquisition of substantially all of the member's assets;

(4) a change in the equity ownership or partnership capital of the member that results in one person or entity owning or controlling 25 percent or more of the equity or partnership capital; or

(5) a material change in the member's business operations.

(b) Review

The Department shall review a change in ownership, control, or operations described in paragraph (a) prior to the change taking effect. The Department may maintain existing restrictions on the member's business activities and place new interim restrictions on the member based on the standards in Rule 1014, pending final Department action. The Department may condition continued membership on the submission of additional information or documents and participation in a membership interview pursuant to Rule 1013 and on prompt compliance with the standards and requirements in Rule 1014, in which case all procedural protections under the Rule 1010 Series shall apply, including the time limits required for issuance of a decision.

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Complaints, Investigations and Sanctions

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Rule 8000 Series

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8000. [Complaints,] Investigations and Sanctions

8100. [Complaints] ***General Provisions***

8110. Availability [of Certificate, By-Laws and Rules] ***of Manual to Customers***

Every member of the Association shall keep in [each branch office maintained by him, in the form to be supplied by the Board of Governors, a copy of the Certificate of Incorporation, By-Laws and Rules of the Association, and of all additions and amendments from time to time made thereto, and of all published interpretive rulings made by the Board of Governors, all of which shall be available for the examination of any customer who makes requests therefor] *its main office and each of its branch offices a current copy of the Association's Manual and all amendments to it. Upon request, a member shall make the Manual and amendments available to any customer for examination.*

[8120. Complaints by Public Against Members for Violations of Rules]

[Any person feeling aggrieved by any act, practice or omission of any member or any person associated with a member of the Association, which such person believes to be in violation of the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or any of the Rules of the Association, may, on the form to be supplied by the Board of Governors, file a complaint against such member or such persons associated with a member in regard thereto with any District Business Conduct Committee of the Association, and any such complaint shall be handled in accordance with the Code of Procedure, as set forth in the Rule 9000 Series.]

8120. Definitions

(a) Unless otherwise provided, terms used in the Rule 8000 Series shall have the meaning as defined in Rule 0120.

(b) The term ''Adjudicator'' shall have the meaning as defined in Rule 9120.

[8130. Complaints by District Business Conduct Committees]

[Any District Business Conduct Committee which, on information and belief, is of the opinion that any act, practice, or omission of any member of the Association or any person associated with a member is in violation of the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or any of the Rules of the Association, may, on the form to be supplied by the Board of Governors, file a complaint against such member or such person associated with a member in regard thereto with itself or with any other District Business Conduct Committee of the Association, as the necessities of the complaint may require, and any such complaint shall be handled in accordance with the Rule 9000 Series and in the same manner as if it had been filed by an individual or member.]

[8140. Complaints by the Board of Governors]

[The Board of Governors shall have authority when on the basis of information and belief it is of the opinion that any act, practice or omission of any member of the Association or of any person associated with a member is in violation of the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or any Rule of the Association to file a complaint against such member or such person associated with a member in respect thereto or to instruct any District Business Conduct Committee to do so, and any such complaint shall be handled in accordance with the Rule 9000 Series.]

8200. Investigations

8210. [Reports] ***Provision of Information and Testimony*** **and Inspection of Books [for Purpose of Investigating Complaints]**

[(a) For the purpose of any investigation, or determination as to filing of a complaint or any hearing of any complaint against any member of the Association or any person associated with a member made or held in accordance with the Rule 9000 Series, or made or held by another domestic or foreign self-regulatory organization, association, securities or contract market or regulator of such markets,

with whom the Association has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement or other regulatory purposes, any District Business Conduct Committee, the Market Surveillance Committee, or the Board of Governors, or any duly authorized member or members of any such Committees or Board or any duly authorized agent or agents of any such Committee or Board]

(a) Authority of Adjudicator and Association Staff

For the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or the Rules of the Association, an Adjudicator or Association staff shall have the right *to*:[:]

(1) [to] require [any] *a* member [of the Association], person associated with a member, or person [no longer associated with a member when such person is] subject to the Association's jurisdiction to [report, either informally or on the record, orally or in writing with regard] *provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify, under oath or affirmation administered by a court reporter or a notary public if requested, with respect* to any matter involved in [any such investigation or hearing, and] *the investigation, complaint, examination, or proceeding; and*

[(2) to investigate the books, records and accounts of any such member or person with relation to any matter involved in any such investigation or hearing.

(b) No such member or person shall fail to make any report as required in this Rule, or fail to permit any inspection of books, records and accounts as may be validly called for under this Rule. Any notice requiring an oral or written report or calling for an inspection of books, records and accounts pursuant to this Rule shall be deemed to have been received by the member or person to whom it is directed by the mailing thereof to the last known address of such member or person as reflected on the Association's records.]

(2) inspect the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding.

(b) Other SRO's and Regulators

Association staff also may exercise the authority set forth in paragraph (a) for the purpose of an investigation, complaint, examination, or proceeding conducted by another domestic or foreign self-regulatory organization, association, securities or contract market, or regulator of such markets with which the Association has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes.

(c) Requirement to Comply

No member or person shall fail to provide information or testimony or to permit an inspection of books, records, or accounts pursuant to this Rule.

(d) Receipt of Notice

A notice under this Rule shall be deemed to have been received by the member or person to whom it is directed by the mailing thereof to the last known address of such member or person as reflected on the Association's records, unless the Adjudicator or Association staff responsible for serving the member or associated person has actual knowledge that the address is out of date. In such case, a copy of the notice shall be served on the member at its last known address, or in the case of an associated person, at the associated person's last known residential address and the business address in the Central Registration Depository of the member with which the person is employed or affiliated.

(e) Electronic Interface

In carrying out its responsibilities under this Rule, the Association may, as appropriate, establish programs for the submission of information to the Association on a regular basis through a direct or indirect electronic interface between the Association and members.

8220. Suspension [of Members] for Failure to [Furnish] ***Provide Requested*** **Information [Duly Requested]**

[(a) The President is hereby directed and authorized to notify members of the Association who fail to provide information with respect to their business practices and/or who fail to keep membership applications and supporting documents current and/or who fail to furnish such other information or reports or other material or data duly requested by the Association pursuant to the powers duly vested in it by its Certificate of Incorporation, By-Laws and such other duly authorized resolutions and directives as are necessary in the conduct of the business of the Association, that the continued failure to furnish duly requested information, reports, data or other material, constitutes grounds for suspension from membership.]

[(b) After fifteen (15) days' notice in writing thereof, and continued failure to furnish the information, reports, data or other material as described in paragraph (a), the President is hereby directed and authorized to suspend the membership of any such member on behalf of the Board of Governors, and to cause notification thereof in the next following membership supplement, to the effect that the membership has been suspended for failure to furnish such duly requested information.]

[(c) Prior to such notice, in writing to the member, the Executive Committee of the Board of Governors shall be notified in writing of such contemplated action by the President.]

[(d) The President shall advise the member concerned, in writing, of the suspension.]

[(e) It is essential for the promotion of the Association's welfare, object and purposes and more particularly for the administration and enforcement of its Rules:

(1) that any District Business Conduct Committee, any Market Surveillance Committee, or any duly authorized member or members of any such Committees, or any duly authorized agent or agents of any such Committees, or any Association examiner duly authorized by the President shall have the right, in order to and solely for the purpose of determining whether any member is complying with the Rules of the Association:

(A) to require any such member to submit a report in writing with regard to any matter connected with such member's business or business practices, and

(B) to inspect the books, records and accounts of any such member; and

(2) that any such Committee or any such member or members thereof, or any such agent or agents thereof, or any such examiner, be and hereby is granted such rights.]

8221. Notice

(a) Notice to Member

If a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association, or fails to keep its membership application or supporting documents current, the National Business Conduct Committee shall provide written notice to such member specifying the nature of the failure and stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspension from membership.

(b) Notice to Person Associated with Member

If a person associated with a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association, the National Business Conduct Committee shall provide written notice to such person specifying the nature of the failure and stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspending the association of the person with the member.

(c) Service of Notice

The National Business Conduct Committee shall serve the member or associated person with such notice via personal service or commercial courier.

8222. Hearing

(a) Request for Hearing

Within five days after the date of service of a notice issued under Rule 8221, a member or associated person may file with the National Business Conduct Committee a written request for an expedited hearing before a subcommittee of the National Business Conduct Committee. The request shall state with specificity why the member or associated person believes that there are insufficient grounds for suspension or any other reason for setting aside the notice issued by the National Business Conduct Committee.

(b) Hearing Procedures

(1) Appointment of Subcommittee

If a hearing is requested, the National Business Conduct Committee shall appoint a subcommittee to conduct the hearing and decide whether the member or associated person should be suspended. The subcommittee shall be composed of a member of the National Business Conduct Committee and one or more current or past members of the NASD Regulation Board.

(2) Time of Hearing

The hearing shall be held within 20 days after the date of service of the notice issued under Rule 8221. Not later than seven days before the hearing, the subcommittee shall serve the member or associated person with written notice of the date and time of the hearing via commercial courier or facsimile and notify the appropriate department or office of NASD Regulation of the date and time of the hearing. The appropriate department or office of NASD Regulation (hereinafter ''appropriate department or office'' in the Rule 8220 Series) shall be the department or office that issued the request for the information, report, material, data, or testimony that the member or associated person failed to provide, or in the case of a member that failed to keep its membership application or supporting documents current, the Department of Member Regulation.

(3) Transmission of Documents

Within seven days before the hearing, the subcommittee shall serve the member or associated person via commercial courier with all documents that were considered in connection with the National Business Conduct Committee's decision to issue a notice under Rule 8221.

(4) Counsel

The member or associated person and the appropriate department or office may be represented by counsel at a hearing conducted under this Rule.

(5) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than four days before the hearing, the member or associated person and the appropriate department or office shall exchange copies of proposed hearing exhibits and witness lists and provide copies of the same to the subcommittee.

(6) Witnesses

A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(7) Additional Information

At any time during its consideration, the subcommittee may direct the member or associated person or the appropriate department or office to submit additional information. Any additional information submitted shall be provided to all parties before the subcommittee renders its decision.

(8) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. The member or associated person may purchase a copy of the transcript from the court reporter.

(9) Record

The record shall consist of all documents that were considered in connection with the National Business Conduct Committee's decision to issue a notice under Rule 8221, the notice issued under Rule 8221, the request for hearing filed under Rule 8222, the transcript of the hearing, and each document or other item of evidence presented to or considered by the Subcommittee. The Office of the General Counsel of NASD Regulation shall be the custodian of the record.

(10) Failure to Appear at Hearing

If a member or associated person fails to appear at a hearing for which it has notice, the subcommittee may dismiss the request for a hearing as abandoned, and the notice of the National Business Conduct Committee issued under Rule 8221 shall become the final action of the Association. Upon a showing of good cause, the subcommittee may withdraw a dismissal entered pursuant to this subparagraph.

8223. Decision

(a) Subcommittee

(1) Proposed Written Decision

The subcommittee may suspend the membership of a member or suspend the association of a person with a member for failure to take the action required by the notice issued under Rule 8221. The subcommittee shall prepare a proposed written decision, and if the subcommittee determines that a suspension should be imposed, the proposed written decision shall state the grounds for the suspension and the conditions for terminating the suspension. The subcommittee shall provide its proposed written decision to the NASD Board of Governors.

(2) Issuance of Decision After Expiration of Call for Review Period

If no Governor calls the suspension proceeding for review within the time prescribed in paragraph (b)(1), the subcommittee's proposed written decision shall become final, and the subcommittee shall serve the final written decision on the member or associated person via commercial courier or facsimile.

(b) NASD Board of Governors

(1) Call For Review by Governor

A Governor may call the suspension proceeding for review if the call for review is made not later than ten days after the Governor receives the subcommittee's proposed written decision. By a unanimous vote of the NASD Board of Governors, the NASD Board of Governors may shorten the call for review period to less than ten days. By an affirmative vote of the majority of the NASD Board of Governors then in office, the NASD Board of Governors may, during the ten day period, vote to extend the period to more than ten days.

(2) Review and Decision

If a Governor calls the suspension proceeding for review within the time prescribed in subparagraph (1), the NASD Board of Governors shall conduct a review not later than its next meeting. The NASD Board of Governors may affirm, modify, or reverse the decision of the subcommittee. Not later than seven days after the NASD Board of Governors meeting, the NASD Board of Governors shall serve a final written decision on the member or associated person via commercial courier or facsimile. The decision shall state the disposition of the suspension proceeding, and if a suspension is imposed, state the

grounds for the suspension and the conditions for terminating the suspension.

(c) Effective Date.

A final written decision served under this Rule shall become effective upon service and shall constitute final action of the Association.

8224. Notice to Membership

The Association shall provide notice of a suspension under the Rule 8220 Series and the grounds therefor in the next membership supplement.

8225. Termination of Suspension

A suspended member or associated person may file a written request for termination of the suspension on the ground of full compliance with the notice issued under Rule 8221 or, if applicable, the conditions of a decision under Rule 8223, with the head of the appropriate department or office. The head of the appropriate department or office shall respond to the request in writing within five days after receipt of the request. If the head of the appropriate department or office grants the request, he or she shall serve the member or associated person with written notice of the termination of the suspension via commercial courier or facsimile. If the head of the department or office denies the request, the suspended member or associated person may file a written request for relief with the National Business Conduct Committee. The National Business Conduct Committee shall respond to the request in writing within ten days after receipt of the request. The National Business Conduct Committee's response shall be served on the member or associated person via commercial courier or facsimile.

8226. Copies of Notices and Decisions to Member

A copy of a notice or decision under the Rule 8220 Series that is served on a person associated with a member shall be served on such member.

8227. Other Action Not Foreclosed

Action by the Association under the Rule 8220 Series shall not foreclose action by the Association under any other Rule.

8300. Sanctions

8310. Sanctions for Violation of the Rules

[Any District Business Conduct Committee, Market Surveillance Committee, the National Business Conduct Committee (NBCC), any other committee exercising powers assigned by the Board, or the Board, in the administration and enforcement of these Rules, the Act, the rules and regulations there under, or the rules of the Municipal Securities Rulemaking Board, and after compliance with the Rule 9000 series, may:]

(a) Imposition of Sanction

After compliance with the Rule 9000 Series, the Association may impose one or more of the following sanctions on a member or associated person for each violation of the federal securities laws, rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or Rules of the Association, or may impose one or more of the following sanctions on a member or associated person for any neglect or refusal to comply with an order, direction, or decision issued under the Rules of the Association:

[(a)]*(1)* censure [any] member or person associated with a member [, and/or];

[(b)]*(2)* impose a fine upon [any] a member or person associated with a member [, and/or];

[(c)]*(3)* suspend the membership of [any] *a* member or suspend the registration of a person associated with a member [, if any,] for a definite period [, and/or for] *or* a period contingent on the performance of a particular act[, and/or];

[(d)*(4)* expel [any] *a member, cancel the membership of a member,* or revoke *or cancel* the registration of [any] *a* person associated with a member [, if any, and/or];

[(e)]*(5)* suspend or bar a member or person associated with a member from association with all members [, and/or]*; or*

[(f)]*(6)* impose any other fitting sanction [deemed appropriate under the circumstances,].

[for each or any violation of any of these Rules by a member or person associated with a member or for any neglect or refusal to comply with any orders, directions or decisions issued by any such committee or by the Board in the enforcement of these Rules, including any interpretative ruling made by the Board, as any such committee or the Board, in its discretion, may deem to be just; provided, however, that no such sanction imposed by any such committee shall take effect until the period for appeal therefrom or review thereof by the National Business Conduct Committee or the Board, as applicable, has expired and any such appeal or review has been completed in accordance with the Rule 9000 Series; and provided, further, that all parties to any]

(b) Assent to Sanction

Each party to a proceeding resulting in a sanction shall be deemed to have assented to [or to have acquiesced in] the imposition of [such] *the* sanction unless [any party aggrieved thereby shall have made] *such party files a written* application for *appeal,* review [thereof]*, or relief* pursuant to the Rule 9000 Series[, within fifteen (15) days after the date of the decision rendered in such proceeding].

IM–8310–1. Effect of a Suspension, Revocation*, Cancellation,* or Bar

If the Association or the Commission issues an order [which] *that* imposes a suspension, revocation, or cancellation of the registration[, if any,] of a person associated with a member or bars [that] a person from further association with any member, a member shall not allow [that] *such* person to remain associated with [that member] *it* in any capacity [whatever], including *a* clerical or ministerial [functions. When an individual is suspended, a member, in addition to the above,] *capacity. If the Association or the Commission suspends a person associated with a member, the member also* shall not pay or credit any salary, *or any* commission, profit, or other remuneration [which] *that* results directly or indirectly from any security transaction [which], that [individual] *the associated person* might have earned during the period of suspension.

IM–8310–2. Release of Disciplinary Information

[No change.]

8320. Payment of Fines, Other Monetary Sanctions, or Costs*; Summary Action for Failure to Pay*

(a) Payment to Treasurer

All fines and other monetary sanctions shall be paid to the Treasurer of the Association and shall be used for the general corporate purposes.

(b) Summary Suspension or Expulsion

[Any member who fails promptly to pay any] *After seven days notice in writing, the Association may summarily suspend or expel from membership a member that fails to:*

(1) pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310[,] or [any costs] *cost* imposed pursuant to Rule 8330 [after] *when* such fine, monetary sanction, or [costs have become] *cost becomes* finally due and payable[, may after seven (7) days' notice in writing be summarily suspended or expelled from membership in the Association. A member may also be summarily suspended or expelled from membership in the Association if the

member fails to immediately terminate the association of any person who fails promptly to pay any]; *or*

(2) terminate immediately the association of a person who fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310[,] or [any costs] a cost imposed pursuant to Rule 8330 [after] *when* such fine, monetary sanction, or cost [has become] *becomes* finally due and payable [after seven (7) days' notice in writing. The].

(c) Summary Revocation of Registration

After seven days notice in writing, the Association may summarily revoke the registration of a person associated with a member[, if any, may be summarily revoked] if such person fails [promptly] to pay [any] *promptly a* fine or other monetary sanction imposed pursuant to Rule 8310[, or any costs] *or a cost imposed* pursuant to Rule 8330 [after] *when* such fine, monetary sanction, or cost [has become] *becomes* finally due and payable [after seven (7) days' notice in writing].

8330. Costs of Proceedings

[Any] *A* member or [any] person associated with a member disciplined pursuant to Rule 8310 shall bear such [part of the costs of the proceedings as any committee referred to in such Rule or the Board] *costs of the proceeding as the Adjudicator* deems fair and appropriate [in] *under* the circumstances.

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Code of Procedure

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Rule 9000 Series

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9000. Code of Procedure

9100. Application and Purpose

9110. Application

(a) Proceedings

The Rule 9000 Series is the Code of Procedure and includes proceedings for disciplining a member or person associated with a member; proceedings for regulating the activities of a member experiencing financial or operational difficulties; proceedings for approving or disapproving a change in business operations that will result in a change in exemptive status under SEC Rule 15c3–3; proceedings for summary suspension of a member or person associated with a member; proceedings for the non-summary suspension, cancellation or bar of a member or a person; and proceedings for obtaining relief from the eligibility requirements of the NASD By-Laws and the Rules of the Association. The Rule 9100 Series is of general applicability to all proceedings set forth in Rule 9000 Series, except the proceedings set forth in the Rule 9700 Series and the Rule 9800 Series, unless a Rule in the Rule 9200 Series, the Rule 9300 Series, the Rule 9400 Series, or the Rule 9500 Series specifically provides otherwise.

(b) Rights, Duties and Obligations of Members and Associated Persons

Unless otherwise specified, a person associated with a member shall have the same rights as a member and shall be subject to the same duties and obligations under the Code.

(c) Incorporation of Defined Terms and Cross References

Unless otherwise provided, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 0120 and Rule 9120. References within the Rule 9000 Series to Association offices or departments refer to offices so designated by the NASD, NASD Regulation or Nasdaq.

9120. Definitions

(a) ''Adjudicator''

The term ''Adjudicator'' means: (1) a body, board, committee, other group, or natural person that presides over a proceeding and renders a decision; (2) a body, board, committee, other group, or natural person that presides over a proceeding and renders a recommended or proposed decision which is acted upon by an Adjudicator described in (1); or (3) a natural person who serves on a body, board, committee, or other group described in (1) or (2). The term includes a Subcommittee as defined in paragraph (z), an Extended Proceeding Committee as defined in paragraph (k), and a Statutory Disqualification Committee as defined in paragraph (y).

(b) ''Chief Hearing Officer''

The term ''Chief Hearing Officer'' means the Hearing Officer designated by the President of NASD Regulation to manage the Office of Hearing Officers, or his or her delegatee.

(c) ''Code''

The term ''Code'' refers to this Code of Procedure.

(d) ''Complainant''

The term ''Complainant'' means, in the Rule 9200 Series, a person who files a complaint to initiate a disciplinary proceeding governed by the Rule 9200 Series and, in the Rule 9300 Series, the person who initiated the disciplinary proceeding.

(e) ''Director''

The term ''Director'' means a member of the Board of Directors of NASD Regulation, excluding the Chief Executive Officer of the NASD.

(f) ''District Committee''

The term ''District Committee'' means a district committee elected pursuant to Article VIII of the NASD Regulation By-Laws.

(g) ''Document''

The term ''Document'' means a writing, drawing, graph, chart, photograph, recording, or any other data compilation, including data stored by computer, from which information can be obtained.

(h) ''Extended Hearing''

The term ''Extended Hearing'' means a disciplinary proceeding described in Rule 9231(c).

(i) ''Extended Hearing Panel''

The term ''Extended Hearing Panel'' means a decisional body that is constituted under Rule 9231(c) to conduct a disciplinary proceeding that is classified as an ''Extended Hearing'' and is governed by the Rule 9200 Series.

(j) ''Extended Proceeding''

The term ''Extended Proceeding'' means a disciplinary proceeding described in Rule 9331(a)(2).

(k) ''Extended Proceeding Committee''

The term ''Extended Proceeding Committee'' means an appellate body that is appointed by the National Business Conduct Committee and constituted under Rule 9331(a)(2) to participate in the National Business Conduct Committee's consideration of a disciplinary proceeding that is classified as an ''Extended Proceeding'' and governed by the Rule 9300 Series.

(l) ''Governor''

The term ''Governor'' means a member of the Board of Governors of the NASD.

(m) ''Head of Enforcement''

The term ''Head of Enforcement'' means the individual designated by the President of NASD Regulation to manage the Department of Enforcement, or his or her delegatee.

(n) ''Hearing Officer''

The term ''Hearing Officer'' means an employee of NASD Regulation who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings brought against members and associated persons.

(o) ''Hearing Panel''

The term ''Hearing Panel'' means a decisional body that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series or that is constituted under the Rule 9500 Series to conduct a proceeding.

(p) ''Interested Association Staff''

The term ''Interested Association Staff'' means, in the context of:

(1) a disciplinary proceeding under the Rule 9200 Series and the Rule 9300 Series:

(A) the Head of Enforcement;

(B) a Department of Enforcement employee who reports, directly or indirectly, to the Head of Enforcement;

(C) an Association employee who directly participated in the authorization of the complaint; or

(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports;

(2) a proceeding under the Rule 9400 Series or the Rule 9530 Series:

(A) the head of the Department of Member Regulation;

(B) a Department of Member Regulation employee who reports, directly or indirectly, to the head of the Department of Member Regulation;

(C) an Association employee who directly participated in the authorization of or the initial decision in the proceeding; or

(D) an Association employee who directly participated in an examination,

investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports; or

(3) a proceeding under the Rule 9510 or 9520 Series:

(A) the head of the department or office that issues the notice;

(B) an Association employee who reports, directly or indirectly, to such person;

(C) an Association employee who directly participated in the initiation of the proceeding; or

(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports.

(q) ''Market Regulation Committee''

The term ''Market Regulation Committee'' means the committee of NASD Regulation designated to consider the federal securities laws and the rules and regulations adopted thereunder and various Rules of the Association and policies relating to:

(1) the quotations of securities;

(2) the execution of transactions;

(3) the reporting of transactions; and

(4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), the Nasdaq Stock Market Rules (Rule 4000 Series), other Nasdaq and NASD Market Rules (Rule 5000 Series), NASD Systems and Programs Rules (Rule 6000 Series), and Charges for Services and Equipment Rules (Rule 7000 Series).

(r) ''NASD Board''

The term ''NASD Board'' means the Board of Governors of the NASD.

(s) ''NASD Regulation Board''

The term ''NASD Regulation Board'' means the Board of Directors of NASD Regulation.

(t) ''Panelist''

The term ''Panelist,'' as used in the Rule 9200 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current or former Director or a former Governor who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

(u) ''Party''

With respect to a particular proceeding, the term ''Party'' means:

(1) a Complainant or a Respondent;

(2) in the Rule 9400 Series and the Rule 9530 Series, the Department of Member Regulation and:

(A) a member that is the subject of a notice under Rule 9412;

(B) a member that submits an application under Rule 9422; or

(3) in the Rule 9510 Series and the Rule 9520 Series, the department or office that issues the notice and:

(A) a member or person that is the subject of a notice under Rule 9512;

(B) a member or person that is the subject of a notice under Rule 9522; or

(C) a member that is the subject of a notice or files an application under Rule 9532.

(v) ''Practicing Before the Association''

The term ''practicing before the Association'' means representing one or more other persons in any proceeding incorporated in Rule 9110, but shall not include appearing pro se.

(w) ''Primary District Committee''

The term ''Primary District Committee'' means, in a disciplinary proceeding under the Rule 9200 Series, the District Committee designated by the Chief Hearing Officer pursuant to Rule 9232 to provide one or more of the Panelists to a Hearing Panel or, if applicable, to an Extended Hearing Panel, for such disciplinary proceeding.

(x) ''Respondent''

The term ''Respondent'' means, in a disciplinary proceeding governed by the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, an NASD member or associated person against whom a complaint is issued.

(y) ''Statutory Disqualification Committee''

The term ''Statutory Disqualification Committee'' means a Subcommittee of the National Business Conduct Committee that is composed of current members of the NASD Regulation Board that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of the Association to the National Business Conduct Committee pursuant to the Rule 9530 Series.

(z) ''Subcommittee''

The term ''Subcommittee'' means an appellate body that is appointed by the National Business Conduct Committee:

(1) constituted by Rule 9331(a) to participate in the National Business Conduct Committee's consideration of a disciplinary proceeding pursuant to the Rule 9300 Series; or

(2) constituted under the Rule 9400 Series or the Rule 9500 Series to conduct a review proceeding.

9130. Service; Filing of Papers

9131. Service of Complaint and Document Initiating a Proceeding

(a) Service on Each Party

A complaint shall be served on each Party by the Complainant or Complainant's counsel or other person the Complainant designates to represent him or her in a proceeding. A document initiating a proceeding shall be served on each Party by the Party initiating such proceeding or his or her counsel or representative.

(b) How Served

A complaint or document initiating a proceeding shall be served pursuant to Rule 9134.

(c) Filing Requirement

A complaint that is served upon a Respondent and each document initiating a proceeding that is served upon a Party, along with the certificate of service executed in connection with the service upon such Respondent or Party, shall be filed with the Association pursuant to Rule 9135.

9132. Service of Orders, Notices and Decisions by Adjudicator

(a) Service on Each Party

An order, notice, or decision issued by a Hearing Officer, Hearing Panel or Extended Hearing Panel under the Rule 9200 Series shall be served on each Party, or each Party's counsel, or other person the Party designates to represent him or her in a proceeding by the Office of Hearing Officers. An order, notice, or decision issued by any other Adjudicator shall be served by that Adjudicator.

(b) How Served

An order, notice, or decision shall be served pursuant to Rule 9134.

(c) Service Upon Counsel or Other Person Acting In Representative Capacity

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

9133. Service of Papers Other Than Complaints, Orders, Notices, or Decisions

(a) Service on Each Party

Other than a complaint, order, notice, or decision, any paper, including an answer and a motion, shall be served on each Party by the Party on whose behalf such paper was prepared or by his or her counsel or representative.

(b) How Served

The paper shall be served pursuant to Rule 9134.

(c) Filing Requirement

The paper that is served upon a Party, along with the certificate of service executed in connection with the service upon such Party, shall be filed with the Association pursuant to Rule 9135.

(d) Service upon Counsel or Other Person Acting in Representative Capacity

Whenever service is required to be made upon a person represented by

counsel or a representative who has filed a notice of appearance pursuant to Rule 9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

9134. Methods of, Procedures for Service

(a) Methods

The following methods of service are permitted:

(1) Personal Service

Personal service may be accomplished by handing a copy of the papers to the person required to be served; leaving a copy at the person's office with an employee or other person in charge thereof; or leaving a copy at the person's dwelling or usual place of abode with a person of suitable age and discretion then residing therein;

(2) Service by Mail by U.S. Postal Service

Service by mail may be accomplished by mailing the papers through the U.S. Postal Service by using first class mail, first class certified mail, first class registered mail, or Express Mail, except that a complaint shall be served upon a Respondent by U.S. Postal Service first class certified mail or Express Mail; or

(3) Service by Commercial Courier

Service by commercial courier may be accomplished by sending the papers through a commercial courier service that generates a written confirmation of receipt or of attempts at delivery.

(b) Procedures

(1) Service on Natural Persons

Papers served on a natural person may be served at the natural person's residential address, as reflected in the Central Registration Depository, if applicable. When a Party or other person responsible for serving such person has actual knowledge that the natural person's Central Registration Depository address is out of date, duplicate copies shall be served on the natural person at the natural person's last known residential address and the business address in the Central Registration Depository of the entity with which the natural person is employed or affiliated. Papers may also be served at the business address of the entity with which the natural person is employed or affiliated, as reflected in the Central Registration Depository, or at a business address, such as a branch office, at which the natural person is employed, or at which the natural person is physically present during a normal business day. If a natural person is represented by counsel or a representative, papers served on the natural person, excluding a complaint or a document initiating a proceeding, shall be served on the counsel or representative.

(2) Service on Entities

Papers served on an entity shall be made by service on an officer, partner of a partnership, managing or general agent, or any other agent authorized by appointment or by law to accept service. Such papers shall be served at the entity's business address as reflected in the Central Registration Depository, if applicable; provided, however, that when the Party or other person responsible for serving such entity has actual knowledge that an entity's Central Registration Depository address is out of date, duplicate copies shall be served at the entity's last known address. If an entity is represented by counsel or a representative, papers served on such entity, excluding a complaint or document initiating a proceeding, shall be served on such counsel or representative.

(3) When Service Is Complete

Personal service and service by commercial courier or express delivery are complete upon delivery. Service by mail is complete upon mailing.

9135. Filing of Papers with Adjudicator: Procedure

(a) When to File

Papers that are required to be filed with an Adjudicator within a time limit specified by the Adjudicator or within a time limit specified by the Rules shall be deemed timely if received within the time limit specified, unless otherwise ordered by an Adjudicator. Other papers that are required to be filed shall be deemed timely if, on the same day such papers are served, they are also hand-delivered, mailed via U.S. Postal service first class mail, or sent by courier to the Association.

(b) Where to File

All papers required to be filed pursuant to the Rule 9200 Series and any notice of appeal or review required to be filed pursuant to the Rule 9300 Series shall be filed with the Office of Hearing Officers. All other papers required to be filed pursuant to the Rule 9000 Series shall be filed where specified in the Rule, or if not specified in the Rule, with the Adjudicator, unless the Adjudicator orders otherwise.

(c) Certificate of Service

Papers filed with an Adjudicator or the Office of Hearing Officers shall be accompanied by a certificate of service stating the name of the person or persons served, the date on which service is made, the method of service and, if service is not made in person, the address to which service is made. Such certificate shall be executed by the person who made the service. If the method of service on a Party is different from the method of service on any other Party, the certificate shall state why such different method was used.

9136. Filing of Papers: Form

(a) Specifications

Papers filed in connection with any proceeding under the Rule 9200 Series and the Rule 9300 Series shall:

(1) be on unglazed white paper measuring 8½ × 11 inches, but to the extent that the reduction of a larger document would render it illegible, such document may be filed on larger paper;

(2) be typewritten or printed in either 10 or 12 point typeface or otherwise reproduced by a process that produces a permanent and plainly legible copy;

(3) include at the head of the paper, or on a title page, the title of the proceeding, the names of the Parties, the subject of the particular paper or pleading, and the number assigned to the proceeding;

(4) be paginated at the bottom of the page and with all margins at least one inch wide;

(5) be double-spaced, with double-spaced footnotes and single-spaced indented quotations; and

(6) be stapled, clipped, or otherwise fastened in the upper left corner, but not bound.

(b) Signature Required

All papers shall be signed and dated pursuant to Rule 9137.

(c) Number of Copies

A signed original and three copies of all papers shall be filed with the Adjudicator.

(d) Form of Briefs

A brief containing more than ten pages shall include a table of contents, and an alphabetized table of cases, statutes, and other authorities cited, with references to the pages of the brief wherein they are cited.

(e) Scandalous or Impertinent Matter

Any scandalous or impertinent matter contained in any brief, pleading, or other filing, or in connection with any oral presentation in a proceeding may be stricken on order of an Adjudicator. Any matter stricken by an Adjudicator by this Rule shall be marked ''Stricken'' and preserved. Matters stricken in a proceeding governed by the Rule 9200 Series shall be preserved under Rule 9267(b).

9137. Filing of Papers: Signature Requirement and Effect

(a) General Requirements

Following the issuance of a complaint in a disciplinary proceeding, or the initiation of another proceeding, every filing of a Party represented by counsel or a representative shall be signed by at

least one counsel or representative of record in his or her name and shall state the business address and telephone number of such counsel or representative. A Party who appears on his or her own behalf shall sign his or her individual name and state his or her address and telephone number on every filing.

(b) Effect of Signature

(1) The signature of a counsel, representative or Party shall constitute a certification that:

(A) the person signing the filing has read the filing;

(B) to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(C) the filing is not made for any improper purpose, such as to harass, cause unnecessary delay, or needlessly to increase the cost of adjudication.

(2) If a filing is not signed, an Adjudicator may strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

9138. Computation of Time

(a) Calendar Day

In the Rule 9000 Series, ''day'' means calendar day.

(b) Formula

In computing any period of time, the day of the act, event, or default from which the period of time designated in the Code begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less, not including any additional time for service by mail allowed by paragraph (c).

(c) Additional Time For Service by Mail

If service is made by U.S. Postal Service first class, certified, or registered mail, three days shall be added to the prescribed period for response.

9140. Proceedings

9141. Appearance and Practice; Notice of Appearance

(a) Representing Oneself

In any proceeding, a person may appear on his or her own behalf. When a person first makes any filing or otherwise appears on his or her own behalf before an Adjudicator in a proceeding, he or she shall file with the Adjudicator, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(b) Representing Others

A person shall not be represented before an Adjudicator, except as provided in this paragraph. Subject to the prohibitions of Rules 9150 and 9280, a person may be represented in any proceeding by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. When a person first makes any filing or otherwise appears in a representative capacity before an Adjudicator in a proceeding, that person shall file with the Adjudicator, and keep current, a written notice stating the name of the proceeding; the representative's name, business address, and telephone number; and the name and address of the person or persons represented. Any individual appearing or practicing in a representative capacity before an Adjudicator may be required to file a power of attorney with the Adjudicator showing his or her authority to act in such capacity.

9142. Withdrawal by Attorney or Representative

An attorney for a Party or other person authorized to represent others by Rule 9141 shall withdraw by giving notice not later than 30 days before the date of withdrawal. The notice shall set forth the good cause for withdrawal.

9143. Ex Parte Communications

(a) Prohibited Communications

Unless on notice and opportunity for all Parties to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rule 9000 Series:

(1) No Party, or counsel to or representative of a Party, or Interested Association Staff shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to a Governor, a Director, or an Adjudicator who is participating in a decision with respect to that proceeding, or to an Association employee who is participating or advising in the decision of a Governor, a Director, or an Adjudicator with respect to that proceeding; and

(2) No Governor, Director, or Adjudicator who is participating in a decision with respect to a proceeding, or no Association employee who is participating or advising in the decision of a Governor, a Director, or an Adjudicator with respect to a proceeding shall make or knowingly cause to be made to a Party, a counsel or representative to a Party, or Interested Association Staff an ex parte communication relevant to the merits of that proceeding.

(b) Disclosure of Prohibited Communication

A Governor, a Director, or an Adjudicator who is participating in a decision with respect to a proceeding, or an Association employee who is participating or advising in the decision of a Governor, a Director, or an Adjudicator, who receives, makes, or knowingly causes to be made a communication prohibited by this Rule shall place in the record of the proceeding:

(1) all such written communications;

(2) memoranda stating the substance of all such oral communications; and

(3) all written responses and memoranda stating the substance of all oral responses to all such communications.

(c) Remedies

Upon receipt of a communication made or knowingly caused to be made by any Party, any counsel or representative to a Party, or any Interested Association Staff in violation of subparagraphs (a)(1) or (a)(2), the Association or an Adjudicator may, to the extent consistent with the interests of justice, the policies underlying the Act, and the Association's Rules, order the Party responsible for the communication, or the Party who may benefit from the ex parte communication made, to show cause why the Party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such ex parte communication.

(d) Timing

In a disciplinary proceeding governed by the Rule 9200 Series and the Rule 9300 Series, the prohibitions of this Rule shall apply beginning with the authorization of a complaint as provided in Rule 9211, unless the person responsible for the communication has knowledge that the complaint shall be authorized, in which case the prohibitions shall apply beginning at the time of his or her acquisition of such knowledge.

(e) Waiver of Ex Parte Prohibition

(1) Offer of Settlement

If a Respondent submits an offer of settlement under Rule 9270, the submission constitutes a waiver by such Respondent of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) Letter of Acceptance, Waiver, and Consent

If a member or a person associated with a member submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member or person associated with a member of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(3) Minor Rule Violation Plan Letter

If a member or a person associated with a member submits an executed minor rule violation plan letter under Rule 9216(b), the submission constitutes a waiver by such member or person associated with a member of any claim that the prohibitions against ex parte communications by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter, or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule plan violation letter.

9144. Separation of Functions

(a) Interested Association Staff

Except as counsel or a witness in a proceeding or as provided in the Rule 9400 Series, Interested Association Staff is prohibited from advising an Adjudicator regarding a decision or otherwise participating in a decision of an Adjudicator. An Adjudicator is prohibited from advising Interested Association Staff regarding a decision or otherwise participating in a decision of Interested Association Staff, including the decision to issue a complaint and a decision whether to appeal or cross-appeal a disciplinary proceeding to the National Business Conduct Committee.

(b) Separation of Adjudicators

A Hearing Officer, including the Chief Hearing Officer, or a Panelist of a Hearing Panel or an Extended Hearing Panel, is prohibited from participating in: a decision whether to issue a complaint pursuant to Rule 9211; a decision whether to appeal a disciplinary proceeding, or to file a cross-appeal with, the National Business Conduct Committee pursuant to Rule 9311; and a discussion or decision relating to a call for review, a review, or an appeal pursuant to the Rule 9300 Series. A Director is prohibited from participating in a discussion or decision relating to the above referenced acts with the Adjudicators referenced above, or a Governor or the NASD Board. A Governor is prohibited from participating in a discussion or a decision relating to the above referenced acts with the Adjudicators referenced above, or a Director or the NASD Regulation Board.

(c) Waiver of Prohibitions of Separation of Functions

(1) Offer of Settlement

If a Respondent submits an offer of settlement under Rule 9270, the submission constitutes a waiver by such Respondent of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) Letter of Acceptance, Waiver, and Consent

If a member or a person associated with a member submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member or person associated with a member of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the proposed letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(3) Minor Rule Violation Plan Letter

If a member or a person associated with a member submits an executed minor rule violation plan letter under Rule 9216(b), the submission constitutes a waiver by such member or person associated with a member of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

9145. Rules of Evidence; Official Notice

(a) Rules of Evidence

The formal rules of evidence shall not apply in a proceeding brought under the Rule 9000 Series.

(b) Official Notice

In a proceeding governed by the Rule 9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of the Association as an expert body. Before an Adjudicator proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice.

9146. Motions

(a) General Requirement for Motions

A Party may make a written or oral motion, subject to limitations set forth below.

(b) Adjudicator May Require a Written Motion

If a Party makes an oral motion, an Adjudicator may order that such motion be set forth in writing, after considering the facts and circumstances, including whether:

(1) the hearing or conference in which the Party makes such motion is being recorded; and

(2) the opposing Parties shall be fully informed and shall have adequate notice and opportunity to respond to such motion.

(c) Specificity

All motions shall state the specific relief requested and the basis therefor.

(d) Time For Filing Opposition or Other Response to Motion

Unless otherwise ordered by an Adjudicator, any Party may file an opposition or other response to a written motion; the opposition or response shall be filed within 14 days after service of the motion. If no response is filed within the response period, the Party failing to respond shall be deemed to have waived any objection to the granting of the motion. A Party shall be afforded an opportunity to respond to an oral motion at the time the oral motion is

made, unless the Adjudicator orders that the Party shall be granted additional time to respond.

(e) Oral Argument

An Adjudicator may allow oral argument on motions. Oral argument may take place in person or by telephone.

(f) Frivolous Motions

An Adjudicator may deny dilatory, repetitive, or frivolous motions without awaiting a response.

(g) No Stay

Unless otherwise ordered by an Adjudicator, the filing of a motion does not stay a proceeding.

(h) Reply

The moving Party shall have no right to reply to the opposition or other response of the other Parties. An Adjudicator may permit a reply to be filed. When permitted, a movant's reply submission shall be filed within five days after service of the opposition or other response.

(i) Page Limit, Format Requirements

Unless otherwise ordered by an Adjudicator, submissions in support of or in opposition to motions shall not exceed ten double-spaced pages, including double-spaced footnotes, exclusive of pages containing any table of contents, table of authorities, or addenda.

(j) Disposition of Procedural Motions; Disposition of Motions for Summary Disposition

In the Rule 9200 Series, a motion on a procedural matter may be decided by a Hearing Officer; a motion for summary disposition of a cause of action set forth in a complaint shall be decided by a majority vote of the Hearing Panel or, if applicable, the Extended Hearing Panel. In the Rule 9300 Series, a motion on a procedural matter may be decided by a Subcommittee, an Extended Proceeding Committee, or the National Business Conduct Committee; a motion for summary disposition of a cause of action shall be decided by the National Business Conduct Committee. In the Rule 9400 Series and the Rule 9500 Series, a motion shall be decided by an Adjudicator.

(k) General

All motions, oppositions or responses, replies, and any other filings made by a Party in a proceeding shall comply with Rules 9133, 9134, 9135, 9136 and 9137.

9147. Rulings on Procedural Matters

The NASD Board, the NASD Regulation Board, the National Business Conduct Committee, a Hearing Officer or any other Adjudicator shall have full authority, except as otherwise provided by this Code, to rule on a procedural motion and other procedural and administrative matters arising during the course of a proceeding conducted pursuant to this Code, subject to the rights of review or appeal provided by this Code.

9148. Interlocutory Review

Except as provided in Rule 9280, there shall be no interlocutory review of a ruling or order issued by any Adjudicator in a proceeding governed by this Code. If an Adjudicator grants interlocutory review of a ruling or order, such review shall not stay a proceeding, except under Rule 9280 or as otherwise ordered by the Adjudicator.

9150. Exclusion of Person from Rule 9000 Proceeding

(a) Exclusion

An Adjudicator may exclude an attorney for a Party or other person authorized to represent others by Rule 9141 from acting as counsel, acting in any representative capacity, or otherwise appearing in a particular Rule 9000 Series proceeding for contemptuous conduct under Rule 9280 or unethical or improper professional conduct in that proceeding. A person excluded under Rule 9280 may seek review of such exclusion under Rule 9280.

(b) Other Proceedings Not Precluded

Prohibiting an attorney or other person authorized to represent others by Rule 9141 from practicing or appearing in an Association proceeding shall not preclude the Association from initiating other proceedings against such person.

9160. Recusal or Disqualification

No person shall participate as an Adjudicator in a matter governed by this Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

(a) NASD Board

The Chair of the NASD Board shall have authority to order the disqualification of a Governor or a member of a Hearing Panel appointed under Rule 9513, and the Vice Chair of the NASD Board shall have authority to order the disqualification of the Chair of the NASD Board;

(b) NASD Regulation Board

The Chair of the NASD Regulation Board shall have authority to order the disqualification of a Director or a member of a Hearing Panel appointed under Rule 9523, and the Vice Chair of the NASD Regulation Board shall have authority to order the disqualification of the Chair of the NASD Regulation Board;

(c) National Business Conduct Committee or Certain Subcommittees

The Chair of the National Business Conduct Committee shall have authority to order the disqualification of a member of the National Business Conduct Committee, a Subcommittee appointed pursuant to the Rule 9400 Series, and the Statutory Disqualification Committee; and the Vice Chair of the National Business Conduct Committee shall have authority to order the disqualification of the Chair of the National Business Conduct Committee;

(d) Rule 9331 Subcommittee or Extended Proceeding Committee

Disqualification of a Panelist of a Subcommittee or Extended Proceeding Committee appointed pursuant to Rule 9331 shall be governed by Rule 9332;

(e) Panelist of Hearing Panel or Extended Hearing Panel

Disqualification of a Panelist of a Hearing Panel or Extended Hearing Panel shall be governed by Rule 9234;

(f) Hearing Officer

Disqualification of a Hearing Officer of a Hearing Panel or an Extended Hearing Panel shall be governed by Rule 9233; and

(g) NASD Regulation Staff As Adjudicator

The President of NASD Regulation shall have authority to order the disqualification of a member of the staff of the Department of Member Regulation participating in a Rule 9400 Series decision.

9200. Disciplinary Proceedings

9210. Complaint and Answer

9211. Issuance of Complaints

(a) Complaints Initiated and Filed by Department of Enforcement

If the Department of Enforcement believes that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce, the Department of Enforcement may authorize and issue a complaint as set forth in Rule 9212. At the time of authorization and issuance of a complaint, the Department of Enforcement may propose: (1) an appropriate location for the hearing; and (2) if the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(q), that the Chief Hearing Officer select as a Panelist for the Hearing Panel, a current or former member of the Market Regulation Committee who is associated with a member of the

Association, or, if applicable, select as a Panelist for an Extended Hearing Panel, a current or former member of the Market Regulation Committee who is or was associated with a member of the Association.

(b) Complaints Initiated by the NASD Regulation Board or the NASD Board

The NASD Regulation Board and the NASD Board each shall have the authority to direct the Department of Enforcement to issue a complaint when, on the basis of information and belief, either of such boards is of the opinion that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce. The Department of Enforcement shall authorize and issue the complaint as set forth in Rule 9212. At the time of authorization and issuance of a complaint, the Department of Enforcement may propose: (1) An appropriate location for the hearing; and (2) if the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(q), that the Chief Hearing Officer select as a Panelist for the Hearing Panel, a current or former member of the Market Regulation Committee who is associated with a member of the Association, or, if applicable, select as a Panelist for an Extended Hearing Panel, a current or former member of the Market Regulation Committee who is or was associated with a member of the Association.

(c) Commencement of Disciplinary Proceeding

A disciplinary proceeding shall begin when the complaint is served and filed.

9212. Complaints—Requirements, Service, Amendment, Withdrawal, and Docketing

(a) Form, Content, Notice, Docketing, and Service

Each complaint shall be in writing and signed by a Complainant. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served by the Complainant on each Party pursuant to Rules 9131 and 9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.

(b) Amendments to Complaints

Upon motion by a Complainant, the Hearing Officer may, at any time after considering good cause shown by a Complainant and any unfair prejudice to any Respondent, permit a Complainant to amend a complaint to include new matters of fact or law.

(c) Withdrawal of Complaints

With prior leave of the Hearing Officer, a Complainant may withdraw a complaint. If a Complainant withdraws the complaint before the earlier of (1) The Hearing Panel's or, if applicable, the Extended Hearing Panel's, issuance of a ruling on a motion for summary disposition, or (2) the start of the hearing on the merits, the Complainant's withdrawal of the complaint shall be without prejudice and such Complainant shall be permitted to refile a case based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. If the Complainant filing the complaint requests to withdraw such complaint after the occurrence of either of the two events set forth in (1) and (2) in this paragraph, the Hearing Panel or, if applicable, the Extended Hearing Panel, after considering the facts and circumstances of the request, shall determine whether the withdrawal shall be granted with prejudice.

(d) Disciplinary Proceeding Docket

The Office of Hearing Officers shall promptly record each complaint filed with it in the Association's disciplinary proceeding docket, and record in the disciplinary proceeding docket each event, filing, and change in the status of a disciplinary proceeding.

9213. Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel

(a) Assignment of Hearing Officer

As soon as practicable after a Complainant has filed his or her complaint with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the disciplinary proceeding and shall serve the Parties with notice of the Hearing Officer's assignment pursuant to Rule 9132.

(b) Appointment of Panelists

As soon as practicable after assigning a Hearing Officer to preside over a disciplinary proceeding, the Chief Hearing Officer shall appoint Panelists pursuant to Rules 9231 and 9232 to a Hearing Panel or, if the Chief Hearing Officer determines that an Extended Hearing Panel should be appointed, to an Extended Hearing Panel.

9214. Consolidation of Disciplinary Proceedings

(a) Initiated by Chief Hearing Officer

The Chief Hearing Officer may order the consolidation of two or more disciplinary proceedings, upon his or her own motion, under circumstances where such consolidation would further the efficiency of the disciplinary process, and where the subject complaints involve common questions of law or fact, or one or more of the same Respondents. In determining whether to order the consolidation of such disciplinary proceedings, the Chief Hearing Officer shall consider: (1) Whether the same or similar evidence reasonably would be expected to be offered at each of the hearings; (2) whether the proposed consolidation would conserve the time and resources of the Parties; and (3) whether any unfair prejudice would be suffered by one or more Parties as a result of the consolidation. If the Chief Hearing Officer proposes to consolidate two or more disciplinary proceedings, the Chief Hearing Officer shall serve upon the Parties notice of the proposed consolidation of disciplinary proceedings, together with a copy of each relevant complaint and any answer that has been filed thereto, pursuant to Rule 9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation.

(b) Initiated by a Party

A Party may file a motion to request the consolidation of two or more disciplinary proceedings if such consolidation would further the efficiency of the disciplinary process, if the subject complaints involve common questions of law or fact or one or more of the same Respondents, or if one or more of the factors favoring consolidation set forth in paragraph (a) exist. If a Party moves to consolidate two or more disciplinary proceedings, the Party shall file such motion, together with a copy of each relevant complaint and any answer thereto that has been filed, with the Office of Hearing Officers, and shall serve the same upon the Parties pursuant to Rule 9133. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation.

(c) Impact on Hearing Panel or Extended Hearing Panel

If the Chief Hearing Officer issues an order to consolidate two or more disciplinary proceedings for which Hearing Panels or, if applicable, Extended Hearing Panels, have been appointed, the Chief Hearing Officer's order shall specify which Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the consolidated disciplinary proceeding, or

shall appoint a new Hearing Panel or, if applicable, Extended Hearing Panel, to preside, based on the criteria set forth in Rules 9231 and 9232.

9215. Answers to Complaints

(a) Form, Service, Notice

Each Respondent named in a complaint shall answer and serve an answer to the complaint on all other Parties within 25 days after service of the complaint on such Respondent pursuant to Rule 9133, and at the time of service file such answer with the Office of Hearing Officers pursuant to Rules 9135, 9136 and 9137. The Hearing Officer assigned to a disciplinary proceeding pursuant to Rule 9213 may extend such period for good cause. Upon the receipt of a Respondent's answer, the Office of Hearing Officers shall promptly send written notice of the receipt of such answer to all Parties.

(b) Content, Affirmative Defenses

Unless otherwise ordered by the Hearing Officer, an answer shall specifically admit, deny, or state that the Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation in the complaint. When a Respondent intends to deny only part of an allegation, the Respondent shall specify so much of it as is admitted and deny only the remainder. A statement of lack of information shall be deemed a denial. Any allegation not denied shall be deemed admitted. Any affirmative defense shall be asserted in the answer.

(c) Motion for More Definite Statement

A Respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state why each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

(d) Amendments to Answer

Upon motion by a Respondent, the Hearing Officer may, after considering good cause shown by the Respondent and any unfair prejudice which may result to any other Party, permit an answer to be amended.

(e) Extension of Time to Answer Amended Complaint

If a complaint is amended pursuant to Rule 9212(b), the time for filing an answer or amended answer shall be extended to 14 days after service of the amended complaint. If any Respondent has already filed an answer, such Respondent shall have 15 days after service of the amended complaint, unless otherwise ordered by the Hearing Officer, within which to file an amended answer.

(f) Failure to Answer, Default

If the Respondent does not file an answer with the Office of Hearing Officers within the time required, the Hearing Officer shall order the Department of Enforcement to send a second notice to such Respondent requiring an answer within 14 days after service of the second notice, or within such longer period as the Hearing Officer in his or her discretion may order. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) enter a default decision against the Respondent pursuant to Rule 9269. If no answer is filed with the Office of Hearing Officers within the time required by the second notice, the allegations of the complaint may be considered admitted by such Respondent and a default decision may be issued by the Hearing Officer. A Respondent may, for good cause shown, move to set aside a default pursuant to Rule 9146.

9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d–1(c)(2)

(a) Acceptance, Waiver, and Consent Procedures

(1) Notwithstanding Rule 9211, if the Department of Enforcement has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Department of Enforcement may prepare and request that the member or associated person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National Business Conduct Committee, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed.

(2) If a member or person associated with a member submits an executed letter of acceptance, waiver, and consent, by the submission such member or person associated with a member also waives:

(A) any right of such member or person associated with a member to claim bias or prejudgment of the General Counsel of NASD Regulation, or his or her delegatee, the National Business Conduct Committee, or any member of the National Business Conduct Committee, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent; and

(B) any right of such member or person associated with a member to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

If a letter of acceptance, waiver, and consent is rejected, the member or associated person shall be bound by the waivers made under subparagraphs (a)(1) and (2) for conduct by persons or bodies occurring during the period beginning on the date the letter of acceptance, waiver, and consent was executed and submitted and ending upon the rejection of the letter of acceptance, waiver, and consent.

(3) If the member or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the National Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) or by the General Counsel of NASD Regulation, or his or her delegatee, may accept such letter or refer it to the National Business Conduct Committee for acceptance or rejection by the National Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) may reject such letter or refer it to the National Business Conduct Committee for acceptance or rejection by the National Business Conduct Committee.

(4) If the letter is accepted by the National Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or

the General Counsel of NASD Regulation, or his or her delegatee, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the Chair and Vice Chair of the National Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) or the National Business Conduct Committee, NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

(b) Procedure for Violation Under Plan Pursuant to SEC Rule 19d–1(c)(2)

(1) Notwithstanding Rule 9211, NASD Regulation or the National Business Conduct Committee may, subject to the requirements set forth in subparagraphs (b)(2) through (b)(4) and in SEC Rule 19d–1(c)(2), impose a fine (not to exceed $2,500) and/or a censure on any member or associated person with respect to any rule listed in IM–9216. If the Department of Enforcement has reason to believe a violation has occurred and if the member or associated person does not dispute the violation, the Department of Enforcement may prepare and request that the member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National Business Conduct Committee, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed.

(2) If a member or person associated with a member submits an executed minor rule violation plan letter, by the submission such member or person associated with a member also waives:

(A) any right of such member or person associated with a member to claim bias or prejudgment of the General Counsel of NASD Regulation, or his or her delegatee, the National Business Conduct Committee, or any member of the National Business Conduct Committee, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter; and

(B) any right of such member or person associated with a member to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

If a minor rule violation plan letter is rejected, the member or person associated with a member shall be bound by the waivers made under subparagraphs (b) (1) and (2) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.

(3) If the member or associated person executes the minor rule violation plan letter, it shall be submitted to the National Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) or the General Counsel of NASD Regulation, or his or her delegatee, may accept such letter or refer it to the National Business Conduct Committee for acceptance or rejection by the National Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) may reject such letter or refer it to the National Business Conduct Committee for acceptance or rejection by the National Business Conduct Committee.

(4) If the letter is accepted by the National Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or the General Counsel of NASD Regulation, or his or her delegatee, it shall be deemed final and the Association shall report the violation to the Commission as required by the Commission pursuant to a plan approved under SEC Rule 19d–1(c)(2). If the letter is rejected by the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or by the National Business Conduct Committee, NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under subparagraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

IM–9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d–1(c)(2)

- *Rule 2210 (b) and (c) and Rule 2220 (b) and (c)—Failure to have advertisements and sales literature approved by a principal prior to use; failure to maintain separate files of advertisements and sales literature containing required information; and failure to file advertisements with the Association within the required time limits.*
- *Rule 3360—Failure to timely file reports of short positions on Form NS–1.*
- *Rule 3110—Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of the Association.*

9220. Request for Hearing; Appointment of Hearing Panel or Extended Hearing Panel; Extensions of Time, Postponements, Adjournments

9221. Request for Hearing

(a) Respondent Request for Hearing

With the filing of any Respondent's answer, such Respondent may: (1) request a hearing; (2) propose an appropriate location for the hearing; and (3) propose, if the complaint alleges at least one cause of action involving a violation of a statute or rule described in Rule 9120(q), that the Chief Hearing Officer select as a Panelist for a Hearing Panel a current or former member of the Market Regulation Committee who is associated with a member of the Association or, if applicable, select as a Panelist for an Extended Hearing Panel, a current or former member of the Market Regulation Committee who is or was associated with a member of the Association. If a Respondent requests a hearing, a hearing shall be granted. A

Respondent who fails to request a hearing with the filing of his or her answer waives the right to a hearing unless a Hearing Officer, Hearing Panel, or, if applicable, an Extended Hearing Panel, grants, for good cause shown, a later filed motion by such Respondent requesting a hearing.

(b) Hearing Officer Order Requiring Hearing

In the absence of a request for a hearing from any Respondent, the Hearing Officer may order any complaint set down for hearing.

(c) Authority of Hearing Panel, Extended Hearing Panel to Order Hearing

If all Respondents waive a hearing, and the Hearing Officer does not order a hearing on his or her own motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may order a hearing or may consider the matter on the record, as defined in Rule 9267. If fewer than all Respondents waive a hearing, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may, in the exercise of its discretion, order that a hearing be held as to all Respondents. Alternatively, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may conduct a hearing as to only those Respondents who requested a hearing and consider the matter on the record as to those Respondents who waived a hearing.

(d) Notice of Hearing

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing, and whether the hearing shall be held before a Hearing Panel or an Extended Hearing Panel, and shall serve such notice on the Parties at least 28 days before the hearing, unless (1) in the discretion of the Hearing Officer, he or she determines that extraordinary circumstances require a shorter notice period, or (2) the Parties waive the notice period.

9222. Extensions of Time, Postponements, and Adjournments

(a) Availability

At any time prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel, the Hearing Officer may, for good cause shown, extend or shorten any time limits prescribed by the Code for the filing of any papers and may, consistent with paragraph (b), postpone or adjourn any hearing.

(b) Limitations on Postponements, Adjournments, and Extensions

A hearing shall begin at the time and place ordered, unless the Hearing Officer, for good cause shown, changes the place of the hearing, postpones the commencement of the hearing, or adjourns a convened hearing for a reasonable period of time, subject to the limitations in subparagraph (b)(2).

(1) Additional Considerations

In considering a motion for the postponement of the start of a hearing or, adjournment once a hearing has begun, the Hearing Officer shall consider:

(A) the length of the proceeding to date;

(B) the number of postponements, adjournments, or extensions already granted;

(C) the stage of the proceedings at the time of the request;

(D) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and

(E) such other matters as justice may require.

(2) Time Limit

Postponements, adjournments, or extensions of time for filing papers shall not exceed 28 days unless the Hearing Officer states on the record or provides by written order the reasons a longer period is necessary.

9230. Appointment of Hearing Panel, Extending Hearing Panel

9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel

(a) Appointment

The Chief Hearing Officer shall appoint a Hearing Panel or an Extended Hearing Panel to conduct the disciplinary proceeding and issue a decision.

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234 (a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of the Association.

(1) Except as provided in (2), a person shall be eligible to be selected as a Panelist only if the person is:

(A) a current member of a District Committee;

(B) a person who previously served on a disciplinary hearing panel;

(C) a former member of the National Business Conduct Committee;

(D) a person who previously served on a disciplinary subcommittee of the National Business Conduct Committee, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; or,

(E) a person who previously was a Director, a member of the Nasdaq Board of Directors, or a Governor, but does not sit currently on any of the boards.

(2) If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(q), the Chief Hearing Officer may select as a Panelist a current member of the Market Regulation Committee or a former member of the Market Regulation Committee who previously served on a disciplinary hearing panel.

(c) Extended Hearing Panel

Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and that such matter shall be considered by an Extended Hearing Panel. The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234 (a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. The Panelists shall be associated with a member of the Association, or retired therefrom. A person retired from employment with a member of the Association shall have retired from such employment not earlier than four years before the date the complaint was filed. The Chief Hearing Officer shall have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for arbitrators appointed under the Rule 10000 Series.

(1) Except as provided in (2), a person shall be eligible to be selected as a Panelist only if the person is:

(A) a current member of a District Committee;

(B) a person who previously served on a disciplinary hearing panel;

(C) a former member of the National Business Conduct Committee;

(D) a person who previously served on a disciplinary subcommittee of the National Business Conduct Committee, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; or,

(E) a person who previously was a Director, a member of the Nasdaq Board of Directors, or a Governor, but does not sit currently on any of the boards.

(2) If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(q), the Chief Hearing Officer may select as a Panelist a current member of the Market Regulation Committee, or a former member of the Market Regulation Committee, who, at the time of his or her membership on the Market Regulation Committee, was associated with a member of the Association. In order to be eligible to sit as a Panelist on an Extended Hearing Panel, a former

member of the Market Regulation Committee shall have served previously on a disciplinary hearing panel.

9232. Criteria for Selection of Panelists and Replacement Panelists

(a) Chief Hearing Officer Selection Alternatives

Following a determination of whether a Hearing Panel or an Extended Hearing Panel should be appointed, the Chief Hearing Officer shall determine:

(1) which District Committee shall be the Primary District Committee from which Panelists may be selected; and

(2) whether one of the Panelists may be selected from the Market Regulation Committee.

(b) Criteria for Selection of Panelist from Market Regulation Committee

The Chief Hearing Officer may select a Panelist from the Market Regulation Committee, as provided in Rule 9231, to serve in a disciplinary proceeding if the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(q).

(c) Criteria for Designation of Primary District Committee

The Chief Hearing Officer shall designate a District Committee as the Primary District Committee based upon relevant facts and circumstances of the case, including but not limited to:

(1) the location of a Respondent's principal office if the Respondent is or was a member firm;

(2) the location of a Respondent's office at the time of the alleged misconduct if the Respondent is or was an associated person;

(3) the location of the office of a member or an associated person, or a former member or associated person, where the alleged misconduct occurred;

(4) the location of witnesses at the time of the filing of the complaint, especially the location of witnesses who are or were customers of a Respondent;

(5) the location, at the time of the alleged misconduct, of the main, branch, or other office in which supervisory personnel, who are or were responsible for the supervision of a Respondent, were employed; and

(6) the location, at the time of the alleged misconduct, of the main, branch, or other office in which supervisory personnel, who are or were responsible for the supervision of the office, division, function, or segment of the member where the alleged misconduct occurred, were employed.

(d) Criteria for Appointment of a Panelist

After the Chief Hearing Officer designates the Primary District Committee, the Chief Hearing Officer shall select Panelists from the current members of the Primary District Committee, the other categories of persons eligible to serve as Panelists as set forth in Rule 9231(b)(1) (A) through (E) or, if applicable, in Rule 9231(c)(1) (A) through (E), who are located in the same geographic area as the Primary District Committee, and, if applicable, from the current or former members of the Market Regulation Committee, based upon the following criteria:

(1) expertise;

(2) the absence of any conflict of interest or bias, and any appearance thereof;

(3) availability; and,

(4) the frequency with which a person has served as a Panelist on Hearing Panels or Extended Hearing Panels during the past two years.

(e) Appointment of Panelists from Other than Primary District Committee.

Designation of the Primary District Committee does not preclude the Chief Hearing Officer from selecting one or more Panelists from other categories of eligible Panelists if the Chief Hearing Officer determines that one or more persons from other categories of eligible Panelists more clearly meet the criteria of paragraph (d) (1) through (4) and the public interest or the administration of NASD Regulation's regulatory and enforcement program would be enhanced by the selection of one or more Panelists from other categories of eligible Panelists other than Panelists from the Primary District Committee.

9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers

(a) Recusal, Withdrawal of Hearing Officer

If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer shall notify the Chief Hearing Officer and the Chief Hearing Officer shall issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer.

(b) Motion for Disqualification

A Party may move for the disqualification of a Hearing Officer. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Hearing Officer's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

(1) when the Party learned of the facts believed to constitute the disqualification; or

(2) when the Party was notified of the assignment of the Hearing Officer.

(c) Disposition of Disqualification Motion

A motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer who shall promptly investigate whether disqualification is required and issue a written ruling on the motion. In the event of a disqualification of the Hearing Officer, the Chief Hearing Officer shall appoint a replacement Hearing Officer.

9234. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists

(a) Recusal, Withdrawal of Panelist

If at any time a Panelist of a Hearing Panel or an Extended Hearing Panel determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Panelist shall notify the Hearing Officer and the Hearing Officer shall issue and serve on the Parties a notice stating that the Panelist has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer may, in the exercise of discretion, determine whether to appoint a replacement Panelist. In the event that both Panelists withdraw, are incapacitated, or otherwise are unable to continue service after being appointed, the Chief Hearing Officer shall appoint two replacement Panelists.

(b) Disqualification: Motion of Party; Order of Chief Hearing Officer

(1) A Party may file a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and (2) the dates on which the Party learned of those facts.

(2) Such motions shall be filed not later than 15 days after the later of:

(A) when the Party learned of the facts believed to constitute the disqualification; or

(B) when the Party was notified of the appointment of the Panelist.

(3) The Chief Hearing Officer may order the disqualification of a Panelist of a Hearing Panel or an Extended Hearing Panel if the Chief Hearing Officer determines that a conflict of interest or bias or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall state the facts constituting the grounds for disqualification.

(c) Disposition of Disqualification Motion: Challenge to Single Member of Hearing Panel

If a Party files a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist.

(d) Disposition of Disqualification Motion: Challenge to Both Panelists of Hearing Panel or Extended Hearing Panel

If a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event one Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists.

(e) Disposition of Disqualification Motion: Challenge to Both Panelists of Hearing Panel or Extended Hearing Panel and Hearing Officer

If a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel, and the Hearing Officer, the Chief Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists. In the event a Hearing Officer and a Panelist are disqualified, the Chief Hearing Officer shall promptly appoint a Hearing Officer. In the event both Panelists and the Hearing Officer are disqualified, the Chief Hearing Officer shall promptly appoint a Hearing Officer and two persons as replacement Panelists.

(f) Criteria for Replacement Panelist

If the Chief Hearing Officer appoints a replacement Panelist by operation of this Rule, the Chief Hearing Officer shall do so using the criteria set forth in Rule 9232.

9235. Hearing Officer Authority

(a) Hearing Officer Authority

The Hearing Officer shall be selected by the Chief Hearing Officer and shall have authority to do all things necessary and appropriate to discharge his or her duties. In addition to the powers exercised by all members of the Hearing Panel or, if applicable, the Extended Hearing Panel, the powers of the Hearing Officer include, but are not limited to:

(1) holding pre-hearing and other conferences and requiring the attendance at any such conference of at least one representative of each Party who has authority to negotiate the resolution of issues in controversy;

(2) regulating the course of the hearing;

(3) ordering the Parties to present oral arguments at any stage of the disciplinary proceeding;

(4) resolving any and all procedural and evidentiary matters, discovery requests, and other non-dispositive motions, subject to any limitations set forth elsewhere in this Code;

(5) reopening any hearing, upon notice to all Parties, prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel;

(6) creating and maintaining the official record of the disciplinary proceeding; and

(7) drafting a decision that represents the views of the majority of the Hearing Panel or, if applicable, the Extended Hearing Panel.

9240. Pre-hearing Conferences and Submissions

9241. Pre-hearing Conferences

(a) Purposes of Conferences

The purposes of pre-hearing conferences include, but are not limited to:

(1) expediting the disposition of the proceeding;

(2) establishing procedures to manage the proceeding efficiently; and

(3) improving the quality of the hearing through more thorough preparation.

(b) Procedure

On his or her own motion or at the request of a Party, the Hearing Officer may, in his or her discretion, order counsel or any Party to meet for a pre-hearing conference. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) Subjects to be Discussed

At a pre-hearing conference, the Hearing Officer may consider and take action with respect to any or all of the following:

(1) simplification and clarification of the issues;

(2) exchange of witness and exhibit lists and copies of exhibits;

(3) stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;

(4) matters of which official notice may be taken;

(5) the schedule for exchanging pre-hearing motions or briefs, if any;

(6) the method of service and filing of papers by the Parties;

(7) determination of hearing dates;

(8) amendments to the complaint or answers thereto;

(9) production of documents as set forth in Rule 9251; and

(10) such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) Scheduling of Pre-hearing Conferences

An initial pre-hearing conference, unless determined by the Hearing Officer to be unnecessary or premature, shall be held within 21 days after service of an answer, or after the expiration of the second period provided for filing an answer as set forth in Rule 9215(f). When a complaint names multiple Respondents, the 21-day period shall commence from the later of (i) the date on which the last timely answer was filed, or (ii) if one or more Respondents have failed to answer, from the expiration of the second period provided for filing an answer under Rule 9215(f).

(e) Pre-hearing Orders

At or following the conclusion of any conference held pursuant to this Rule, the Hearing Officer shall enter a ruling or order that recites any agreements reached and any procedural determinations made by the Hearing Officer.

(f) Failure to Appear: Default

A Party who fails to appear, in person or through counsel or a representative, at a pre-hearing conference of which he or she has been duly notified, may be deemed in default pursuant to Rule 9269. A Party may, for good cause shown, file a motion to set aside the default.

9242. Pre-hearing Submissions

(a) Requirement to Furnish Information

Prior to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, the Hearing Officer, in the exercise of his or her discretion, may order Parties to furnish such information as deemed appropriate, including any or all of the following:

(1) an outline or narrative summary of their case or defense;

(2) the legal theories upon which they shall rely;

(3) a list and copies of documents that they intend to introduce at the hearing;

(4) a list of witnesses who shall testify on their behalf, including the witnesses' names, occupations, addresses, and a brief summary of their expected testimony; and,

(5) if a witness shall be called to testify as an expert, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, a list of the expert's publications, and copies of those publications that are not readily available to the other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel.

9250. Discovery

9251. Inspection and Copying of Documents in Possession of Staff

(a) Documents to be Available for Inspection and Copying

(1) Unless otherwise provided by this Rule, or by order of the Hearing Officer, the Department of Enforcement shall make available for inspection and copying by any Respondent Documents prepared or obtained by Interested Association Staff in connection with the investigation that led to the institution of proceedings. Such Documents include but are not limited to:

(A) requests for information issued pursuant to Rule 8210;

(B) every other written request directed to persons not employed by the Association to provide documents or to be interviewed;

(C) the Documents provided in response to any such requests described in (A) and (B) above;

(D) all transcripts and transcript exhibits; and

(E) all other Documents obtained from persons not employed by the Association.

(2) The Department of Enforcement shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint, requests for information under Rule 8210 are issued under the same investigative file number under which the investigation leading to the institution of disciplinary proceedings was conducted. If Interested Association Staff receives Documents pursuant to a request for information under Rule 8210 after Documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such Documents are material and relevant to the disciplinary proceeding in which such Respondent is a Party, the additional Documents shall be made available to the Respondent not later than 14 days after the Interested Association Staff receives such Documents. If a hearing on the merits is scheduled to begin, Interested Association Staff shall make the additional Documents available to the Respondent not less than ten days before the hearing. If Interested Association Staff receives such Documents ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, Interested Association Staff shall make the additional Documents available immediately to the Respondent.

(3) Nothing in subparagraph (a)(1) shall limit the discretion of the Department of Enforcement to make available any other Document or the authority of the Hearing Officer to order the production of any other Document.

(b) Documents That May Be Withheld

(1) The Department of Enforcement may withhold a Document if:

(A) the Document is privileged or constitutes attorney work product;

(B) the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by an Association employee that shall not be offered in evidence;

(C) the Document would disclose the identity of a confidential source or Association examination or investigatory techniques; or

(D) the Hearing Officer grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

(2) Nothing in subparagraph (b)(1) authorizes the Department of Enforcement to withhold a Document, or a part thereof, that contains material exculpatory evidence.

(c) Withheld Document List

The Hearing Officer may require the Department of Enforcement to submit to the Hearing Officer a list of Documents withheld pursuant to subparagraphs (b)(1)(A) through (b)(1)(D) or to submit to the Hearing Officer any Document withheld. Upon review, the Hearing Officer may order the Department of Enforcement to make the list or any Document withheld available to the other Parties for inspection and copying.

(d) Timing of Inspection and Copying

The Hearing Officer shall determine the schedule of production of documents pursuant to this Rule. Unless otherwise ordered by the Hearing Officer, the Department of Enforcement shall commence making Documents available to a Respondent for inspection and copying pursuant to this Rule not later than 21 days after service of the Respondent's answer or, if there are multiple Respondents, not later than 21 days after the last timely answer is filed. If a Respondent in a multi-Respondent case fails to answer, the Department of Enforcement shall make Documents available to all other Respondents not later than the later of:

(1) 21 days after the filing date of the last timely answer, or

(2) the expiration of the second period provided for filing an answer as set forth in Rule 9215(f).

(e) Place and Time of Inspection and Copying

Documents subject to inspection and copying pursuant to this Rule shall be made available to the Respondent for inspection and copying at the Association office where they are ordinarily maintained, or at such other Association office as the Hearing Officer, in his or her discretion, shall designate, or as the Parties otherwise agree. A Respondent shall be given access to the Documents at the Association's offices during normal business hours. A Respondent shall not be given custody of the Documents or be permitted to remove the Documents from the Association's offices.

(f) Copying Costs

A Respondent may obtain a photocopy of all Documents made available for inspection. A Respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made at the request of a Respondent shall be at a rate to be established by the NASD Regulation Board.

(g) Failure to Make Documents Available—Harmless Error

In the event that a Document required to be made available to a Respondent pursuant to this Rule is not made available by the Department of Enforcement, no rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer shall determine whether the failure to make the document available was not harmless error, applying applicable Association, Commission, and federal judicial precedent.

9252. Requests for Information

(a) Content and Timing of Requests

A Respondent who requests that the Association invoke Rule 8210 to compel the production of Documents or testimony at the hearing shall do so in writing and serve copies on all Parties. Such request shall: be submitted to the Hearing Officer no later than 21 days before the scheduled hearing date; describe with specificity the Documents, the category or type of Documents, or the testimony sought; state why the Documents, the category or type of Documents, or the testimony are material; describe the requesting Party's previous efforts to obtain the Documents, the category or type of Documents, or the testimony through other means; and state whether the custodian of each Document, or the custodian of the category or type of Documents, or each proposed witness is subject to the Association's jurisdiction.

(b) Standards for Issuance

A request that the Association compel the production of Documents or testimony shall be granted only upon a showing that: the information sought is relevant, material, and non-cumulative; the requesting Party has previously attempted in good faith to obtain the desired Documents and testimony through other means but has been unsuccessful in such efforts; and each of the persons from whom the Documents and testimony are sought is subject to the Association's jurisdiction. In addition, the Hearing Officer shall consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified.

(c) Limitations on Requests

If, after consideration of all the circumstances, the Hearing Officer determines that a request submitted pursuant to this Rule is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she shall deny the request, or grant it only upon such conditions as fairness requires. In making the foregoing determination, the Hearing Officer may inquire of the other Parties whether they shall stipulate to the facts sought to be proved by the Documents or testimony sought. If the Hearing Officer grants the request, the Hearing Officer shall order that requested Documents be produced to all Parties not less than ten days before the hearing, and order that witnesses whose testimony was requested appear and testify at the hearing. If the Hearing Officer grants the request ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, the Documents or testimony shall be produced immediately to all Parties.

9253. Production of Witness Statements

(a) Availability

A Respondent in a disciplinary proceeding may file a motion requesting that the Department of Enforcement produce for inspection and copying a statement of any person called or to be called as a witness by the Department of Enforcement that pertains, or is expected to pertain, to his or her direct testimony, including statements that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500. The production shall be made at a time and place fixed by the Hearing Officer and shall be made available to all Parties. Such production shall be made under conditions intended to preserve the items to be inspected or copied.

(b) Failure to Produce—Harmless Error

In the event that a statement required to be made available for inspection and copying by a Respondent is not provided by the Department of Enforcement, there shall be no rehearing of a proceeding already heard, or issuance of an amended decision in a proceeding already decided, unless the Respondent establishes that the failure to provide the statement was not harmless error. The Hearing Officer shall determine whether the failure to provide any statement was not harmless error, applying applicable Association, Commission, and federal judicial precedent.

9260. Hearing and Decision

9261. Evidence and Procedure in Hearings

(a) Submission of Documentary Evidence and List of Witnesses Before Hearing

No later than ten days before the hearing, or at such earlier date as may be specified by the Hearing Officer, each Party shall submit to all other Parties and to the Hearing Officer copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing.

(b) Party's Right to Be Heard

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative.

(c) Request to Submit Additional Evidence

Notwithstanding paragraph (a), a Party, for good cause shown, may seek to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record.

9262. Testimony

A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

9263. Evidence: Admissibility

(a) Criteria for Receiving and Excluding Evidence

A Hearing Officer shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.

(b) Objections

Objections to the admission or exclusion of evidence shall be made on the record and shall succinctly state the grounds relied upon. Excluded material shall be deemed a supplemental document, which shall be attached to the record and retained under Rule 9267.

9264. Motion for Summary Disposition

(a) Pre-hearing

After a Respondent's answer has been filed and Documents have been made available to that Respondent for inspection and copying pursuant to Rule 9251, the Respondent or the Complainant, without leave of the Hearing Officer, may make a motion for summary disposition of any or all the causes of action in the complaint with respect to that Respondent. All pre-hearing motions for summary disposition and supporting papers shall be filed at least 21 days before the time set for the hearing, or at such earlier time as ordered by the Hearing Officer. Notwithstanding the provisions of Rule 9146(d), any opposition or response to a pre-hearing motion for summary disposition shall be filed at least seven days before the time set for the hearing.

(b) After Commencement of Hearing on Merits

After the Complainant has completed presentation of its case in chief as to a Respondent, that Respondent or the Complainant, without leave of the Hearing Officer, may make a motion for summary disposition as to any or all of the causes of action in the complaint with respect to that Respondent. If the Complainant has not completed its case in chief, the Complainant or Respondent may move for summary disposition only with leave of the Hearing Officer.

(c) Form of Papers

A motion for summary disposition pursuant to paragraph (a) shall be accompanied by the following: a statement of undisputed facts; a

supporting memorandum of points and authorities; and affidavits or declarations that set forth such facts as would be admissible at the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein. A memorandum of points and authorities in support or opposition shall not exceed 35 pages.

(d) Rulings on Motion

Pursuant to Rule 9146, the Hearing Panel or, if applicable, the Extended Hearing Panel, shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. The Hearing Panel or, if applicable, the Extended Hearing Panel, may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the Party making the motion is entitled to summary disposition as a matter of law. With respect to motions pursuant to paragraph (a), the facts alleged in the pleadings against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by the non-moving Party, uncontested affidavits or declarations, or facts officially noticed pursuant to Rule 9145. If a Party opposing a motion for summary disposition made pursuant to paragraph (a) cannot present, for reasons stated in that Party's affidavit or declaration before hearing, facts essential to justify that Party's opposition, the Hearing Panel or, if applicable, the Extended Hearing Panel, may deny the motion for summary disposition or defer the decision on the motion.

9265. Record of Hearings

(a) Recordation

A hearing shall be recorded by a court reporter and a transcript shall be prepared. Unless otherwise ordered by a Hearing Officer, a pre-hearing conference shall be recorded by a court reporter and a transcript shall be prepared.

(b) Availability of a Transcript

A transcript of a pre-hearing conference and a transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase from the court reporter a transcript of his or her own testimony.

(c) Transcript Correction

Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as ordered by the Hearing Officer, a Party or witness may seek to correct his or her transcript. A proposed correction of the transcript shall be submitted to the Hearing Officer by affidavit. Upon notice to all Parties to the disciplinary proceeding, the Hearing Officer may order the correction to the transcript as requested or sua sponte.

9266. Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs

(a) Discretion of Hearing Officer to Require Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs

At the discretion of the Hearing Officer, the Parties may be ordered to file proposed findings of facts and conclusions of law, or post-hearing briefs, or both. The Hearing Officer may order that such proposed findings and conclusions be filed together with, or as part of, post-hearing briefs.

(b) Reference to Record Required

Proposed findings of fact or other statements of fact in briefs shall be supported by specific references to the record.

(c) Period for Filing

In any case in which the Hearing Officer ordered the filing of proposed findings or conclusions of law, or post-hearing briefs, the Hearing Officer shall, after consultation with the Parties, prescribe the period within which proposed findings and conclusions of law and post-hearing briefs are to be filed. Such period shall be reasonable under all the circumstances but the total period allowed for the filing of post-hearing submissions shall not exceed 60 days after the conclusion of the hearing unless the Hearing Officer, for good cause shown, permits a different period and sets forth in an order the reasons why a longer period is necessary.

(d) Form, Length of Papers

Unless the Hearing Officer orders otherwise, each post-hearing submission shall not exceed 25 pages, exclusive of cover sheets, tables of contents, and tables of authorities.

9267. Record; Supplemental Documents Attached to Record; Retention of Record and Supplement Documents Attached To Record; Copies

(a) Contents of the Record, Retention Of

The record shall consist of:

(1) the complaint, answers, each notice of hearing, pre-hearing order, and any amendments thereto;

(2) each application, motion, submission, and other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(3) each transcript of a pre-hearing conference and of a hearing, and each stipulation, transcript of testimony, Document, and other item admitted into evidence;

(4) each written communication accepted at the discretion of the Hearing Officer;

(5) with respect to a motion to disqualify a Hearing Officer under Rule 9233 or a Panelist under Rule 9234, each affidavit or transcript of testimony taken and the ruling made in connection with the request;

(6) all proposed findings and conclusions;

(7) each written ruling, order, and decision issued by the Chief Hearing Officer, Hearing Officer, Hearing Panel or, if applicable, Extended Hearing Panel; and

(8) any other document or item accepted into the record by the Hearing Officer, Hearing Panel or, if applicable, Extended Hearing Panel.

(b) Supplemental Documents Attached To Record; Retention Of

A supplemental Document attached to the record shall be a Document not admitted by the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, and any matter stricken from any filing or stricken during an oral presentation, including any matter stricken from any filing or stricken during any oral presentation because the Adjudicator determined it was scandalous or impertinent as provided in Rule 9136(e). Such Documents shall not constitute part of the record, but shall be retained until the date upon which the Association's decision becomes final disciplinary action or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(c) Substitution of Copies

Parties may submit to the Hearing Officer for substitution a true copy of a Document in the record.

9268. Decision of the Hearing Panel or Extended Hearing Panel

(a) Majority Decision

Within 60 days after the final date allowed for filing findings of fact, conclusions of law, and post-hearing briefs, or by a date established at the discretion of the Chief Hearing Officer, the Hearing Officer shall prepare a written decision that reflects the views of the Hearing Panel or, if applicable, the Extended Hearing Panel, as determined by majority vote.

(b) Contents of Decision; Signature

Each member of the Hearing Panel or, if applicable, the Extended Hearing Panel, shall sign the decision. Members of the Hearing Panel or, if applicable, the Extended Hearing Panel, may indicate next to their signatures whether they dissent from the decision. The decision shall include:

(1) a statement describing the investigative or other origin of the disciplinary proceeding;

(2) the specific statutory or rule provisions that were alleged to have been violated;

(3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;

(4) the conclusions of the Hearing Panel, or Extended Hearing Panel, as to whether the Respondent violated any provision alleged in the complaint;

(5) a statement of the Hearing Panel, or the Extended Hearing Panel, in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction shall become effective.

(c) Dissenting Opinion

Within 65 days after the final date allowed for filing findings of fact and conclusions of law, and post-hearings briefs, or by a date established at the discretion of the Chief Hearing Officer, the Hearing Officer or any Panelist may prepare a written dissenting opinion.

(d) Service, Notice, And Dissemination Requirements

The Office of Hearing Officers shall promptly serve the decision of the Hearing Panel, or the Extended Hearing Panel, and any dissenting opinion on the Parties; publish notice of the decision and any dissenting opinion in the Central Registration Depository; and provide a copy of the decision and any dissenting opinion to each member of the Association with which a Respondent is associated.

(e) Appeal or Review

If not timely appealed pursuant to Rule 9311 or timely called for review pursuant to Rule 9312, the majority decision shall constitute final disciplinary action of the Association for purposes of SEC Rule 19d–1(c)(1).

9269. Failure to Appear at Hearings; Default

(a) Failure to Appear May Result in Default Decision

A Party who fails to appear at a hearing of which he or she has been duly notified may be deemed to be in default. As a consequence of the default, the allegations against a non-appearing Respondent may be deemed admitted and a default decision entered by the Hearing Officer. If the non-appearing Party is the Department of Enforcement, the Hearing Officer may order that the complaint be dismissed with prejudice. In addition, the Hearing Officer may order that the non-appearing Party pay the costs incurred by other Parties in connection with their appearance at the hearing.

(b) Request to Set Aside Default

A Party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs.

9270. Settlement Procedure

(a) When Offer Allowed; No Stay of Proceeding

A Respondent who is notified that a proceeding has been instituted against him or her, or a Respondent to a proceeding already instituted, may propose in writing an offer of settlement at any time. If a Respondent proposes an offer of settlement 30 or fewer days before the hearing on the merits is scheduled to begin, or after the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel.

(b) Settlement Offer Shall Conform to Rule

A Respondent who makes an offer of settlement shall do so in conformity with the provisions of this Rule and shall not make such an offer of settlement frivolously or propose a sanction inconsistent with the seriousness of the violations to be found.

(c) Content and Signature Requirements

An offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. The offer of settlement shall contain in reasonable detail:

(1) a statement describing the investigative or other origin of the disciplinary action;

(2) the specific statutory or rule provisions that the member or associated person is alleged to have violated;

(3) a statement containing the acts or practices which the member or associated person is alleged to have engaged in or omitted;

(4) a statement consenting to findings of fact and violations consistent with the statements contained in the offer of settlement required by subparagraphs (c)(2) and (c)(3); and,

(5) a proposed sanction to be imposed that is consistent with the Association's then current sanction guidelines or, if inconsistent with the sanction guidelines, a detailed statement supporting the proposed sanction.

(d) Waiver

If a Respondent submits an offer of settlement, by the submission such Respondent waives:

(1) any right of such Respondent to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National Business Conduct Committee, the Commission, and the courts, or any right otherwise to challenge or contest the validity of the order issued, if the offer of settlement and order of acceptance are accepted;

(2) any right of such Respondent to claim bias or prejudgment of the Chief Hearing Officer, Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, a Panelist on a Hearing Panel, or, if applicable, an Extended Hearing Panel, the General Counsel of NASD Regulation, or his or her delegatee, the National Business Conduct Committee, or any member of the National Business Conduct Committee, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance, or rejection of such offer of settlement and order of acceptance; and

(3) any right of such Respondent to claim that a person or body violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussion regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of settlement, including acceptance or rejection of such offer of settlement and order of acceptance.

If an offer of settlement and an order of acceptance are rejected, the Respondent shall be bound by the waivers made in this paragraph (d) for conduct by persons or bodies occurring during the period beginning from date the offer of settlement was submitted and ending upon the rejection of the offer of settlement and order of acceptance.

(e) Uncontested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by the Department of Enforcement before a hearing on the merits has begun, the Department of Enforcement shall transmit the uncontested offer of settlement and a proposed order of acceptance to the National Business Conduct Committee with its recommendation. If an offer of settlement is determined to be uncontested by the Department of Enforcement after a hearing on the merits has begun, the Department of

Enforcement shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the National Business Conduct Committee to accept or reject.

(1) A proposed order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions consistent with the terms of the offer of settlement.

(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the National Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) or the General Counsel of NASD Regulation, or his or her delegatee, may accept such offer of settlement and order of acceptance or refer them to the National Business Conduct Committee for acceptance or rejection by the National Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) may reject such offer of settlement and order of acceptance or refer them to the National Business Conduct Committee for acceptance or rejection by the National Business Conduct Committee.

(3) If the offer of settlement and order of acceptance are accepted by the National Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or the General Counsel of NASD Regulation, or his or her delegatee, they shall become final and the National Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or the General Counsel of NASD Regulation, or his or her delegatee, shall communicate the acceptance to the Hearing Officer who shall thereafter issue the order.

(f) Contested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement opposes it, the offer of settlement is contested. When the Department of Enforcement opposes an offer of settlement, the Respondent's written offer and the Department of Enforcement's written opposition shall be submitted to a Hearing Panel or, if applicable, an Extended Hearing Panel. The Hearing Panel or, if applicable, the Extended Hearing Panel, may order the Department of Enforcement and the Respondent to attend a settlement conference.

(1) If a contested offer of settlement is approved by the Hearing Panel or, if applicable, Extended Hearing Panel, the Hearing Officer shall draft an order of acceptance of the offer of settlement. The order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions consistent with the terms of the offer of settlement. The offer of settlement, any written opposition thereto, and the order of acceptance shall be forwarded to the National Business Conduct Committee to accept or reject.

(2) Before an offer of settlement and order of acceptance shall become effective, they shall be submitted to, and accepted by, the National Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) may accept or reject such offer of settlement and order of acceptance or refer them to the National Business Conduct Committee for acceptance or rejection by the National Business Conduct Committee.

(3) If the offer of settlement and order of acceptance are accepted by the National Business Conduct Committee or the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), the National Business Conduct Committee or the Chair or the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) shall communicate the acceptance to the Hearing Officer who shall thereafter issue the order.

(g) Final Disciplinary Action of Association

The proceeding shall conclude as of the date the order of acceptance is issued. The order of acceptance shall constitute final disciplinary action of the Association. The sanction shall take effect as set forth in the order.

(h) Rejection of Offer of Settlement

If an uncontested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the Chair and Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or the National Business Conduct Committee, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. If a contested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the Chair and Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or the National Business Conduct Committee, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. The rejected offer and proposed order of acceptance shall not constitute a part of the record in any proceeding against the Respondent making the offer.

(i) Disciplinary Proceeding With Multiple Respondents

When a disciplinary proceeding names multiple Respondents, settlement offers may be accepted or rejected as to any one or all of the Respondents submitting offers. The proceedings shall thereafter be terminated as to those Respondents whose offers of settlement are accepted, but such Respondents may be required to participate in any hearing conducted as to those Respondents that did not submit offers of settlement or whose offers of settlement were rejected.

(j) No Prejudice from Rejected Offer of Settlement

If an offer of settlement is rejected by a Hearing Panel or, if applicable, an Extended Hearing Panel, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or the National Business Conduct Committee, the Respondent shall not be prejudiced by the offer, which may not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding.

9280. Contemptuous Conduct

(a) Persons Subject to Sanctions

If a Party, attorney for a Party, or other person authorized to represent others by Rule 9141, engages in conduct in violation of an order of a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, or other contemptuous conduct during a proceeding, a Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may:

(1) subject the Party, attorney for a Party, or other person authorized to represent others by Rule 9141, to the

sanctions set forth in paragraph (b); and,

(2) exclude an attorney for a Party, or other person authorized to represent others by Rule 9141, under Rule 9150.

(b) Sanctions Other Than Exclusion

A Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may make such orders as are just in regard to a Party, an attorney for a Party, or other person authorized to represent others by Rule 9141.

(1) Such orders may include:

(A) an order providing that the matters on which the order is made or any other designated facts shall be taken to be established for the purposes of the disciplinary proceeding in accordance with the claim of the Party obtaining the order;

(B) an order providing that the disobedient Party may not support or oppose designated claims or defenses, or may not introduce designated matters in evidence;

(C) an order providing that pleadings or a specified part of the pleading shall be stricken, or an order providing that the proceeding shall be stayed until the Party subject to the order obeys it;

(D) in lieu of any of the foregoing orders or in addition thereto, an order providing that contemptuous conduct includes the failure to obey any order; and

(E) an order as provided in subparagraphs (A), (B), and (C) where a Party has failed to comply with an order to produce a person for examination, unless the Party failing to comply shows that such Party is unable to produce such person for examination.

(2) A Party that without substantial justification fails to disclose information required by the Rule 9250 Series or otherwise required by order of the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, shall not, unless such failure is harmless, be permitted to use as evidence at a hearing, in a motion or in any other filing of papers, or in oral argument, any witness or information not so disclosed. In addition to, or in lieu of this sanction, the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. These sanctions may include any of the sanctions provided for in subparagraphs (A), (B), and (C) of subparagraph (b)(1).

(c) National Business Conduct Committee Review of Exclusions

If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or other person may seek review of the exclusion by filing a motion to vacate with the National Business Conduct Committee. Such motion to vacate shall be filed and served on all Parties within five days after service of the exclusion order. Any response shall be filed with the National Business Conduct Committee and served on all Parties within five days after the service of the motion to vacate. The National Business Conduct Committee shall consider such motion on an expedited basis and promptly issue a written decision The filing of a motion to vacate shall stay all aspects of the disciplinary proceeding until at least seven days after service of the decision of the National Business Conduct Committee. The National Business Conduct Committee review proceedings shall be conducted on the basis of the written record without oral argument.

(d) Adjournment

The hearing, conferences, or other activities relating to the disciplinary proceeding shall be stayed pending the National Business Conduct Committee's review of an exclusion order in paragraph (c). In the event that the National Business Conduct Committee upholds an exclusion of an attorney or other person authorized to represent others by Rule 9141, the Hearing Officer may, upon motion by a Party represented by an attorney or other person subject to an order of exclusion, grant an adjournment to allow the retention of new counsel or selection of a new representative. In determining whether to grant an adjournment or the length of an adjournment, the Hearing Officer shall consider whether there are other counsel or representatives of record on behalf of the Party, the availability of other counsel or other members of an excluded attorney's firm, or the availability of other representatives for the Party, and any other relevant factors.

9300. Review of Disciplinary Proceedings by the National Business Conduct Committee, NASD Regulation and NASD Boards, and Application for SEC review

9310. Appeal to or Review by National Business Conduct Committee

9311. Appeal by Any Party; Cross-Appeal

(a) Time to File Notice of Appeal

A Respondent or Complainant may file a written notice of appeal within 15 days after service of a decision issued pursuant to Rule 9268 or Rule 9269.

(b) Effect

An appeal to the National Business Conduct Committee from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the National Business Conduct Committee issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the NASD Regulation or NASD Boards, until a decision is issued pursuant to Rule 9351 or Rule 9352.

(c) Notice of Appeal Content and Signature Requirements

A Party appealing pursuant to this Rule shall file a written notice of appeal with the Office of Hearing Officers and serve the notice on the Parties. The notice of appeal shall be signed by the appealing Party, or his or her counsel or representative, and shall contain:

(1) the name of the disciplinary proceeding;

(2) the disciplinary proceeding docket number;

(3) the name of the Party on whose behalf the appeal is made;

(4) a statement on whether oral argument before the National Business Conduct Committee is requested; and,

(5) a brief statement of the findings, conclusions, or sanctions as to which exceptions are taken.

(d) Notice of Cross-Appeal

A Party who is served with a notice of appeal may file a written notice of cross-appeal and serve the notice of cross-appeal on the Parties. The notice of cross-appeal shall be filed within five days after service of the notice of appeal. The notice of cross-appeal shall be signed by the Party cross-appealing, or his or her counsel, and shall contain the information set forth in subparagraphs (c)(1)–(2) and (c)(4)–(5), and the name of the Party on whose behalf the cross-appeal is made.

(e) Waiver of Issues Not Raised

The National Business Conduct Committee may, in its discretion, deem waived any issue not raised in the notice of appeal or cross-appeal.

(f) Withdrawal of Notice of Appeal or Cross-Appeal

A Party may withdraw a notice of appeal or a notice of cross-appeal filed by him or her at any time by filing a written notice of withdrawal of appeal or cross-appeal with the Office of Hearing Officers and serving notice thereof on the Parties. The notice of withdrawal of appeal or cross-appeal shall contain: the name of the disciplinary proceeding; the disciplinary proceeding docket number; and the name of the Party on whose behalf the notice of appeal or cross-appeal was filed previously. The notice of withdrawal of appeal or cross-appeal shall be signed by the Party, or his or her counsel or representative. Upon the withdrawal of a notice of appeal, any outstanding cross-appeal shall be

treated as an appeal unless it is withdrawn.

9312. Review Proceedings Initiated by the National Business Conduct Committee

(a) Call for Review

(1) Rule 9268 Decision

A decision issued pursuant to Rule 9268 may be subject to a call for review by any member of the National Business Conduct Committee or, pursuant to authority delegated from the National Business Conduct Committee, by any member of the Review Subcommittee of the National Business Conduct Committee. The Review Subcommittee shall be composed of two to four persons who are current members of the National Business Conduct Committee. At least 50 percent of the persons making up the Review Subcommittee shall be Non-Industry Directors, as defined in Article I of the NASD Regulation By-Laws. A decision issued pursuant to Rule 9268 shall be subject to a call for review within 45 days after the date of service of the decision. If called for review, such decision shall be reviewed by the National Business Conduct Committee.

(2) Rule 9269 Decision

A default decision issued pursuant to Rule 9269 shall be subject to a call for review by the General Counsel of NASD Regulation, or his or her delegatee, on his or her own motion within 45 days after the date of service of the decision. If called for review, such decision shall be reviewed by the National Business Conduct Committee.

(b) Effect

Institution of review by a member of the National Business Conduct Committee on his or her own motion, a member of the Review Subcommittee on his or her own motion, or the General Counsel of NASD Regulation, or his or her delegatee, on his or her own motion shall operate as a stay of a final decision issued pursuant to Rule 9268 or Rule 9269 as to all Parties subject to the notice of review, until the National Business Conduct Committee issues a decision pursuant to Rule 9349, or, in cases called for discretionary review by the NASD Regulation or NASD Boards, until a decision is issued pursuant to Rule 9351 or Rule 9352.

(c) Requirements

If a member of the National Business Conduct Committee, a member of the Review Subcommittee, or the General Counsel of NASD Regulation, or his or her delegatee, determines to call a case for review, a written notice of review shall be served promptly on each Party to the proceeding and filed with the Office of Hearing Officers. Such notice of review shall contain:

(1) the name of the disciplinary proceeding;

(2) the disciplinary proceeding docket number; and,

(3) a brief statement of the findings, conclusions, or sanctions with respect to which the National Business Conduct Committee, the Review Subcommittee, or the General Counsel of NASD Regulation, or his or her delegatee, determined that a call for review was necessary.

The statement contained in the notice of review shall not limit the scope of the National Business Conduct Committee's authority under Rule 9346 to review any issues raised in the decision rendered pursuant to Rule 9268 or Rule 9269. The National Business Conduct Committee shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue not set forth in the notice of review that shall be considered by the National Business Conduct Committee.

(d) Effect of Withdrawal of Notice of Appeal, Cross-Appeal

If the review of a disciplinary proceeding by the National Business Conduct Committee is terminated before the National Business Conduct Committee issues a decision on the merits because all appealing Parties file a notice of withdrawal of appeal and no Party previously filed a notice of cross-appeal, or all Parties who previously filed a notice of cross-appeal file a notice of withdrawal of cross-appeal:

(1) a member of the National Business Conduct Committee or of the Review Subcommittee shall have the right to call for review a decision issued pursuant to Rule 9268 in accordance with Rule 9312(a)(1), except that the 45 day period during which a call for review may be made shall begin on the day the Association receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal; and,

2) the General Counsel of NASD Regulation, or his or her delegatee, shall have the right to call for review a decision issued pursuant to Rule 9269 in accordance with Rule 9312(a)(2), except that the 45 day period during which a call for review may be made shall begin on the day the Association receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal.

9320. Transmission of Record; Extensions of Time, Postponements, Adjournments

9321. Transmission of Record

Within 21 days after the filing of a notice of appeal or notice of review, or at such later time as the National Business Conduct Committee may designate, the Office of Hearing Officers shall assemble and prepare an index to the record, transmit the record and the index to the National Business Conduct Committee, and serve copies of the index upon all Parties. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, shall certify that the record transmitted to the National Business Conduct Committee is complete.

9322. Extensions of Time, Postponements, and Adjournments

(a) Availability

At any time prior to the issuance of a decision pursuant to Rule 9349, the National Business Conduct Committee may, for good cause shown, extend or shorten any time limits prescribed by the Code for the filing of any papers and may, consistent with paragraph (b), postpone or adjourn any hearing.

(b) Limitations on Postponements, Adjournments, and Extensions

Oral argument shall begin at the time and place ordered, unless the National Business Conduct Committee, for good cause shown, postpones or changes the location of the oral argument, subject to the limitations in paragraph (b)(2).

(1) Additional Considerations

In considering a motion for postponement of oral argument, the National Business Conduct Committee shall consider, in addition to any other relevant factors:

(A) the length of time the disciplinary proceeding has been pending to date;

(B) the number of postponements, adjournments, or extensions already granted;

(C) the stage of the proceedings at the time of the request; and

(D) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and

(E) any other such matters that justice may require.

(2) Time Limit

Postponements, adjournments, or extensions of time for filing papers shall not exceed 28 days, unless the National Business Conduct Committee determines otherwise.

9330. Appointment of Subcommittee or Extended Proceeding Committee; Disqualification and Recusal

9331. Appointment by National Business Conduct Committee of Subcommittee or Extended Proceeding Committee

(a) Appointment by National Business Conduct Committee

Following the filing of a notice of appeal pursuant to Rule 9311 or a

notice of review pursuant to Rule 9312, the National Business Conduct Committee shall designate a Subcommittee or an Extended Proceeding Committee to participate, subject to Rule 9345, in a disciplinary proceeding appealed or called for review.

(1) Subcommittee

Except as provided in subparagraph (2), for each disciplinary proceeding appealed or called for review, the National Business Conduct Committee shall appoint a Subcommittee to participate, subject to Rule 9345, in the appeal or review. A Subcommittee shall be composed of two or more persons who shall be current or former Directors, or former Governors.

(2) Extended Proceeding Committee

Upon consideration of the volume and complexity of the certified record, or other factors the National Business Conduct Committee deems material, the National Business Conduct Committee may determine that a disciplinary proceeding appealed or called for review shall be designated an Extended Proceeding and shall appoint an Extended Proceeding Committee to participate, subject to Rule 9345, in the appeal or review. The Extended Proceeding Committee shall be composed of two or more persons who shall be current or former Directors, or former Governors. The Chair of the National Business Conduct Committee shall have discretion to compensate any or all Panelists of an Extended Proceeding Committee at the rate then in effect for arbitrators appointed under the Rule 10000 Series.

(b) Function

If a hearing is held, the Subcommittee or, if applicable, the Extended Proceeding Committee, shall hear oral arguments and consider, if allowed, any new evidence. Based on the hearing and the record on appeal or review, the Subcommittee or, if applicable, the Extended Hearing Committee, shall make a recommendation to the National Business Conduct Committee regarding the disposition of all matters on appeal, cross-appeal, or review. The recommendation shall be in the form of a written recommended decision.

9332. Disqualification and Recusal

(a) Recusal, Withdrawal of Member or Panelist

If at any time a member of the National Business Conduct Committee, or a Panelist of a Subcommittee or an Extended Proceeding Committee, determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the member or the Panelist shall notify the Chair or the Vice-Chair of the National Business Conduct Committee, and the Chair or the Vice-Chair of the National Business Conduct Committee shall issue and serve on the Parties a notice stating that the member or Panelist has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or is otherwise unable to continue his or her service after a hearing has been convened, the Chair or Vice-Chair of the National Business Conduct Committee shall appoint a replacement Panelist.

(b) Motion for Disqualification

A Party may move for the disqualification of a member of the National Business Conduct Committee, or a Panelist of a Subcommittee or an Extended Proceeding Committee. All such motions shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists, or circumstances otherwise exist where his or her fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

(1) when the Party learned of the facts believed to constitute the disqualification; or

(2) when the Party was notified of the composition of the Subcommittee or, if applicable, the Extended Proceeding Committee.

(c) Disposition of Disqualification Motions: Challenges to Single Member of National Business Conduct Committee or Single Panelist of Subcommittee or Extended Hearing Committee

Motions for disqualification of a member of the National Business Conduct Committee, or a Panelist of a Subcommittee or an Extended Proceeding Committee shall be decided by the Chair or Vice-Chair of the National Business Conduct Committee, who shall promptly determine whether disqualification is required, and issue a written ruling on the motion. If a Panelist is disqualified, the Chair or the Vice-Chair of the National Business Conduct Committee shall appoint a replacement Panelist.

(d) Disposition of Disqualification Motions: Challenges to Multiple Panelists

(1) National Business Conduct Committee

If a Party files a motion to disqualify more than one member of the National Business Conduct Committee, the Chair or the Vice-Chair of the National Business Conduct Committee shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. In the event of such disqualification, the remaining members of the National Business Conduct Committee shall consider the review or appeal of the disciplinary matter.

(2) Subcommittee; Extended Proceeding Committee

If a Party files a motion to disqualify more than one Panelist of a Subcommittee or an Extended Proceeding Committee, the Chair or the Vice-Chair of the National Business Conduct Committee shall promptly determine whether disqualification is required, and shall issue a written ruling on the motion. If multiple Panelists are disqualified, the Chair or the Vice-Chair of the National Business Conduct Committee shall appoint replacement Panelists.

9340. Proceedings

9341. Oral Argument

(a) Request for Oral Argument

A Party may request oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee. Oral argument shall be requested in writing either in the Party's notice of appeal or cross-appeal, or within 15 days after service of the National Business Conduct Committee's notice of review. Subject to the limitations of Rules 9342 and 9344, oral argument shall be granted if timely requested. The right to oral argument set forth in this Rule is unaffected by a Party's waiver of, or failure to request, a hearing pursuant to the Rule 9200 Series.

(b) Discretion to Proceed With or Without Oral Argument

In the absence of a request for oral argument, the Subcommittee or, if applicable, the Extended Proceeding Committee, in its discretion, may order that a matter be set down for oral argument, or may consider the matter on the basis of the record.

(c) Notice Regarding Oral Argument

If oral argument is held, a notice stating the date, time, and place of the argument shall be served on the Parties at least 21 days before the hearing. The Parties may agree in writing to waive the notice period or, in extraordinary circumstances, the Subcommittee or, if applicable, the Extended Proceeding Committee, may provide for a shorter notice period.

(d) Attendance Required

The Parties shall make oral arguments before the Subcommittee or, if applicable, the Extended Proceeding Committee. Unless otherwise agreed to by all of the Parties, all Panelists comprising the Subcommittee or, if

applicable, the Extended Proceeding Committee, shall be present for the oral argument.

(e) Time Limits

Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, orders otherwise for good cause shown, each Party's oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee, shall be limited to a total of 30 minutes.

(f) Recordation; Transcript Correction

Oral arguments shall be recorded and a written transcript prepared by a court reporter. Parties may purchase copies of the transcript from the court reporter. Any corrections that a Party believes necessary to a transcript shall be submitted by motion to the Subcommittee or, if applicable, the Extended Proceeding Committee, within 21 days after the hearing date or within five days after receipt of the transcript, whichever date is later.

9342. Failure to Appear at Oral Argument

A Party who requests oral argument but fails to appear after being duly notified, shall be deemed to have waived any opportunity for oral argument provided under the Rule 9300 Series. The Subcommittee or, if applicable, the Extended Proceeding Committee, shall permit argument to go forward as to those Parties who appear. The Subcommittee or, if applicable, the Extended Proceeding Committee, in the exercise of its discretion, may consider the matter on the basis of the record without oral argument as to those Parties who failed to appear.

9343. Disposition Without Oral Argument

If an oral argument is not held, the matter shall be considered by a Subcommittee or, if applicable, an Extended Proceeding Committee, on the basis of the record, as defined in Rule 9267, and supplemented by any written materials submitted to or issued by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee in connection with the appeal, cross-appeal, or call for review.

9344. Failure to Participate Below; Abandonment of Appeal

(a) Failure to Participate Below

When an appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, Hearing Panel or, if applicable, Extended Hearing Panel, but shows good cause for the failure to participate, the National Business Conduct Committee may dismiss the appeal and remand the matter for further proceedings, or may hear evidence and consider the matter. If the appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, Hearing Panel or, if applicable, Extended Hearing Panel, and fails to show good cause for the failure to participate, the matter shall be considered by the Subcommittee or, if applicable, Extended Proceeding Committee, and the National Business Conduct Committee on the basis of the record and other documents, as provided in Rules 9346 and 9347. For purposes of this paragraph, failure to participate shall include failure to file an answer or otherwise respond to a complaint, or failure to appear at a scheduled hearing, but shall not include failure to request a hearing pursuant to Rule 9221.

(b) Abandonment of Appeal

If an appealing Party fails to advise the National Business Conduct Committee of the basis for seeking review, or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the National Business Conduct Committee may dismiss the appeal as abandoned, and the decision of the Hearing Officer, Hearing Panel or, if applicable, Extended Hearing Panel, shall become the final disciplinary action of the Association. If a cross-appealing Party fails to advise the National Business Conduct Committee of the basis for seeking review, or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the National Business Conduct Committee may dismiss the cross-appeal as abandoned. Upon a showing of good cause, the National Business Conduct Committee may withdraw any dismissal entered pursuant to this Rule.

9345. Subcommittee or Extended Proceeding Committee Recommendation to National Business Conduct Committee

A Subcommittee or, if applicable, an Extended Proceeding Committee, shall present a recommended decision in writing to the National Business Conduct Committee and all other Directors not later than seven days before the meeting of the National Business Conduct Committee at which the disciplinary proceeding shall be considered.

9346. Evidence in National Business Conduct Committee Proceedings

(a) Scope of Review

Except as otherwise set forth in this paragraph, the National Business Conduct Committee's review shall be limited to consideration of: (i) the record, as defined in Rule 9267, supplemented by briefs and other papers submitted to the Subcommittee or, if applicable, the Extended Proceeding Committee, and the National Business Conduct Committee; and (ii) any oral argument permitted under this Code. A Party may introduce additional evidence only with prior approval of the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee, upon a showing that extraordinary circumstances exist under paragraph (b). If an appealing Party shows good cause for failure to participate in the disciplinary proceeding below, the National Business Conduct Committee may hear evidence and consider the disciplinary proceeding pursuant to Rule 9344(a).

(b) Leave to Introduce Additional Evidence

A Party may apply to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee for leave to introduce additional evidence by motion filed not later than 30 days after service of such Party's notice of appeal or cross-appeal, or not later than 35 days after service upon the Party by the National Business Conduct Committee of a notice of review. The motion shall describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce it below, and demonstrate why the evidence is material to the proceeding, and be filed and served. By a motion filed in accordance with Rule 9146, a Party may request an extension of the period during which a Party may file a motion for leave to introduce additional evidence. A Party shall demonstrate that there was good cause for failing to file the motion for leave to introduce additional evidence during the period prescribed.

(c) Motion In Opposition; Motion to Introduce Rebuttal Evidence

A Party may file an opposition to a motion, as provided in Rule 9146(d), for leave to introduce new evidence, and may move for leave to introduce rebuttal evidence in response to the proposed new evidence. A Party who moves to introduce rebuttal evidence in response to the proposed new evidence of another Party shall describe each item of proposed rebuttal evidence and explain why the evidence is material to the proceeding, and shall file and serve such motion.

(d) Discretion Regarding Review of Additional Evidence

Upon consideration of any motion to introduce additional evidence and any opposition thereto, the Subcommittee

or, if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee may permit the evidence to be introduced into the record on review, or the National Business Conduct Committee may remand the disciplinary proceeding for further proceedings consistent with its ruling or for further fact finding.

(e) Requirements for Submitting Additional Documentary Evidence

A Party that is permitted to introduce additional documentary evidence before the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee pursuant to paragraph (d) shall make copies of the evidence available to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee, and to all Parties at such time as the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee may specify.

(f) Subcommittee or Extended Proceeding Committee Order Requiring Additional Evidence

On its own motion, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee may order that the record be supplemented with such additional evidence as it may deem relevant. Among other things, the Subcommittee, or if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee may order a Respondent who asserts his or her inability to pay a monetary sanction to file a sworn financial statement and to keep such statement current as ordered by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee.

(g) Rules of Evidence Not Applicable

Formal rules of evidence shall not apply.

(h) Testimony

A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

9347. Filing of Papers in National Business Conduct Committee Proceedings

(a) Briefs; Reply Briefs; Requirements

Parties may file briefs in connection with proceedings governed by the Rule 9300 Series. Briefs shall be confined to the particular matters at issue. An exception to findings, conclusions, or sanctions shall be supported by citation to the relevant portions of the record, including references to specific pages relied upon, and by concise argument, including citation of such statutes, decisions, and other authorities as may be relevant. If an exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, an appendix thereto, or by citation to the record. Parties may file reply briefs. If a Party files a reply brief, such brief shall be limited to matters in reply. All briefs shall conform to the requirements of the Rule 9130 Series, and, except with advance leave of the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee, exclusive of pages containing tables of contents or tables of authorities, a brief other than a reply brief shall not exceed 25 double-spaced pages, and a reply brief shall not exceed 12 double-spaced pages.

(b) Timely Filing of Briefs

Briefs shall be due upon dates established by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee in a scheduling order. Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Business Conduct Committee specifies otherwise, opening briefs shall be submitted not less than 21 days from the date of the scheduling order, and answering briefs shall be submitted 21 days thereafter. When reply briefs are submitted, such briefs shall be filed not later than ten days after service of the answering brief.

9348. Powers of the National Business Conduct Committee on Review

In any appeal or review proceeding pursuant to the Rule 9300 Series, the National Business Conduct Committee may affirm, dismiss, modify, or reverse with respect to each finding, or remand the disciplinary proceeding with instructions. The National Business Conduct Committee may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction.

9349. National Business Conduct Committee Formal Consideration; Decision

(a) Decision of National Business Conduct Committee, Including Remand

In an appeal or review of a disciplinary proceeding governed by the Rule 9300 Series that is not withdrawn or dismissed prior to a decision on the merits, the National Business Conduct Committee, after considering all matters presented in the appeal or review, and the written recommended decision of the Subcommittee or, if applicable, the Extended Proceeding Committee, may affirm, dismiss, modify or reverse the decision of the Hearing Panel or, if applicable, Extended Hearing Panel, with respect to each Respondent who has appealed or cross-appealed or is subject to a call for review. The National Business Conduct Committee may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the National Business Conduct Committee may remand the disciplinary proceeding with instructions. The National Business Conduct Committee shall prepare a proposed written decision pursuant to paragraph (b).

(b) Contents of Decision

The decision shall include:

(1) a statement describing the investigative or other origin of the disciplinary proceeding;

(2) the specific statutory or rule provisions that were alleged to have been violated;

(3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;

(4) the conclusions as to whether the Respondent violated any provision alleged in the complaint;

(5) a statement in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction imposed, the reasons therefor, and, pursuant to Rule 9360, the date upon which such sanction shall become effective.

(c) Issuance of Decision After Expiration of Call for Review Period

The National Business Conduct Committee shall provide its proposed written decision to the NASD Regulation Board, and, if the disciplinary proceeding is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation Board may call the disciplinary proceeding for review pursuant to Rule 9351. The NASD Board may call the disciplinary proceeding for review pursuant to Rule 9352. If neither the NASD Regulation Board nor the NASD Board calls the disciplinary proceeding for review, the proposed written decision of the National Business Conduct Committee shall become final, and the National Business Conduct Committee shall serve its written decision on the Parties and provide a copy to each member of the Association with which a Respondent is associated. The decision shall constitute the final disciplinary action of the Association for purposes of SEC Rule 19–1(c)(1), unless the National Business Conduct Committee remands the proceeding.

9350. Discretionary Review by Boards

9351. Discretionary Review by the NASD Regulation Board

(a) Call for Review by Director

A Director may call a disciplinary proceeding for review by the NASD Regulation Board, if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 9349, a Director shall have not less than seven days to determine if the disciplinary proceeding should be called for review. A Director shall call a disciplinary proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(c) Review at Next Meeting

If a Director calls a disciplinary proceeding for review within the period prescribed in paragraph (b), the NASD Regulation Board shall review the disciplinary proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation Board may order the Parties (excluding any Respondent who did not appeal or cross-appeal, or as to whom the issues appealed or called for review do not apply), to file briefs in connection with the NASD Regulation Board review proceedings pursuant to this Rule.

(d) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee. The NASD Regulation Board may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the NASD Regulation Board may remand the disciplinary proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 9349(b) (1)–(6).

(e) Issuance of Decision After Expiration of Call for Review Period

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the disciplinary proceeding for review pursuant to Rule 9352. If the NASD Board does not call the disciplinary proceeding for review, the proposed written decision of the NASD Regulation Board shall become final, and the NASD Regulation Board shall serve its written decision on the Parties and provide a copy to each member of the Association with which a Respondent is associated. The decision shall constitute the final disciplinary action of the Association for purposes of SEC Rule 19d–1(c)(1), unless the NASD Regulation Board remands the proceeding.

9352. Discretionary Review by the NASD Board

(a) Call for Review by Governor

A Governor may call a disciplinary proceeding for review by the NASD Board if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

(1) Disciplinary Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the disciplinary proceeding under Rule 9351, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the NASD Regulation Board.

(2) Disciplinary Proceeding Not Called for Review by NASD Regulation Board

If no Director of the NASD Regulation Board called the disciplinary proceeding for review under Rule 9351, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(3) Waiver

By a unanimous vote of the NASD Board, the NASD Board may shorten the period in subparagraph (1) or (2) to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period in subparagraph (1) or (2), vote to extend the period in subparagraph (1) or (2) to more than seven days.

(c) Review at Next Meeting

If a Governor calls a disciplinary proceeding for review within the period prescribed in paragraph (b), the NASD Board shall review the disciplinary proceeding not later than the next meeting of the NASD Board. The NASD Board may order the Parties (excluding any Respondent who did not appeal, cross-appeal, or as to whom the issues appealed or called for review do not apply) to file briefs in connection with review proceedings pursuant to this Rule.

(d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse: (1) the proposed written decision of the NASD Regulation Board; or (2) if the NASD Regulation Board did not call a disciplinary proceeding for review under Rule 9351, the proposed written decision of the National Business Conduct Committee. The NASD Board may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the NASD Board may remand the disciplinary proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 9349(b)(1)–(6).

(e) Issuance of Decision

The NASD Board shall issue and serve its written decision on the Parties and provide a copy to each member of the Association with which a Respondent is associated. The decision shall constitute the final disciplinary action of the Association for purposes of SEC Rule 19d–1(c)(1), unless the NASD Board remands the proceeding.

9360. Effectiveness of Sanctions

A sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d–1(c)(1) shall become effective on a date established by the Chief Hearing Officer, which shall not be earlier than 30 days after the date of service of the decision constituting final disciplinary action. A bar or an expulsion shall become effective upon service of the decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d–1(c)(1), unless otherwise specified therein.

9370. Application to Commission for Review

(a) Appeal to Commission; Effect

A person aggrieved by final disciplinary action pursuant to the Rule 9300 Series may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing with the Commission of an application for review by the Commission shall stay the effectiveness of any sanction, other than a bar or an expulsion, imposed in a decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d–1(c)(1).

(b) Association Notification to Member

The Association shall promptly notify any Association member with which a Respondent is associated if the

Respondent files an application for review to the Commission.
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9400. Limitations and Approval Procedures Under Rules 3130, 3131, and 3140

9410. Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties

9411. Purpose

The Rule 9410 Series sets forth procedures for regulating the activities of a member that is experiencing the financial or operational difficulties specified in Rule 3130 or 3131.

9412. Notice of Limitations

The Department of Member Regulation (hereinafter ''Department'' in the Rule 9410 Series) may issue a notice directing a member to limit its business activities if the Department has reason to believe that any condition specified in Rule 3130 or 3131 exists. The notice shall specify the grounds on which action is being taken, the nature of the limitations to be imposed, the effective date of the limitations, and a fitting sanction that will be imposed if the member fails to comply with the limitations set forth in the notice. The effective date of the limitations shall be at least seven days after the date of service of the notice. The notice also shall inform the member that it may request a hearing before the Department under Rule 9413. The Department shall serve the notice pursuant to Rules 9131 and 9134.

9413. Department Consideration

(a) Request for Hearing

A member aggrieved by a notice issued under Rule 9412 may file a written request for a hearing before the Department. The request shall state the specific grounds for withdrawing or modifying the limitations specified in the notice. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within five days after service of the notice under Rule 9412.

(b) Hearing

If a member requests a hearing under paragraph (a), the Department shall conduct a hearing within 14 days after service of the notice under Rule 9412. The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter. Any corrections to the transcript shall be submitted within three days after the hearing or within three days after receipt of the transcript, whichever is later.

(c) Decision

Within seven days after the hearing, the Department shall issue a decision approving, modifying, or withdrawing the limitations specified in the notice. If the decision imposes limitations, the decision shall provide for a fitting sanction to be imposed under Rule 9417 if the member fails to comply with the limitations. The Department shall promptly serve the decision pursuant to Rules 9132 and 9134. The decision shall become effective upon service.

(d) Failure to Request Hearing

If a member does not request a hearing under paragraph (a), the limitations specified in the notice shall become effective on the date specified in the notice. Unless the National Business Conduct Committee calls the notice for review under Rule 9414, the limitations specified in the notice shall remain in effect until the Department removes or modifies the limitations pursuant to Rule 9418.

9414. National Business Conduct Committee Review

(a) Initiation of a Review

(1) Application by Member

A member aggrieved by a decision issued under Rule 9413 may file a written application for review by the National Business Conduct Committee. The application shall state the specific grounds for the review and whether oral argument is requested. The application shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the decision. The member may withdraw its application for review at any time by filing a written notice with the National Business Conduct Committee pursuant to Rules 9135, 9136, and 9137.

(2) Motion of National Business Conduct Committee

A decision issued under Rule 9413 shall be subject to a call for review by any member of the National Business Conduct Committee or the Review Subcommittee described in Rule 9312(a)(1) within 30 days after service of the decision. If a member that receives a notice under Rule 9412 does not request a hearing under Rule 9413, the notice shall be subject to a call for review by any member of the National Business Conduct Committee or the Review Subcommittee, within 30 days after the effective date of the notice. If the National Business Conduct Committee or the Review Subcommittee calls a decision or notice for review, a

written notice of review shall be served promptly on the member pursuant to Rules 9132 and 9134. The notice of review shall state the specific grounds for the review and whether an oral argument is ordered. If a decision is called for review by a member of the National Business Conduct Committee or the Review Subcommittee, the decision shall be reviewed by the National Business Conduct Committee.

(3) Stay

Unless otherwise ordered by the National Business Conduct Committee, the initiation of a review under this paragraph shall stay the decision of the Department or an uncontested notice until a decision constituting final action of the Association is issued.

(4) Ex Parte Communications

The prohibitions against ex parte communications in Rule 9143 shall become effective under the Rule 9410 Series when Association staff has knowledge that a member intends to file a written application for review or that the National Business Conduct Committee intends to review a decision on its own motion under this Rule.

(b) Subcommittee Consideration

(1) Appointment of Subcommittee

The National Business Conduct Committee shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more members. One member shall be a member of the National Business Conduct Committee, and the remaining member or members shall be current or former Directors of the NASD Regulation Board or former Governors of the NASD Board.

(2) Oral Argument

If oral argument is requested by the member, oral argument shall be held before the Subcommittee within 14 days after service of the decision under Rule 9413. If oral argument is ordered by the Subcommittee, oral argument shall be held before the Subcommittee within seven days after service of the order. The member shall be entitled to be represented by an attorney. The oral argument shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter. Any corrections to the transcript shall be submitted within three days after the oral argument or within three days after receipt of the transcript, whichever is later.

(3) Review on Record

If oral argument is not requested or ordered, the Subcommittee shall conduct its review on the basis of the record and any written submissions by the Parties.

(4) Additional Evidence

The Subcommittee may consider additional evidence if the member shows good cause for not previously submitting such evidence.

(5) Recommendation

The Subcommittee shall present a recommended decision in writing to the National Business Conduct Committee and all other Directors not later than seven days before the meeting of the National Business Conduct Committee at which the proceeding shall be considered.

(c) Decision

(1) Decision of National Business Conduct Committee, Including Remand

After considering all matters presented in the review and the written recommended decision of the Subcommittee, the National Business Conduct Committee may affirm, modify, or reverse the Department's decision or remand the proceeding with instructions. The National Business Conduct Committee shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include:

(A) a description of the Department's decision, including its rationale;

(B) a description of the principal issues regarding the imposition of limitations raised in the review and a statement supporting the disposition of such issues;

(C) a summary of the evidence on each issue;

(D) a statement of whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor; and

(E) if any limitations are imposed, a description of the limitations and a statement describing a fitting sanction that will be imposed under Rule 9417 if the member fails to comply with any of the limitations.

(3) Issuance of Decision After Expiration of Call for Review Period

The National Business Conduct Committee shall provide its proposed written decision to the NASD Regulation Board, and, if the proceeding is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation Board may call the proceeding for review pursuant to Rule 9415. The NASD Board may call the proceeding for review pursuant to Rule 9416. If neither the NASD Regulation Board nor the NASD Board calls the proceeding for review, the proposed written decision of the National Business Conduct Committee shall become final, and the National Business Conduct Committee shall serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Association, unless the National Business Conduct Committee remands the proceeding.

9415. Discretionary Review by the NASD Regulation Board

(a) Call for Review by Director

A Director may call a proceeding for review by the NASD Regulation Board if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 9414, a Director shall have not less than seven days to determine if the proceeding should be called for review. A Director shall call a proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(c) Review at Next Meeting

If a Director calls a proceeding for review within the period prescribed by paragraph (b), the NASD Regulation Board shall review the proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee or remand the proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 9414(c)(2).

(e) Issuance of Decision After Expiration of Call for Review Period

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9416. If the NASD Board does not call the proceeding for review, the proposed written decision of the NASD Regulation Board shall become final, and the NASD Regulation Board shall serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Association, unless the NASD Regulation Board remands the proceeding.

9416. Discretionary Review by the NASD Board

(a) Call for Review by Governor

A Governor may call a proceeding for review by the NASD Board if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

(1) Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the proceeding under Rule 9415, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the NASD Regulation Board.

(2) Proceeding Not Called for Review by NASD Regulation Board

If no Director of the NASD Regulation Board called the proceeding for review under Rule 9415, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(3) Waiver

By a unanimous vote of the NASD Board, the NASD Board may shorten the period in subparagraph (1) or (2) to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period in subparagraph (1) or (2), vote to extend the period in subparagraph (1) or (2) to more than seven days.

(c) Review at Next Meeting

If a Governor calls a proceeding for review within the period prescribed in paragraph (b), the NASD Board shall review the proceeding not later than the next meeting of the NASD Board. The NASD Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse: (1) the proposed written decision of the NASD Regulation Board, or (2) if the NASD Regulation Board did not call a proceeding for review under Rule 9415, the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Board may remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 9414(c)(2).

(e) Issuance of Decision

The NASD Board shall issue and serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Association, unless the NASD Board remands the proceeding.

9417. Enforcement of Sanctions

(a) Order

If the Department determines that a member has failed to comply with any limitations imposed by a decision under Rule 9413, 9414, 9415, or 9416, or an effective notice under Rule 9413(d), the Department shall issue an order to be served pursuant to Rules 9132 and 9134 imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions.

(b) Hearing

A member aggrieved by an order issued under paragraph (a) may file a written request for a hearing before the Department. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within four days after service of the order. The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter. Any corrections to the transcript shall be submitted within two days after the hearing or within two days after receipt of the transcript, whichever is later.

(c) Decision

Within four days after the hearing, the Department shall affirm, modify, or reverse the order issued under paragraph (a). The Department shall serve the decision on the member pursuant to Rules 9132 and 9134. The decision shall become effective upon service and shall constitute final action of the Association.

9418. Additional Limitations; Modification or Removal of Limitations

(a) Additional Limitations

If a member continues to experience financial or operational difficulty specified in Rule 3130 or 3131, notwithstanding an effective notice or decision under the Rule 9410 Series, the Department may impose additional limitations by issuing a notice under Rule 9412.

(b) Modification of Limitations

If the Department determines that any limitations previously imposed under the Rule 9410 Series should be modified or removed, the Department shall serve a written notice on the member pursuant to Rules 9132 and 9134.

9419. Application to Commission for Review; Other Action Not Foreclosed

(a) Any person aggrieved by final action pursuant to the Rule 9410 Series may apply for review by the Commission under Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.

(b) Action by the Association under the Rule 9410 Series shall not foreclose action by the Association under any other Rule.

9420. Approval of Change in Business Operations That Will Result in a Change in Exemptive Status under SEC Rule 15c3–3

9421. Purpose

The Rule 9420 Series sets forth procedures for Rule 3140, which requires the Association's approval of a change in a member's business activities that will result in a change in the member's exemptive status under SEC Rule 15c3–3.

9422. Department of Member Regulation Consideration

(a) Application

A member shall apply for approval of a change in its business operation that will result in a change in its exemptive status under SEC Rule 15c3–3 by filing a written application with the Department of Member Regulation (hereinafter ''Department'' in the 9420 Rule Series) at the district office in the district in which it has its principal place of business. The application shall address the criteria set forth in Rule 3140 and shall be filed pursuant to Rules 9135, 9136, and 9137.

(b) Decision

Within 21 days after receipt of the application, the Department shall issue a decision approving or denying the application in whole or in part. If the decision denies the application in whole or in part, the decision shall set forth the specific grounds for such action. The decision shall provide a fitting sanction to be imposed in accordance with Rule 9426 if the member fails to comply with any limitations imposed. The Department shall serve the decision pursuant to Rules 9132 and 9134.

9423. National Business Conduct Committee Review

(a) Initiation of Review

(1) Application by Member

A member aggrieved by a decision issued under Rule 9422 may file a written application for review by the National Business Conduct Committee. The application shall state the specific grounds for the review and whether oral

argument is requested. The application shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the decision. The member may withdraw its application at any time by filing a written notice with the National Business Conduct Committee pursuant to Rules 9135, 9136, and 9137.

(2) Motion of National Business Conduct Committee

A decision issued under Rule 9422 shall be subject to a call for review by any member of the National Business Conduct Committee or the Review Subcommittee described in Rule 9312(a)(1) within 30 days after service of the decision. If the National Business Conduct Committee or the Review Subcommittee calls a decision for review, a written notice of review shall be served promptly on the member pursuant to Rules 9132 and 9134. The written notice of review shall state the specific grounds for the review and whether oral argument is ordered. If a decision is called for review by any member of the National Business Conduct Committee or the Review Subcommittee, the decision shall be reviewed by the National Business Conduct Committee.

(3) No Stay of Action

Unless otherwise ordered by the National Business Conduct Committee, the initiation of a review under this paragraph shall not stay the decision of the Department.

(4) Ex Parte Communications

The prohibitions against ex parte communications in Rule 9143 shall become effective under the Rule 9420 Series when Association staff has knowledge that a member intends to file a written application for review or that the National Business Conduct Committee intends to review a decision on its own motion under this Rule.

(b) Subcommittee Consideration

(1) Appointment of Subcommittee

The National Business Conduct Committee shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more members. One member shall be a member of the National Business Conduct Committee, and the remaining member or members shall be current or former Directors of the NASD Regulation Board or former Governors of the NASD Board.

(2) Oral Argument

If oral argument is requested by the member, oral argument shall be held before the Subcommittee within 14 days after service of the decision under Rule 9422. If oral argument is ordered by the Subcommittee, oral argument shall be held before the Subcommittee within seven days after service of the order. The oral argument shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter. Any corrections to the transcript shall be submitted within three days after the oral argument or within three days after receipt of the transcript, whichever is later.

(3) Review on Record

If oral argument is not requested or ordered, the Subcommittee shall conduct its review on the basis of the record and any written submissions by the Parties.

(4) Additional Evidence

The Subcommittee may consider additional evidence if the member shows good cause for not previously submitting such evidence.

(5) Recommendation

The Subcommittee shall present a recommended decision in writing to the National Business Conduct Committee and all other Directors not later than seven days before the meeting of the National Business Conduct Committee at which the proceeding shall be considered.

(c) Decision

(1) Decision of National Business Conduct Committee, Including Remand

After considering all matters presented in the review and the written recommended decision of the Subcommittee, the National Business Conduct Committee may affirm, modify, or reverse the Department's decision or remand the proceeding with instructions. The National Business Conduct Committee shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include:

(A) a description of the Department's decision, including its rationale;

(B) a description of the principal issues regarding the change in the member's exemptive status raised in the review and a statement supporting the disposition of such issues;

(C) a summary of the evidence on each issue;

(D) a statement of whether the Department's decision is affirmed, modified, or reversed, and a rationale therefore; and

(E) if any limitations are imposed, a description of the limitations and a statement describing a fitting sanction that will be imposed under Rule 9426 if the member fails to comply with any of the limitations.

(3) Issuance of Decision After Expiration of Call for Review Period

The National Business Conduct Committee shall provide its proposed written decision to the NASD Regulation Board, and, if the proceeding is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation Board may call the proceeding for review pursuant to Rule 9424. The NASD Board may call the proceeding for review pursuant to Rule 9425. If neither the NASD Regulation Board nor the NASD Board calls the proceeding for review, the proposed written decision of the National Business Conduct Committee shall become final, and the National Business Conduct Committee shall serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Association, unless the National Business Conduct Committee remands the proceeding.

9424. Discretionary Review by the NASD Regulation Board

(a) Call for Review by Director

A Director may call a proceeding for review by the NASD Regulation Board if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 9423, a Director shall have not less than seven days to determine if the proceeding should be called for review. A Director shall call a proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(c) Review at Next Meeting

If a Director calls a proceeding for review within the period prescribed by paragraph (b), the NASD Regulation Board shall review the proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee or remand the proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 9423(c)(2).

(e) Issuance of Decision After Expiration of Call for Review Period

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9425. If the NASD Board does not call the proceeding for review, the proposed written decision of the NASD Regulation Board shall become final, and the NASD Regulation Board shall serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Association, unless the NASD Regulation Board remands the proceeding.

9425. Discretionary Review by NASD Board

(a) Call for Review by Governor

A Governor may call a proceeding for review by the NASD Board if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

(1) Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the proceeding under Rule 9424, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the NASD Regulation Board.

(2) Proceeding Not Called for Review by NASD Regulation Board

If no Director of the NASD Regulation Board called the proceeding for review under Rule 9424, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(3) Waiver

By a unanimous vote of the NASD Board, the NASD Board may shorten the period in subparagraph (1) or (2) to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period in subparagraph (1) or (2), vote to extend the period in subparagraph (1) or (2) to more than seven days.

(c) Review at Next Meeting

If a Governor calls a proceeding for review within the period prescribed in paragraph (b), the NASD Board shall review the proceeding not later than the next meeting of the NASD Board. The NASD Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse: (1) the proposed written decision of the NASD Regulation Board, or (2) if the NASD Regulation Board did not call a proceeding for review under Rule 9424, the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Board may remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 9423(c)(2).

(e) Issuance of Decision

The NASD Board shall issue and serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Association, unless the NASD Board remands the proceeding.

9426. Enforcement of Sanctions

(a) Order

If the Department determines that a member has failed to comply with limitations imposed by a decision under Rule 9422, 9423, 9424, or 9425, the Department shall issue an order to be served pursuant to Rules 9132 and 9134 imposing the sanctions set forth in the decision and specifying the effective date and time of such sanctions.

(b) Hearing

A member aggrieved by an order issued under paragraph (a) may file a written request for a hearing before the Department. The request shall be filed pursuant to Rule 9135, 9136, and 9137 within four days after service of the order. The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter. Any corrections to the transcript shall be submitted within two days after the hearing or within two days after receipt of the transcript, whichever is later.

(c) Decision

Within four days after the hearing, the Department shall affirm, modify, or reverse the order issued under paragraph (a). The Department shall serve the decision on the member pursuant to Rule 9132 and 9134. The decision shall become effective upon service and shall constitute final action of the Association.

9427. Application to Commission for Review

Any person aggrieved by final action pursuant to the Rule 9420 Series may apply for review by the Commission under Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.

9500. Suspension, Cancellation, Bar, and Eligibility Procedures

9510. Procedures for Summary Suspension by NASD

9511. Purpose

Section 15A(h)(3) of the Act authorizes a registered securities association to summarily (1) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (2) suspend a member who is in such financial or operating difficulty that the association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the association, or (3) limit or prohibit any person with respect to access to services offered by the association if (1) or (2) applies to such person or, in the case of a person who is not a member, if the association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the association.

Summary suspension procedures for the grounds listed in Section 15A(h)(3) of the Act are set forth in the Rule 9510 Series. Other procedures for suspending the membership of a member, suspending the registration of an associated person, or suspending a person from association with any member are found in Rules 8220, 8320, and 9520.

9512. Notice

(a) Authorization

The NASD Board may authorize the President of NASD Regulation or Nasdaq to issue a written notice that:

(1) summarily suspends a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;

(2) summarily suspends a member who is in such financial or operating difficulty that the Association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors,

creditors, other members, or the Association; or

(3) limits or prohibits any person with respect to access to services offered by the Association if subparagraph (1) or (2) applies to such person or, in the case of a person who is not a member, if the NASD Board determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.

(b) Contents and Service of Notice

A notice issued under this Rule shall state the specific grounds for the summary suspension and state that the member or associated person may file a written request for a hearing under Rule 9513. The notice shall be served by facsimile or pursuant to Rules 9131 and 9134. A copy of a notice served on a person who is associated with a member shall be served on such member pursuant to Rule 9134.

(c) Effective Date

A summary suspension shall be effective on the date and time specified in the notice.

9513. Hearing and Decision

(a) Request

(1) Request by Member or Associated Person

A member or associated person subject to a summary suspension may file a written request for a hearing with the NASD Board. The request shall state the specific grounds for reversing the summary suspension. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within ten days after service of the notice under Rule 9512. The member or associated person may withdraw its request for a hearing by filing a written notice with the NASD Board pursuant to Rules 9135, 9136, and 9137.

(2) Failure to File Request

If the member or associated person subject to a summary suspension does not file a written request for a hearing under subparagraph (1), the notice of summary suspension shall constitute final action by the Association.

(3) No Stay of Summary Suspension

A request for a hearing shall not stay the effectiveness of a summary suspension under Rule 9512.

(b) Hearing Panel Consideration

(1) Appointment of Hearing Panel

If a member or associated person subject to a summary suspension files a written request for a hearing, a hearing shall be held before a Hearing Panel within 15 days after service of the notice under Rule 9512. The Hearing Panel shall be composed of two or more members. One member shall be a Governor of the NASD Board, and the remaining member or members shall be current or former members of the NASD Regulation Board, the Nasdaq Board, or the NASD Board.

(2) Rights of Member or Associated Person

A member or associated person subject to a summary suspension shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

(3) Witnesses

A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter.

(4) Recordation of Hearing

The hearing shall be recorded and a transcript prepared by a court reporter. The member or associated person may purchase a copy of the transcript from the court reporter. Any corrections to the transcript shall be submitted within three days after the hearing or within three days after receipt of the transcript, whichever is later.

(c) Decision

(1) Decision of the Hearing Panel

The Hearing Panel shall affirm, modify, or reverse the summary suspension. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include a statement describing the investigative or other origin of the proceeding, the grounds for issuing the notice under Rule 9512, and a rationale for the disposition of the proceeding, and, if a suspension continues to be imposed, the specific grounds for imposing such sanction and the terms of the suspension.

(3) Issuance of Decision After Expiration of Call for Review Period

The Hearing Panel shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9514. If the NASD Board does not call the proceeding for review, the proposed written decision of the Hearing Panel shall become final, and the Hearing Panel shall serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute final action of the Association.

9514. Discretionary Review by the NASD Board

(a) Call for Review by Governor

A Governor may call a proceeding for review by the NASD Board if the call for review is made within the period prescribed by paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the Hearing Panel pursuant to Rule 9513, a Governor shall have not less than seven days to determine if the decision should be called for review. A Governor shall call the proceeding for review by notifying the General Counsel of the NASD. By a unanimous vote of the NASD Board, the NASD Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period, vote to extend the period in to more than seven days.

(c) Review at Next Meeting

If a Governor calls a proceeding for review within the period prescribed by paragraph (b), the NASD Board shall review the decision not later than the next meeting of the NASD Board. The NASD Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of the NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse the proposed written decision of the Hearing Panel. Alternatively, the NASD Board may remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements of Rule 9513(c)(2).

(e) Issuance of Decision

The NASD Board shall issue and serve its decision pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Association, unless the NASD Board remands the proceeding.

9515. Application to Commission for Review

Any person aggrieved by final action pursuant to the Rule 9510 Series may apply for review by the Commission under Section 19 of the Act. The filing of an application for review by the Commission shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.

9516. Other Action Not Foreclosed

Action by the Association under the Rule 9510 Series shall not foreclose action by the Association under any other Rule.

9520. Non-Summary Suspension, Cancellation, and Bar Procedures

9521. Purpose

(a) The Rule 9520 Series sets forth procedures for the Association to:

(1) cancel the membership of a member that becomes ineligible for continuance in membership, or that continues to be associated with an ineligible person, or suspend or bar a

person from continuing to be associated with a member because such person is or becomes ineligible for association under Article III, Section 3 of the NASD By-Laws;

(2) suspend or cancel the membership of a member or the registration of a person for failure to pay fees, dues, assessments, or other charges; failure to submit a required report or information related to such payment; or failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under Article VI, Section 3 of the NASD By-Laws; and

(3) cancel the membership of a member for failure to file or submit on request any report, document, or other information required to be filed with or requested by the Association under Article VII, Section 2 of the NASD By-Laws.

(b) Procedures for summarily suspending a member or associated person on grounds set forth in Section 15A(h)(2) of the Act are found in the Rule 9510 Series. Other procedures for suspending a member or associated person for failure to submit required information or failure to pay fines, monetary sanctions, or costs are found in Rules 8220 and 8320, respectively.

9522. Initiation of Proceeding

(a) Notice

Association staff shall initiate a proceeding authorized under Section 3 of Article III, Section 3 of Article VI, or Section 2 of Article VII of the NASD By-Laws by sending a written notice to the member or associated person. The notice shall specify the grounds for and effective date of the cancellation, suspension, or bar and shall state that the member or associated person may file a written request for a hearing. The notice shall be served by facsimile or pursuant to Rule 9131 and 9134.

(b) Copy of Notice to Member

A copy of a notice served on a person associated with a member shall be served on such member pursuant to Rule 9134.

(c) Effective Date

For any cancellation, suspension, or bar under Section 3 of Article III of the NASD By-Laws, the effective date shall be at least seven days after service of the notice on the member or associated person. For any cancellation or suspension under Section 3 of Article VI or Section 2 of Article VII of the NASD By-Laws, the effective date shall be at least 15 days after service of the notice on the member or associated person.

9523. Hearing Panel Consideration

(a) Request for Hearing

A member or associated person who receives a notice under Rule 9522(a) may file a written request for a hearing with the NASD Regulation Board. The request shall be filed pursuant to Rules 9135, 9136, and 9137 before the effective date set forth in the notice. The request shall state the grounds for opposing the cancellation, suspension, or bar. The member or associated person may withdraw its request at any time by filing a written notice with the NASD Regulation Board pursuant to Rules 9135, 9136, and 9137.

(b) Stay of Action

Unless otherwise ordered by the NASD Regulation Board, a request for a hearing under paragraph (a) shall stay the notice issued under Rule 9522.

(c) Appointment of Hearing Panel

If a member or associated person files a request for a hearing, the NASD Regulation Board shall appoint a Hearing Panel to conduct a hearing. The Hearing Panel shall be composed of two or more current or former Directors of the NASD Regulation Board.

(d) Rights of Member

The member or associated person shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

(e) Witnesses

A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter.

(f) Recordation of Hearing

The hearing shall be recorded and a transcript prepared by a court reporter. The member or associated person may purchase a copy of the transcript from the court reporter. Any corrections to the transcript shall be submitted within three days after the hearing or within three days after receipt of the transcript, whichever is later.

(g) Decision

(1) Decision of Hearing Panel

The Hearing Panel shall decide whether a cancellation, suspension, or bar shall be imposed. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include:

(A) an identification of the article of the NASD By-Laws that authorizes the proceeding;

(B) a statement describing the origin of the proceeding;

(C) a statement of the nature of the ineligibility or the failure to take action that is at issue;

(D) a statement of findings of fact and conclusions as to any violations of the By-Laws;

(E) a rationale for the disposition of the proceeding; and, F) if a suspension, cancellation, or bar is imposed, the effective date and time and the terms of the sanction.

(3) Issuance of Decision After Expiration of Call for Review Period

The Hearing Panel shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9524. If the NASD Board does not call the proceeding for review, the proposed written decision of the Hearing Panel shall become final, and the Hearing Panel shall serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute final action of the Association.

9524. Discretionary Review by NASD Board

(a) Call for Review by Governor

A Governor may call a proceeding for review by the NASD Board if the call for review is made within the period prescribed by paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the Hearing Panel pursuant to Rule 9523, a Governor shall have not less than seven days to determine if the decision should be called for review. A Governor shall call a proceeding for review by notifying the General Counsel of the NASD. By a unanimous vote of the NASD Board, the NASD Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period, vote to extend the period to more than seven days.

(c) Review at Next Meeting

If a Governor calls a proceeding for review within the period prescribed by paragraph (b), the NASD Board shall review the proceeding not later than the next meeting of the NASD Board. The NASD Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision and Final Action of the Association

After review, the NASD Board may affirm, modify, or reverse the decision of the Hearing Panel or remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements of Rule 9523(g)(2).

(e) Issuance of Decision After Expiration of Call for Review Period

The NASD Board shall issue and serve its decision pursuant to Rules 9132 and 9134. The decision shall constitute final action of the Association, unless the NASD Board remands the proceeding.

9525. Application to Commission for Review

Any person aggrieved by final action pursuant to the Rule 9520 Series may

apply for review by the Commission under Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.

9526. Other Action Not Foreclosed

Action by the Association under the Rule 9520 Series shall not foreclose action by the Association under any other Rule.

9530. Eligibility Proceedings

9531. Purpose

The Rule 9530 Series sets forth procedures for a person to become associated with a member, notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act and for a current member or person associated with any member to obtain relief from the eligibility or qualification requirements of the NASD By-Laws and the Rules of the Association. Such actions hereinafter are referred to as ''eligibility proceedings.''

9532. Initiation of Eligibility Proceedings

(a) Notice of Disqualification or Ineligibility

(1) Issuance

If the Department of Member Regulation (hereinafter ''Department'' in the Rule 9530 Series) has reason to believe that a statutory disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of the Association, the Department shall issue a written notice to the member or associated person. The notice shall specify the grounds for such disqualification or ineligibility.

(2) Notice to Member

A notice issued to a member that is subject to a statutory disqualification or is otherwise ineligible for membership shall state that the member may apply for relief by filing a written application for relief with the Department within seven days after service of the notice.

(3) Notice to Associated Person

A notice issued to an associated person who is subject to a statutory disqualification or is otherwise ineligible for association shall state that the member with which the person is or may become associated may apply for relief on behalf of itself and such person by filing a written application for relief with the Department within seven days after service of the notice.

(4) Service

A notice issued under this section shall be served by facsimile or pursuant to Rules 9131 and 9134.

(b) Application by Member

A member shall file a written application for relief from the eligibility requirements of the Association with the Department if the member:

(1) determines that it is subject to a statutory disqualification or otherwise is no longer eligible for membership;

(2) determines that a person associated with it is subject to a statutory disqualification or otherwise is no longer eligible for association with the member; or

(3) wishes to sponsor the association of a person who is subject to a statutory disqualification or otherwise is ineligible for association with a member.

(c) Form of Application for Relief

A written application for relief shall be submitted on Form MC400 and shall include a detailed statement demonstrating why the requested relief should be granted.

(d) Withdrawal of Application

A member may withdraw its application for relief at any time by filing a written notice with the Department pursuant to Rules 9135, 9136, and 9137.

(e) Ex Parte Communications

The prohibitions against ex parte communications set forth in Rule 9143 shall become effective under the Rule 9530 Series when the Department of Member Regulation has initiated the eligibility proceeding and Association staff has knowledge that a member intends to file written application for relief with the Department.

9533. National Business Conduct Committee Consideration

(a) Hearing Panel Consideration

(1) Appointment of Hearing Panel

If a member files an application for relief, the National Business Conduct Committee shall appoint a Hearing Panel composed of two or more members, who shall be current or former Directors of the NASD Regulation Board or former Governors of the NASD Board. The Hearing Panel shall conduct a hearing and recommend a decision on the request for relief.

(2) Rights of Member

The member and its current or prospective associated person, as applicable, shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

(3) Recordation of Hearing

The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter. Any corrections to the transcript shall be submitted within three days after the hearing or within three days after receipt of the transcript, whichever is later.

(4) Recommendation

The Hearing Panel shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the recommendation of the Hearing Panel, the Statutory Disqualification Committee shall present its recommended decision in writing to the National Business Conduct Committee and all other Directors not later than seven days before the meeting of the National Business Conduct Committee at which the eligibility proceeding shall be considered.

(b) Decision

(1) Decision of the National Business Conduct Committee.

After considering all matters presented in the request for relief, the Statutory Disqualification Committee's recommended decision, the public interest, and the protection of investors, the National Business Conduct Committee may grant or deny the request for relief, and, if relief is granted, impose conditions on the matter and its current or prospective associated person. Alternatively, the National Business Conduct Committee may remand the eligibility proceeding. The National Business Conduct Committee shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include:

(A) a decription of the origin of the eligibility proceeding and the nature of disqualification;

(B) a description of the prospective business or employment requested to be engaged in; and

(C) a statement in support of the disposition of the request for relief, which, if granted, includes any of the applicable elements under SEC Rule 19h-1(e) and a description of any conditions that are imposed on the member and current or prospective associated person.

(3) Issuance of Decision After Expiration of Call for Review Period

The National Business Conduct Committee shall provide its proposed written decision to the NASD Regulation Board, and, if the eligibility proceeding is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation Board may call the eligibility proceeding for review pursuant to Rule 9534. The NASD Board may call the eligibility proceeding for review pursuant to Rule 9535. If neither the NASD Regulation Board nor the NASD Board calls the eligibility proceeding for review, the proposed written decision of the National

Business Conduct Committee shall become final, and the National Business Conduct Committee shall serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute final action of the Association, unless the National Business Conduct Committee remands the eligibility proceeding.

9534. Discretionary Review by the NASD Regulation Board

(a) Call for Review by Director

A Director may call an eligibility proceeding for review by the NASD Regulation Board, if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 9533, a Director shall have not less than seven days to determine if the eligibility proceeding should be called for review. A Director shall call an eligibility proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(c) Review at Next Meeting

If a Director calls the eligibility proceeding for review within the period prescribed by paragraph (b), the NASD Regulation Board shall review the eligibility proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Regulation Board may remand the eligibility proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 9533(b)(2).

(e) Issuance of Decision After Expiration of Call for Review Period

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the eligibility proceeding for review pursuant to Rule 9535. If the NASD Board does not call the eligibility proceeding for review, the proposed written decision of the NASD Regulation Board shall become final, and the NASD Regulation Board shall serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Association, unless the NASD Regulation Board remands the eligibility proceeding.

9535. Discretionary Review by the NASD Board

(a) Call for Review by Governor

A Governor may call an eligibility proceeding for review by the NASD Board if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

(1) Eligibility Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the eligibility proceeding under Rule 9534, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the NASD Regulation Board.

(2) Eligibility Proceeding Not Called for Review by NASD Regulation Board

If no Director of the NASD Regulation Board called the eligibility proceeding for review under Rule 9534, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(3) Waiver

By a unanimous vote of the NASD Board, the NASD Board may shorten the period in subparagraph (1) or (2) to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period in subparagraph (1) or (2), vote to extend the period in subparagraph (1) or (2) to more than seven days.

(c) Review at Next Meeting

If a Governor calls a eligibility proceeding for review within the period prescribed in paragraph (b), the NASD Board shall review the eligibility proceeding not later than the next meeting of the NASD Board. The NASD Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse: (1) the proposed written decision of the NASD Regulation Board, or (2) if the NASD Regulation Board did not call an eligibility proceeding for review under Rule 9534, the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Board may remand the eligibility proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 9533(b)(2).

(e) Issuance of Decision

The NASD Board shall issue and serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Association, unless the NASD Board remands the proceeding.

9536. Application to Commission for Review

Any person aggrieved by final action pursuant to the Rule 9530 Series may apply for review by the Commission under Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.

9600. [Reserved]

9700. PROCEDURES ON GRIEVANCES CONCERNING THE AUTOMATED SYSTEMS

[No change.]

9800. CORPORATE FINANCING AND DIRECT PARTICIPATION PROGRAM MATTERS

[No change.]

[FR Doc. 97–11600 Filed 5–7–97; 8:45 am]

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Thursday
May 8, 1997

Part III

Environmental Protection Agency

40 CFR Part 87

Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[AMS–FRL–5821–3]

Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standards and Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule (DFRM).

SUMMARY: This rulemaking amends the existing United States regulations governing the exhaust emissions from new commercial aircraft gas turbine engines. Under the authority of section 231 of the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is promulgating new emission standards for oxides of nitrogen (NO_X) and carbon monoxide (CO) for newly manufactured and newly certified commercial aircraft gas turbine engines with rated thrust greater than 26.7 kilonewtons (kN). This action will codify into United States law the current voluntary NO_X (a two-staged NO_X standard) and CO emission standards of the United Nations International Civil Aviation Organization (ICAO), and thereby bring the United States emission standards into alignment with the internationally adopted standards. These ICAO CO and NO_X standards are being added to the current EPA regulations for smoke and hydrocarbon emissions that have been in effect since 1984. EPA is also adopting ICAO's requirement that these standards also apply to applications that otherwise would have been fulfilled by turbojet and turbofan engines (e.g. propfan, unducted fan, and advanced ducted fan). In addition, today's action also amends the test procedures for gaseous exhaust emissions and smoke exhaust emissions to correspond to recent amendments to the ICAO test procedures for these emissions. EPA is also amending its certification test fuel specifications to make them consistent with ICAO's test fuel specifications.

All of the affected engines are already meeting the ICAO CO and first-stage NO_X emission standards that EPA is adopting today. Most engines also meet the ICAO second-stage NO_X standard; only a few models need minor reductions in emissions to meet this standard. In addition, most manufacturers routinely measure these emissions today even though it is not required by federal regulation. Today's amendments to the emission test procedures are those recommended by ICAO and are widely used by the aircraft engine industry. Thus, today's rulemaking promulgates action that will establish consistency between U.S. and international standards, requirements, and test procedures. Since aircraft and aircraft engines are international commodities, there is some commercial benefit to consistency between U.S. and international emission standards and control program requirements (i.e., easier to qualify products for international markets since the Federal Aviation Administration (FAA) can certify engines for ICAO compliance). In addition, today's action ensures that domestic commercial aircraft will meet the current international standards, and thus, the public can be assured they are receiving the air quality benefits of the international standards.

DATES: This rule is effective July 7, 1997 unless notice is received by June 9, 1997 that adverse or critical comments will be submitted on a specific element of this rule. EPA will publish a timely document in the **Federal Register** withdrawing this rulemaking if adverse comments are received. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1997.

ADDRESSES: Interested parties may submit written comments in response to this notice (in duplicate if possible) to Public Docket No. A–94–66, at: Air Docket Section, U.S. Environmental Protection Agency, Attention: Docket No. A–94–66, First Floor, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460. A copy of the comments should also be sent to Bryan Manning, U.S. EPA (EPCD–12), Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

Materials relevant to this notice have been placed in Docket No. A–94–66 by EPA. The docket is located at the above address and may be inspected from 8:00 a.m. to 5:30 p.m. on weekdays. EPA may charge a reasonable fee for copying docket materials.

A copy of this action and the Regulatory Support Document is available through the Technology Transfer Network Bulletin Board System (TTNBBS) under OMS, Rulemaking and Reporting, Non-Road, and Aviation Emissions. TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 eastern standard time (EST), when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at 919–541–5384 in Research Triangle Park, North Carolina, during normal business hours EST. In addition, the TTNBBS can be accessed through the following internet addresses: World Wide Web: http://ttnwww.rtpnc.epa.gov or TELNET: ttnbbs.rtpnc.epa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Manning, U.S. EPA (EPCD–12), Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 741–7832.

SUPPLEMENTARY INFORMATION:

Regulated entities. Entities potentially regulated by this action are those that manufacture and sell aircraft engines and aircraft in the United States. Regulated categories include:

Category	Examples of regulated entities
Industry	New aircraft engine manufacturers.
Industry	New aircraft manufacturers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in 40 CFR 87.20. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Introduction

A. History of EPA's Regulation of Aircraft Engine Emissions

Section 231 of the Clean Air Act (CAA) directs the EPA Administrator to ''issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare'' (42 U.S.C. 7571(a)(2)). Under this authority EPA has conducted several rulemakings establishing emission standards and related requirements for several classes (commercial and general aviation engines) of aircraft and aircraft engines. In 1973, EPA promulgated emission regulations for vented fuel, smoke, and exhaust (HC, NO_X, and CO) emissions (38 FR 19088, July 17, 1973). Three tiers of standards were promulgated: retrofit standards for in-use engines, standards

for newly manufactured engines (those engines built after the effective date of the regulations) and for newly certified engines (those engines designed and certified after the effective date of the regulations). On August 16, 1976 (41 FR 34722) EPA promulgated emission standards for supersonic aircraft engines. On January 7, 1980 (45 FR 1419), EPA rescinded all gaseous emission requirements for piston engines (P1) and auxiliary power units (APU). On December 30, 1982 (47 FR 58462) EPA revisited aircraft engine emissions and amended regulations as follows:

(1) Withdrew HC, CO, and NO_X emission standards for gas turbine engines used only for general aviation applications, for aircraft gas turbine engines of rated thrust less than 26.7 kN, and for newly certified aircraft gas turbine engines (i.e., engine models produced for the first time) in all rated thrust categories;

(2) Withdrew CO and NO_X, emission standards for newly manufactured aircraft gas turbine engines (i.e., engines already being produced) of rated thrust equal to or greater than 26.7 kN;

(3) Decreased the stringency of the HC emission standards for newly manufactured aircraft gas turbine engines of rated thrust equal to or greater than 26.7 kN;

(4) Revised smoke emission standards for turboprop engines to agree with existing U.S. Air Force smoke standards;

(5) Revised compliance date for all gaseous emission standards from January 1, 1983 to January 1, 1984;

(6) Exempted engine models produced in quantities of 20 units per year or less or not more than 200 units total future production;

(7) Redefined the idle power set point for engine compliance testing;

(8) Revised the test fuel specification for engine compliance testing; and

(9) Transferred responsibility and authority for evaluation of requests for exemption from emission standards to the Secretary of Transportation (DOT). On October 18, 1984 (49 FR 41002) EPA amended the test fuel specifications by broadening the ranges of allowable test fuel naphthalenes content, hydrogen content, viscosity, and final boiling point values.

Prior to today's action, EPA regulations were limited to smoke and fuel venting emissions standards for all commercial jet aircraft classes (turboprop engines (TP), turbofan and turbojet engines (TF), turbine engines of the JT3D model family (T3), turbine engines of the JT8D model family (T8), and turbine engines for aircraft designed to operate at supersonic flight speeds (TSS)) and HC emission standards for newly manufactured aircraft gas turbine engines (TF, T3, and T8) with a thrust greater than 26.7 kN. Separate HC emission standards exist for gas turbine engines employed in supersonic aircraft, and the smoke standards vary for the several different classes of engines (see 40 CFR part 87 for a summary of EPA's aircraft engine emission control requirements and 14 CFR part 34 for the Secretary of Transportation's regulations for ensuring compliance with these standards in accordance with section 232 of the Clean Air Act) .

B. Interaction With the International Community

Since publication of the initial standards in 1973, EPA, together with the Federal Aviation Administration (FAA), has worked with the International Civil Aviation Organization (ICAO) on the development of international aircraft engine emission standards. ICAO was established in 1944 by the United Nations ''in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.'' [1] In 1972 at the United Nations Conference on the Human Environment, ICAO's position on the human environment was developed to be the following: ''[i]n fulfilling this role ICAO is conscious of the adverse environmental impact that may be related to aircraft activity and its responsibility and that of its member States to achieve maximum compatibility between the safe and orderly development of civil aviation and the quality of the human environment.'' Also, in 1972 ICAO established the position to continue ''* * * with the assistance and cooperation of other bodies of the Organization and other international organizations * * * the work related to the development of Standards, Recommended Practices and Procedures and/or guidance material dealing with the quality of the human environment * * *.'' [2] The United States is one of more than 150 participating member States of ICAO. Under the basic ICAO treaty established in 1944, the participating nations have an obligation to adopt to the extent possible the ICAO standards. A nation which elects not to do so must provide a written explanation to ICAO describing why a given standard is impractical to comply with or not in their national interest. However, ICAO standards are voluntary and therefore have no punitive powers for states that elect not to adopt ICAO standards.

On June 30, 1981, ICAO issued its first international standards and recommended practices covering aircraft engine emissions. These provisions applied to many of the same classes of engines to which the U.S. standards in force at that time applied. As mentioned above, with the establishment of the international standards, the U.S. was obligated under the Convention on International Civil Aviation to notify ICAO regarding differences between U.S. standards and ICAO standards and to provide notification on the date by which the program requirements would be consistent. At the time that the 1981 ICAO standards were issued, EPA was in the midst of a rulemaking reconsidering various provisions of the aircraft emission regulations in effect at that time. Among other actions, this rulemaking ultimately resulted in the scaling back of the U.S. program originally promulgated in July 1973 including withdrawal of the CO and NO_X emission standards for newly manufactured gas turbine engines and exemptions for general aviation engines and commercial gas turbine engines with less than 26.7 kN thrust. (See the December 30, 1982 **Federal Register** and public docket OMSAPC–78–1 for more information on the rationale for this action.) With the exception of the changes made above (most notably an EPA decision not to adopt the ICAO CO and NO_X standards at that time), these 1982 U.S. regulations were compatible with the ICAO requirements released in 1981 (Annex II, First Edition).[3]

On July 26, 1993 ICAO issued an amendment to existing NO_X emission standards and test procedures for aircraft engine emissions.[4] The new ICAO NO_X emission standard (revised NO_X emission standard will take effect in year 1996 for newly certified engines and year 2000 for newly manufactured engines) represents a 20 percent reduction over the ICAO NO_X emission standard issued in 1981. As discussed above, the U.S. has an obligation under the Convention on International Civil Aviation to notify ICAO regarding differences between U.S. standards and

[1] ICAO, Booklet on ''The Convention on International Civil Aviation—The First 35 Years'', 1979.

[2] International Civil Aviation Organization (ICAO), Foreword of ''Aircraft Engine Emissions,'' Annex 16, Volume II, Second Edition, July 1993.

[3] The U.S. notified ICAO of these differences.

[4] International Civil Aviation Organization (ICAO), ''Aircraft Engine Emissions,'' Annex 16, Volume II, Second Edition, July 1993.

ICAO standards, and to provide notification on the date by which the program requirements will be consistent. In response to this action by ICAO and for the reasons discussed below, EPA is adopting ICAO's 1993 amendments, ICAO's existing NO_X and CO emission standards issued in 1981, and other technical amendments to further align EPA and ICAO requirements.

II. Environmental Need for Control

It has been more than ten years since EPA issued a rulemaking action with regard to aircraft and aircraft engines, and thus, U.S. standards and ICAO standards have been inconsistent throughout this same time period. As mentioned above, Section 231(a)(2) of the CAA authorizes EPA to, from time to time, revisit emission standards for aircraft engine emissions ''* * * which in his judgment causes, or contributes to air pollution which may * * * endanger the public health or welfare.'' In judging the need for the NO_X and CO standards promulgated in today's action, the Administrator has determined (1) that the public health and welfare is endangered in several air quality regions by violation of the National Ambient Air Quality Standards (NAAQS) for NO_X (which contributes to ozone) and CO; and (2) that airports and aircraft are now or are projected to be, significant sources of emissions of NO_X and CO in some of the air quality control regions in which the NAAQS are being violated. (EPA has found that at 16 different airports commercial aircraft emit over 1,000 tons per year of NO_X and 2,000 tons per year of CO at the ground level.)[5]

Currently, aircraft are about 2 percent of the total U.S. mobile source NO_X and CO ground level emissions inventory. Commercial aircraft emissions are about 70 and 30 percent respectively of these NO_X and CO aircraft emissions inventories.[6] Commercial aircraft emissions are a fast growing segment of the transportation sector's emission inventory. This growth in commercial aircraft emissions is occurring at a time when other significant mobile and stationary sources are drastically reducing emissions, thereby accentuating the growth in aircraft emissions. For instance, commercial aircraft in the Los Angeles area will consume about 4 percent of the basin's allowable emissions inventory by 2010, which would be double its current contribution.[7]

Air pollutants resulting from airport operations are emitted from several types of sources: aircraft main engines and auxiliary power units (APUs); ground support equipment (GSE) , which include vehicles such as aircraft tugs, baggage tugs, fuel trucks, maintenance vehicles, and other miscellaneous vehicles used to support aircraft operations; ground access vehicles (GAV), which include vehicles from off-site used by passengers, employees, freight operators, and other persons utilizing an airport. EPA's previous estimates show aircraft engines comprise approximately 45 percent of total air pollutant emissions from airport operations; GAV account for another 45 percent, and APUs and GSEs combined make up the remaining 10 percent.[8] Since EPA continues to study the total effect of airport ground-level emission sources and will deal with GAVs in another venue, these sources could be part of future notices in which EPA will request comment on possible regulation.

Adopting the ICAO NO_X and CO emission standards and related test procedures will help in achieving and/or maintaining compliance with the NAAQS for ozone (O_3), NO_X, CO, and particulate matter (PM). Some of the adverse effects on public health and welfare associated with these pollutants are discussed briefly below.

A. NO_X, PM, and Ground-Level Ozone

NO_X is directly harmful to human health and the environment. Exposure to NO_2 (nitrogen dioxide) can reduce pulmonary function and increase airway irritation in healthy subjects as well as people with pre-existing pulmonary conditions. In children, exposure to NO_2 at or near the level of the ambient standard appears to increase the risk of respiratory illness. NO_X and one of its key transformation products (nitric acid) also contribute to a number of adverse environmental impacts such as overgrowth of algae and oxygen depletion (eutrophication). (NO_X and its products have a role in excess nitrogen loads to sensitive water bodies. For instance, 25 percent of excess nitrogen to the Chesapeake Bay comes from the air.) NO_X and its products contribute to acid rain, which affects both terrestrial and aquatic ecosystems (already under stress from sulfur related acidification), including acidification of surface waters, reduction in fish populations, damage to forests and associated wildlife, soil degradation, damage to materials, monuments, buildings, etc., and reduced visibility. In addition, NO_X at cruise altitudes from subsonic aircraft is considered to be a precursor of tropospheric ozone and a contributor to greenhouse gas.[9]

NO_X emitted at low altitude is also a precursor in the formation of some nitrate particulate matter (PM) in the atmosphere (mostly ammonium nitrate). In general, nitrate PM is a significant contributor to overall ambient PM concentrations in many parts of the western U.S., and thus, contributes to the overall health and welfare concerns related to PM. Essentially all nitrate PM is of such a diameter that it is respirable in humans.

NO_X is also a primary precursor to atmospheric ozone (O_3) on a broad regional scale. Ozone is a highly reactive chemical compound which can affect both biological tissues and man-made materials. Ozone can affect human pulmonary and respiratory health—symptoms include chest pain, coughing, and shortness of breath.

The presence of elevated levels of ozone is of concern in rural areas as well. Because of its high chemical reactivity, ozone causes damage to vegetation. Estimates based on experimental studies of the major commercial crops in the U.S. suggest that ozone may be responsible for significant agricultural crop yield losses. In addition, ozone causes noticeable leaf damage in many crops, which reduces marketability and value. Finally, there is evidence that exposures to ambient levels of ozone which exist in many parts of the country are also responsible for forest and ecosystem damage. Such damage may be exhibited as leaf damage, reduced growth rate, and increased susceptibility to insects, disease, and other environmental stresses and has been reported to occur in areas that attain the current NAAQS. There are complexities associated with evaluating such effects due to the wide range of species and biological systems that introduce significant uncertainties.[10]

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[5] Energy and Environmental Analysis, ''Work Assignment 04, Task 1: Final Report, Inventory of Civil Aircraft Emissions for Twenty-Five Nonattainment Areas,'' September 11, 1991.

[6] E.H. Pechan and Associates, Inc., ''National Annual Aircraft Emissions by Subcategory from Trends 1995 Report'' (National Air Pollutant Emission Trends 1995—EPA), Facsimile from Maureen Mullen to Bryan Manning of the U.S. EPA, August 16, 1996.

[7] U.S. EPA, California Federal Implementation Plan proposal, 59 FR 23355, May 5, 1994.

[8] The California FIP, signed by the Administrator 2/14/95, is located in EPA Air Docket A–94–09, item number V-A–1. The FIP was vacated by an act of Congress before it became effective.

[9] Intergovernmental Panel on Climate Change, ''Radiative Forcing of Climate Change,'' 1994; United Nation Environment Programme/World Meteorological Organization, ''Scientific Assessment of Ozone Depletion,'' 1994.

[10] U.S. Environmental Protection Agency, Advance Notice of Proposed Rule—''Control of Air Pollution from Heavy-Duty Engines,'' Section II,

B. Carbon Monoxide

For CO emissions, the growth in aircraft emissions is a concern because of the role of CO plays in harming human health. It is important in both the airport occupational and community environments. CO enters the blood stream and reduces the delivery of oxygen to the body's organs and tissues. CO is most serious for those who suffer from cardiovascular disease, particularly those with angina or peripheral vascular disease. Exposure to high levels of CO is associated with the impairment of visual perception, work capacity, manual dexterity, learning ability and performance of complex tasks. [11]

III. Description of Action

Under the authority of section 231 of the CAA, EPA today is adopting ICAO's June 1981 NO_X and CO emission standards and ICAO's amendments of July 1993, which include a more stringent NO_X standard for the future and other test procedure changes. EPA is adopting regulations for aircraft engine NO_X and CO control for several reasons. Maintenance of the NAAQS requires that aircraft engines be subject to a program of control compatible with their significance as pollution sources. The development of cleaner gas turbine engine technology has demonstrated the technical feasibility at a reasonable cost of the ICAO standards adopted in 1981 and amended 1993. Aircraft and aircraft engines are international commodities and, as such, are designed and manufactured to meet international standards. Thus, even though the U.S. did not adopt the ICAO CO and NO_X standards in 1982, engine manufacturers have continued to make progress in reducing these emissions. Today's action is aimed at assuring that this progress is not reversed in the future. It is important to note that section 233 of the CAA vests authority to implement emission standards for aircraft engines only in EPA.[12] States are preempted from taking independent action. Thus, while many states are implementing control programs to reduce mobile source emissions, it is EPA's responsibility to assure that a comprehensive emission control program is established for aircraft engines. In addition, the U.S. has an obligation to be compatible with the ICAO program if deemed appropriate, as discussed above.

Today's promulgated emission standards and test procedures apply to commercial aircraft engines; no general aviation or military engines are covered by today's rule. The commercial aircraft engines subject to today's rule are those engines that are either newly certified or newly manufactured after the effective date of these regulations. The adopted emission standards, test procedures, and their effective dates are described below. For the sake of consistency and harmonization, the effective dates below for NO_X standards are identical with those of the ICAO NO_X standards. EPA recognizes that these requirements are not effective or federally enforceable for engines produced prior to July 7, 1997.

A. CO Standard

EPA adopts ICAO's CO emission standard for newly manufactured aircraft gas turbine engines (turbofan and turbojet engines) of rated thrust greater than 26.7 kilonewtons (kN) as follows:

For all engines, manufactured on or after July 7, 1997;

CO = 118 grams/kilonewton (g/kN)(rated output).

This standard is identical to the ICAO standard that became effective in 1986. The CO emission standard does not provide compliance lead time since it was adopted in 1981 and all newly manufactured engines have met the ICAO standard for many years. According to data available to EPA at this time, all applicable engines covered by this promulgated emission standard currently meet this emission standard.[13]

B. NO_X Standards

EPA adopts ICAO's NO_X emission standard for newly certified and newly manufactured aircraft gas turbine engines (turbofan and turbojet engines) of rated thrust greater than 26.7 kN with compliance dates as follows:

For engines of a type or model of which that date of manufacture of the first individual production model was on or before December 31, 1995 and for which the date of manufacture of the individual engine was on or before December 31, 1999;

NO_X = (40 + 2(rated pressure ratio))g/kN(rated output);

For engines of a type or model of which the date of manufacture of the first individual production model was after December 31, 1995 or for which the date of manufacture of the individual engine was after December 31, 1999;

NO_X = (32 + 1.6(rated pressure ratio))g/kN(rated output).

The first NO_X emission standard presented above matches the ICAO standard that became effective in 1986. According to available data, the NO_X emission standard for those engines certified on or before December 31, 1995 and manufactured on or before December 31, 1999 is now being met by all engines covered by this rulemaking. The later NO_X emission standard above (for engines newly certified after 1995 and newly manufactured after the year 1999) matches the ICAO 1993 amendments' 20 percent reduction which becomes effective in the year 1996 for newly certified engines and in the year 2000 for newly manufactured engines. There is a four year period between when newly certified engines must meet the standards and when all newly manufactured engines must meet the standards to provide lead time for the production of 100 percent compliant products. According to available data, the NO_X standard for those engines certified after December 31, 1995 or manufactured after December 31, 1999 is met by all but two of the affected aircraft gas turbine engine models (approximately 15 percent of the market).[14]

C. Feasibility of NO_X and CO Standards

Section 231(b) of the CAA states that ''Any regulation prescribed under this section * * * shall take effect after such period as the Administrator finds necessary * * * to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' Accordingly, the Administrator has determined that emissions from aircraft and aircraft engines should be reduced to the extent practicable with present and developing technology. The standards adopted herein are not quantitatively derived from the air quality impact discussed above in section II of today's rule, but instead reflect EPA's judgment as to what reduced emission levels are currently practicable to achieve for gas

''Health Concerns and Air Quality Issues: NO_X, VOC, Ozone, and Particulate Matter; 60 FR 45580, August 31, 1995.

[11] U.S. Environmental Protection Agency, ''National Air Pollutant Emission Trends,'' EPA/454/R–94/027, October 1994; ''Air Quality Criteria for Carbon Monoxide,'' EPA/600/8–90/045F, October 1991.

[12] CAA section 233 entitled ''State Standards and Controls'' states that ''No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.''

[13] U.S. Environmental Protection Agency, Office of Mobile Sources, ''Regulatory Support Document for Aircraft Engine Emissions Regulations'', February 1997.

[14] U.S. Environmental Protection Agency, Office of Mobile Sources, ''Regulatory Support Document for Aircraft Engine Emissions Regulations'', February 1997.

turbine engines when considering the cost of compliance within the implementation dates presented above. (See Regulatory Support Document of today's rule for further discussion of engine emission levels.)

In the mid-1980's, EPA was concerned that the 1986 ICAO NO_X and CO standards were not justifiable because the technological control methods were still in their infancy and the air quality impact of aircraft operations was not substantial enough compared to other sources. Over the years the aircraft engine industry has made substantial progress in controlling gas turbine engine emissions. EPA now believes that the 1986 ICAO NO_X and CO emission standards and the 1993 ICAO amended standards will be easily met by the aircraft engine industry, as discussed below. Furthermore, the importance of controlling aircraft emissions has grown in many areas as controls on other sources become more stringent and attainment of the NAAQS's has still not been achieved. Therefore, it is appropriate to revisit the U.S. standards in today's rule as described below.

1. Feasibility of NO_X Standard

The two engine models that are not achieving the emission levels required by the later NO_X standard (NO_X standard which took effect in 1996 for newly certified engines and in 2000 for newly manufactured engines) currently are Pratt and Whitney's JT8D–200 series and Rolls-Royce's RB211 series (specifically RB211–524 and RB211–535), and both engine models are expected to still be in production in the year 2000. These engines have already been targeted for modification by Pratt & Whitney and Rolls-Royce based upon the ICAO 1993 amendments. Pratt and Whitney projects that the JT8D–200s (currently about 9 percent of Pratt & Whitney's turbofan engine market) will meet the new NO_X standard as early as 1998 by using a new low-NO_X can-annular combustor equipped with improved fuel nozzles to optimize mixing, flame temperature and residence time in the combustion chamber. In this improved combustor, the airflow would be reduced in the primary combustion zone and axially shifted from the dilution zone to the secondary combustion zone. This action would result in an enriched primary combustor zone and a rapid secondary combustion zone transition that would reduce the formation of NO_X by about 20 percent, the amount of emission control needed to achieve the standard.[15] (See Regulatory Support Document of this rule for further technological discussion.)

For the RB211 (currently about 70 percent of Rolls-Royce's turbofan engine market), Rolls-Royce stated in a January 3, 1997 letter to EPA that the RB211–524 (designated RB211–524G/H–T) will comply with the new NO_X standard as early as mid 1997 and that the RB211–535 will meet this NO_X standard by late 1999.[16] RB211 series engines comply with ICAO's 1986 NO_X standard, but these engines currently have NO_X levels that are about 20 percent above the new NO_X standard.[17] Based on the information provided by Pratt and Whitney and Rolls-Royce, EPA believes the compliance date of January 1, 2000 for newly manufactured engines affected by this new NO_X standard provides adequate lead time for the manufacturers of the two higher-emitting engines models (and manufacturers of other new model engines) to cost-effectively develop technology to comply with this new NO_X standard. Moreover, since this new NO_X standard is an international requirement which Pratt & Whitney and Rolls-Royce would meet to market their products, the costs incurred for technological improvements made by these two manufacturers to meet this standard should not necessarily be attributed to today's regulations. The ICAO standards ensure that (1) The technology is or will be available and (2) the costs of compliance will be minimal. EPA recognizes that the percentage reductions achieved are not trivial, nor are the costs already incurred or possible additional future costs necessary to achieve these reductions inconsequential, including certification costs. Nonetheless, EPA believes that the promulgated regulations will not impose any additional burden on manufacturers beyond that of the current ICAO requirements. (See section V. of today's rule for further discussion of regulatory impact).

[15] U.S. Environmental Protection Agency, ''Record of EPA Communication with Pratt and Whitney Regarding EPA's Technological Feasibility Assessment of the 1993 ICAO Amended NO_X Standards in Regards to the JT8D–200 series of Aircraft Engines,'' Memorandum from Bryan Manning to the docket, January 19, 1996.

[16] Rolls-Royce Aerospace Group, Rolls-Royce's technological feasibility assessment of the 1993 ICAO NO_X standard in regards to the RB211, Letter from Ashley J. Owen of Combustion Engineering Department to Bryan Manning of the U.S. Environmental Protection Agency, January 3, 1997.

[17] Defense Research Agency, ICAO/CAEP Working Group 3 (Emissions)—Third Meeting—Bonn, Germany, ''Combined Report of the Certification and Technology Subgroups,'' June 1995.

2. Feasibility of CO Standard

To meet the 1986 ICAO emissions standards, manufacturers have combustors that utilize a short (straight through) annular design, fuel atomizers using air in some manner to assist the process, efficient cooling configuration, low residence times, minimum pressure drop, fixed geometry air entry and a fuel injector spacing approximately the same as the combustor height. Such combustors are designed to minimize CO, HC, NO_X, and smoke emissions, while retaining combustor performance, operability and durability capabilities. CO and HC are products from lower power engine operations, whereas NO_X and smoke are primarily from high power operation. CO and HC have been reduced significantly, by improvements in the fuel-air mixing, without significant adverse effects on NO_X. The trade-offs between CO, HC, smoke and NO_X emissions are now widely understood by manufacturers and have been successfully balanced to meet ICAO standards. Typically, current production engines have large margins in comparison to the existing CO and HC standards imposed by ICAO,[18] to which EPA's promulgated CO and current HC standard are identical.[19] Furthermore, the new ICAO NO_X standard to become effective in 1996 for newly certified engines and 2000 for newly manufactured engines (the same as being adopted by EPA) will ensure that (1) the technology is or would be available to successfully balance CO, HC, and NO_X emissions and (2) the cost of compliance will be minimal.

D. Amendments to Smoke and Gaseous Emission Test and Measurement Procedures, Compliance Procedures, and Test Fuel Specifications

1. Smoke and Gaseous Emission Test and Measurement Procedures

In today's rule, EPA incorporates by reference ICAO's 1993 amendments to the test procedures for measuring smoke and gaseous emissions (ICAO International Standards and Recommended Practices Environmental Protection, Annex 16, Volume II,

[18] International Coordinating Council of Aerospace Industries Association (ICCAIA) stated in a December 19, 1996 memorandum to EPA in regards to CO emission levels of current production engines (as discussed above typically these levels are significantly lower than the existing ICAO CO standard), that ''[m]odern combustor efficiencies exceed 99.5 percent at all power conditions, including idle, and there is little or no potential for further improvement.''

[19] Defense Research Agency, ICAO/CAEP Working Group 3 (Emissions)—Third Meeting—Bonn, Germany, ''Combined Report of the Certification and Technology Subgroups,''June 1995.

''Aircraft Engine Emissions,'' Second Edition, July 1993, Appendices 2 , 3, and 5) in 40 CFR 87.64 and 87.82. ICAO's amendments, which became effective on November 11, 1993, apply to subsonic (newly certified and newly manufactured for NO_X) and supersonic gas turbine engines. These technical changes will simplify the measurement process and improve the measurement techniques and equipment of the test procedures for smoke and gaseous emissions. These test procedure amendments incorporated by reference will become effective on July 7, 1997. These amendments include the following: (1) Raising the temperature tolerance by ±5 C degrees for sampling line of smoke emissions, (2) adding an option to install by-pass around the volume meter in the smoke analysis system, (3) adding an option to install a flow splitter to draw a higher sample flow rate through the probe of the smoke analysis system, (4) adding a test to show that a flow splitter does not change the smoke level in the smoke analysis system, (5) adding new leakage and cleanliness check procedures for gaseous emissions instruments, (6) revising the recommended curve fitting technique to relate emission indices to combustor inlet temperature for gaseous emissions, (7) adding precautions for performance specification accuracy of HC, CO, and carbon dioxide (CO_2) analyzers for gaseous emissions, (8) revising the performance specifications of HC, CO, and CO_2 analyzers for gaseous emissions, (9) adding a check on the effect of oxygen on the CO_2 analyzer response for gaseous emissions, (10) adding calibrations of CO and CO_2 analyzers for gaseous emissions, (11) revising the performance specifications of NO_X analyzers for gaseous emissions, (12) revising the calibration and test gas specifications for CO, CO_2, and NO_X for gaseous emissions, and (13) revising the calculation of the gaseous emissions parameters.

In the 1982 final rule, EPA incorporated by reference the then-existing ICAO testing and measurement procedures for aircraft engine emissions (ICAO International Standards and Recommended Practices Environmental Protection, Annex 16, Volume II, ''Aircraft Engine Emissions,'' First Edition, June 1981, Appendices 2, 3, and 5 were incorporated by reference in 40 CFR 87.64 and 87.82) in order to eliminate confusion over minor differences in procedures for demonstrating compliance with the U.S. and ICAO standards. Also, in 1982 EPA specified that ''[w]hile the U.S. standard for gaseous emissions will now apply to HC only, it is recommended that CO and NO_X measurements be made and reported to the certificating authority as well, for information only. * * *'' Manufacturers have been voluntarily conducting and reporting CO and NO_X measurements for twelve years in accordance with EPA's recommendation, and FAA has certified the test data to ICAO.[20] Thus, formal adoption of the ICAO CO and NO_X test procedures requires no new action by manufacturers. In addition, the existence of ICAO's requirements ensures that the costs of compliance (as well as the air quality impact) with these test procedures will be minimal.

2. Compliance Procedure for Gaseous and Smoke Emission Standards

In today's rule, EPA will also incorporate by reference the ICAO compliance procedure for gaseous and smoke emissions (ICAO International Standards and Recommended Practices Environmental Protection, Annex 16, Volume II, ''Aircraft Engine Emissions,'' Second Edition, July 1993, Appendix 6) in 40 CFR 87.71 and 87.89. This ICAO compliance procedure applies to subsonic and supersonic gas turbine engines and has been in effect since February 18, 1982. By incorporating by reference ICAO's Appendix 6, EPA is today adopting this compliance procedure for gaseous and smoke emissions as an alternative to certification testing every engine for a type or model. This alternative compliance procedure incorporated by reference will become effective on July 7, 1997. This change in the EPA compliance procedure will simplify and reduce the testing burden of the compliance process. According to section 232 of the CAA, the Secretary of Transportation (DOT) has the authority to enforce the aircraft emission standards established by EPA.[21] On June 29, 1995 the Secretary (or more specifically the Administrator of the FAA) incorporated by reference ICAO's Appendix 6 as an alternative for demonstrating compliance to the gaseous and smoke emissions, and thus, established the level of confidence required for U.S. compliance testing. Therefore, today's action by EPA to adopt Appendix 6 as an alternative for compliance procedures concurs with the required level of confidence established by the Secretary for certification testing, and thus it is an acceptable means of compliance.

This compliance procedure is as described above an alternative method of compliance, and thus, the use of the procedure is voluntary for manufacturers. Manufacturers have been using this compliance procedure to adhere to ICAO's requirements since 1982, and more recently manufacturers have been using it voluntarily as an alternative for DOT's compliance regulations. Thus, formal adoption of the ICAO compliance procedure for gaseous and smoke emissions as an alternative compliance procedure requires no new action by manufacturers. In addition, since the compliance procedure is optional and the ICAO requirements (and DOT's recently adopted regulations) have been in existence for years, the cost (as well as the air quality impact) of this alternative compliance procedure will be minimal.

3. Test Fuel Specifications

In July 1988, ICAO amended the test fuel specifications which it had previously adopted in 1981. Specifically, the 1988 amendments (apply to subsonic and supersonic gas turbine engines) broadened the ranges of allowable test fuel naphthalenes content, hydrogen content, viscosity, final boiling point values, and aromatics content and allowed wider bands of acceptability.

In 1982, EPA established test fuel specifications that matched ICAO's 1981 test fuel specifications. EPA has not changed its test fuel specifications since 1984, when EPA finalized amendments in response to reported difficulties by manufacturers in procuring fuels meeting the existing test fuel specifications.[22] The 1984 EPA amendments broadened the ranges of allowable test fuel naphthalenes content, hydrogen content, viscosity, and final boiling point values. These 1984 changes resulted in a difference in test fuel specifications between EPA and ICAO standards. However at that time, EPA believed ICAO would soon amend its test fuel specifications to match EPA's new specifications. Instead, since the 1984 amendments by EPA, differences between EPA and ICAO fuel specifications have remained, and ICAO's 1988 amendments did not address the disparity. In fact, in 1988 ICAO widened the range of acceptable fuels even further than the 1984 EPA specifications. As discussed above, the 1988 ICAO amendments, which became effective on November 17, 1988,

[20] These measurements have been shown to meet the existing ICAO CO and NO_X standards.

[21] Specifically, the FAA of the DOT is responsible for enforcement of the aircraft emission standards established by EPA.

[22] See 49 FR 25643 (October 18, 1984).

broadened the ranges of allowable test fuel naphthalenes content, hydrogen content, viscosity, final boiling point values, and aromatics content and allowed wider bands of acceptability. In July 1993, ICAO amended its test fuel specifications slightly. These specifications, which became effective on November 11, 1993 and apply to subsonic and supersonic gas turbine engines, require aircraft engine testing fuel to have a certain density instead of a specific gravity, and changes the units of net heat of combustion of testing fuel from kilojoule/kilogram (kJ/kg) to megajoule/kilogram (MJ/kg).

In response to these differences, EPA has once again revisited the test fuel issue. For the 1993 ICAO amendments to the specific gravity and net heat of combustion, EPA believes that because these two changes to the ICAO test fuel specifications are merely changes to one property's description and another property's units, but not changes to the allowable range of values for these properties, EPA will adopt the 1993 ICAO changes from specific gravity to density and from kJ/kg to MJ/kg for net heat combustion (see section 87.61 of today's regulations). For the remaining test fuel differences, each property is discussed separately below. For purposes of comparison, the ICAO specifications and U.S. commercial jet fuel characteristics of interest are presented below in Table 1. Survey data on jet fuels conducted by the National Institute for Petroleum and Energy Research (NIPER) indicates that the aromatics content and kinematic viscosity of current U.S. commercial jet fuels found in-use have values which overlap with the ICAO test fuel specifications.[23] The ICAO aromatics content specification has a higher maximum limit than the current U.S. specification. Since fuels with higher aromatics content generally are more severe for emissions testing purposes, adopting the ICAO aromatics content specification would not adversely affect in-use emissions. Lowering the kinematic viscosity minimum limit would also not affect emissions because it would only have an effect on the cold-starting operation of aircraft engines (not idle, landing-take-off, or cruise operations) due to the manner in which aircraft engines function, and the starting operation is not measured in the emissions test procedures. Thus for aromatic content and kinematic viscosity where differences existed in the past, not only are the current U.S. commercial jet fuels adequately similar to the ICAO specifications, but the ICAO specifications would not adversely affect in-use emissions; therefore, EPA will adopt these ICAO specifications for the purpose of certification emission testing.

The NIPER survey data shows that U.S. jet fuel distillation temperatures closely track EPA and ICAO requirements but that the ICAO specification allows a 5 °C lower 10 percent boiling point and final boiling point. However, adopting the ICAO specification for distillation temperature at 10 percent and final boiling points, which has a lower minimum limit than the current U.S. specification, would have no discernible effect on emissions. In addition, similar to aromatics content, the ICAO naphthalenes content specification has a higher maximum limit than the current U.S. specification. Since fuels with a higher napthalenes content are more severe for emission testing purposes, adopting the ICAO naphthalenes content specification would not adversely affect in-use emissions. For hydrogen content, adopting the ICAO specification, which has a 0.1 mass percent higher maximum limit, would be a minor change that would have no effect on emissions. Since distillation temperature, naphthalenes content, and hydrogen content have no adverse effect on in-use emissions, EPA will adopt the ICAO specifications for the purpose of certification emission testing. Moreover, the ICAO agreements to adopt today's NO_X standards were based on these test fuel specifications. If EPA does not adopt these test fuel specifications, the U.S. NO_X standards would not be entirely consistent with ICAO standards.

In addition, unless specified otherwise in the above discussion for test fuel specifications or in the accompanying test fuel regulations for this section (see 87.61 of the regulations), manufacturers should comply with the latest version of the aviation fuel specifications from the American Society for Testing and Materials (ASTM).[24]

TABLE 1.—COMPARISON OF U.S. JET FUEL CHARACTERISTICS TO CURRENT DIFFERENCES BETWEEN EPA AND ICAO TEST FUEL SPECIFICATIONS

Property	EPA	ICAO	Difference	Jet-A NIPER 1995	Jet-A NIPER 1994	Jet-A NIPER 1993	Jet-A ASTM spec.	ASTM test method	ASTM method reproducibility
Distallation, °C:									
10% Boiling Point	160–201	155–201	−5 °C	161.7–198.3 ...	161.1–201.7 ...	167.8–197.2 ...	<205	D86	3.0+2.63*S [1]
Final Boiling Pt.	240–285	235–285	−5 °C	.....	.....	.....	<300		10.5 °C
Aromatics, vol. %	15–20	15–23	−3 vol%	13–24.4	13.7–22.6	9.5–23.3	<22 [2]	D1319	2.5–3.0 vol%
Naphthalenes, vol. %	1.0–3.0	1.0–3.5	−0.5 vol%	0.5–2.88	0.1–2.70	0.2–2.98	<3.0	D1840	0.11 vol%
Hydrogen, mass %	13.4–14.0 ...	13.4–14.1 ...	−0.1 mass%	.....	.....	.....		D1018	0.18 wt%
								D3343	0.16 wt%
								D5291	~0.86 wt% [3]
Kinematic Viscosity @ −20 °C, mm^2/sec.	4.0–6.5	2.5–6.5	−1.5 mm^2/sec ...	3.79–7.7	3.3–7.0	1.4–6.8	<8.0	D445	0.7% of mean

[1] S is the average slope of distallation line.
[2] Aromatic content of up to 25 vol% allowed by agreement between vendor and purchaser.
[3] Reproducibility given as the square root of the mean value times 0.2314.

[23] National Institute for Petroleum and Energy Research (NIPER), ''Aviation Turbine Fuels, 1995'', Cheryl L. Dickson and Gene P. Sturm, Jr., March 1996, NIPER–194 PPS 96/2.

[24] ASTM, ''Standard Specification for Aviation Turbine Fuels,'' D1655.

E. Engines ''Designed for Applications That Otherwise Would Have Been Fulfilled by Turbojet and Turbofan Engines''

In July 1993 ICAO amended the applicability of its regulations for subsonic turbojet and turbofan engines to include ''* * * engines designed for applications that otherwise would have been fulfilled by turbojet and turbofan engines.'' This ICAO provision evolved from recent industry developmental work performed on propfan, unducted fan, and advanced ducted propfan (ADP) engines. The propfan or unducted fan engines can be thought of as either an advanced version of the turboprop having a propeller capable of very high mach numbers or a turbofan with an extremely high effective bypass ratio. This high bypass ratio decreases fuel consumption and thus has a higher propulsion efficiency. Propfan engines have blades that are thin and swept back to increase their capability to withstand relative velocities.[25]

Pratt and Whitney's advanced ducted prop (ADP) is an example of a propfan. The ADP offers significantly reduced fuel consumption, low noise, and low emissions compared to high-bypass ratio turbofans. The ADP has these characteristics through the use of a special fan drive system allowing for a lower fan tip speed and slower exhaust gas velocities. Both the fan tip speed and the exhaust gas velocity are major sources of inefficiency in a turbine engine.[26]

In today's rule, EPA will apply its regulatory provisions for subsonic turbojet and turbofan engines to include these new applications. To meet public health and welfare protection requirements of section 231 of the CAA, EPA must ensure that, if any of these technologies become commercially viable, their emissions will be regulated, given that these new engines would contribute to overall aircraft emissions. Currently, none of these developmental engines have been certified, but if they certify in the future, they will be covered by the requirements that apply to turbojet and turbofan engines. (See the Regulatory Support Document for further discussion of these engine applications.) It is EPA's understanding that the development of the propfan and unducted fan engines has not been active recently, but the development of the ADP is ongoing. These engines will need to comply with ICAO's 1993 amendments if produced, and thus, ICAO's standards will ensure that if these applications were developed they will have the technology to meet today's promulgated standards.[27] In addition, the existence of ICAO's 1993 standards ensures that the cost of compliance (as well as the air quality impact) of today's promulgated requirements to include these new engine applications will be minimal.

F. Correction to the Exponent for Rated Output in the Equation of the Smoke Number for New Aircraft Turboprop Engines

Because of an editorial error, the exponent for rated output in the equation of the smoke number for new aircraft turboprop engines was incorrectly specified as -168 (see section 87.31(e)(3) of the regulations). For this smoke number equation in section 87.31(e)(3) of the regulations, EPA today corrects the exponent value for rated output to -0.168.

IV. Coordination With FAA

The requirements contained in the notice are being adopted after consultation with the Secretary of Transportation in order to assure appropriate consideration of aircraft safety. Under section 232 of the CAA, the Secretary of Transportation (DOT), has the responsibility to enforce the aircraft emission standards established by EPA under section 231.[28] In addition, section 231(b) of the CAA states that ''[a]ny regulation prescribed under this section * * * shall take effect (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance * * *.'' As in past rulemakings and pursuant to the above referenced sections of the CAA, EPA has coordinated with the Federal Aviation Administration (FAA) of the DOT during the process of formulating the promulgated emission standards and test procedures for aircraft engine emissions set forth here.

Moreover, FAA is the official U.S. delegate to ICAO. FAA agreed to the 1993 amendments at ICAO's Second Meeting of the Committee on Aviation Environmental Protection (CAEP II)[29] after advisement from EPA. After CAEP II, FAA then notified EPA of the detailed revisions to the ICAO Standards and Recommended Practices for Aircraft Engine Emissions to be incorporated by EPA in its aircraft engine emissions regulations (if EPA chooses to take such action).[30] FAA was a member of two CAEP III subgroups (among others),[31] Economic and Analysis Subgroup and the Certification and Technology Subgroup, which both included projections of technology and cost considerations of the ICAO standards adopted in 1993 in separate CAEP III reports respectively. The reports were entitled, ''ICAO CAEP Working Group 3 (Emissions)—Combined Report of the Certification and Technology Subgroups'' and ''ICAO CAEP Working Group 4, Coordination and Economic Analysis, Final Report of the Economic Analysis Subgroup'' (Bonn, Germany, June 1995). These reports were a source for EPA's projections of the technology and cost considerations for compliance with today's action, and they serve as another form of consultation with the DOT.

In addition, as discussed above, FAA will have the responsibility to enforce today's promulgated requirements. As a part of its compliance responsibilities, FAA conducts the emission tests or delegates that responsibility to the engine manufacturer, which is then monitored by the FAA. Since the FAA does not have the resources or the funding to test engines themselves, FAA selects engineers at each plant to serve as representatives (called designated engineering representatives (DERs)) for the FAA while the manufacturer performs the test procedures. DERs' responsibilities include evaluating the test plan, the test engine, the test equipment, and the final testing report sent to FAA. DERs' responsibilities are determined by the FAA and today's rule will not affect their duties.

[25] U.S. Environmental Protection Agency, ''Regulatory Support Document for Aircraft Engine Emissions Regulations,'' February 1997.

[26] U.S. Environmental Protection Agency, ''Regulatory Support Document for Aircraft Engine Emissions Regulations,'' February 1997.

[27] Although ICAO requirements in Annex 16, Volume II apply to such applications, specifically certifying propfan, unducted fan, and/or advanced ducted propfan applications may require variations to the test procedures specified by ICAO in Annex 16, Volume II. Thus, prior to certifying these engine applications as gas turbine engines, the test procedure variations would need to be worked out by ICAO. Due to the international nature of the aviation industry, this work would best be performed through a working group of the ICAO Committee on Aviation Environmental Protection (CAEP).

[28] Specifically, the FAA of the DOT has the responsibility to enforce the aircraft emission standards established by EPA.

[29] The Second Meeting of CAEP (CAEP II) occurred in Montreal, Quebec from December 2 through 13 in 1991.

[30] U.S. Department of Transportation, Federal Aviation Administration, Revisions to the ICAO standards and recommended practices for aircraft engine emissions, Letter from Nicholas P. Krull to Richard Wilson of the U.S. Environmental Protection Agency, August 27, 1993.

[31] The Third Meeting of CAEP (CAEP III) occurred in Montreal, Quebec from December 5 through 15 in 1995.

V. Regulatory Impacts

Aircraft engines are international commodities, and thus, they are designed to meet international standards. Today's rule will have the benefit of establishing consistency between U.S. and international emission standards and test procedures. Thus, an emission certification test which meets U.S. requirements will also be applicable to all ICAO requirements. As discussed above, all engines covered by today's federal standards already meet the standards or will meet them by the standards' effective dates. EPA knows of only 2 engine types that do not currently meet all of the standards. Pratt & Whitney and Rolls-Royce, the manufacturers of these two engine types, are already developing improved technology in response to the ICAO standards that match the standards adopted here, and EPA does not believe that the costs incurred by the aircraft industry as a result of the existing ICAO standards should be attributed to today's regulations. Also, the test data necessary to determine compliance are already collected by manufacturers during current engine certification tests. Therefore, EPA believes that the promulgated regulations will impose no additional burden on manufacturers.

The existence of ICAO's requirements results in minimal cost as well as air quality benefits from today's promulgated requirements. Since aircraft and aircraft engines are international commodities, there is some commercial benefit to consistency between U.S. and international emission standards and control program requirements (i.e., easier to qualify products for international markets since FAA can certify engines for ICAO compliance). While not a regulatory impact *per se*, EPA adoption of the ICAO standards and related requirements/test procedures meets our treaty obligations and strengthens the U.S. position in future ICAO/CAEP processes related to emission standards.

VI. Public Participation

The Agency is publishing this action as a direct final rule because it views the provisions of today's action as non-controversial, and based on outreach efforts with all affected parties, EPA anticipates no adverse or critical comments. The existence of ICAO's requirements ensures that the promulgated regulations impose no additional burden on manufacturers. Aircraft engine manufacturers have indicated that they will not be adversely affected by this direct final rule, and thus, the Agency expects no adverse comments for those manufacturers. Similarly, the Agency does not expect adverse comments from the environmental community or state and local governments, since the environmental impact is at least directionally positive.

This action will become effective July 7, 1997. If the Agency receives adverse comments by June 9, 1997, EPA will publish a subsequent **Federal Register** document withdrawing this rule. In the advent that adverse or critical comments are received, EPA is also publishing a Notice of Proposed Rulemaking (NPRM) in a separate action today (found in the Proposed Rule section of this **Federal Register**), which proposes the same rule changes contained in this direct final rule. Any adverse comments received by the date listed above will be addressed in a subsequent final rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 7, 1997.

Nonetheless, if public comments are to be submitted, the Agency requests wherever applicable, full supporting data and detailed analysis should be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for any changes to any aspect of the regulations that they believe need to be modified or improved. All comments should be directed to EPA Air Docket, Docket No. A–94–66 (See **ADDRESSES**).

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it ''Confidential Business Information.'' Submissions containing such proprietary information should be sent directly to the contact person listed above (See **ADDRESSES**), and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

VII. Statutory Authority

The statutory authority for today's rule is provided by sections 231 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7571 and 7601. See section II. of today's rule for discussion of how EPA meets the CAA's statutory requirements.

VIII. Administrative Designation and Regulatory Analysis

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, EPA has determined that this direct final rule is not a ''significant regulatory action'' within the meaning of the Executive Order and is therefore not subject to OMB review. As a result of the ICAO standards, all aircraft engines covered by today's direct final rule already meet the standards or will do so by the time the standards go into effect. Thus, the annual effect on the economy of today's promulgated standards will be minimal, and none of the other thresholds identified in the executive order will be triggered by this action.

IX. Compliance With Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601–602, requires that federal agencies examine the effects of their regulations on small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 amended those requirements. The SBREFA requires an agency to prepare a Regulatory Flexibility Analysis in conjunction with the rulemaking, unless the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA as amended by SBREFA, EPA

has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. Because of the limited classes of aircraft engines to which today's regulations apply, no small entities are affected.

X. Submission to Congress and the General Accounting Office

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

XI. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.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, EPA 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, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditure of $100 million or more for State, local, or tribal governments, in the aggregate or the private sector in any one year. As a result of the ICAO standards, all aircraft engines covered by today's rule already meet the promulgated standards or will do so by the time the standards will go into effect. Thus, the annual effect on the economy of today's promulgated standards will be minimal. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

XII. Paperwork Reduction Act

This rule does not itself impose any reporting or recordkeeping requirements. Any reporting and recordkeeping requirements associated with these standards will be defined by the Secretary of Transportation in enforcement regulations issued later under the provisions of section 232 of the Clean Air Act. Since most if not all manufacturers already measure CO and NO_x and report the results to the FAA, any additional reporting and record keeping requirements associated with FAA enforcement of these regulations are likely to be very small.

List of Subjects in 40 CFR Part 87

Environmental protection, Incorporation by reference, Aircraft engines.

Dated: April 29, 1997.

Carol M. Browner,

Administrator.

40 CFR Part 87 is amended as follows:

PART 87—CONTROL OF AIR POLLUTION FROM AIRCRAFT AND AIRCRAFT ENGINES

1. The authority citation for part 87 continues to read as follows:

Authority: Secs. 231, 301(a), Clean Air Act, as amended (42 U.S.C 7571, 7601(a)).

Subpart A—General Provisions

2. Section 87.1 is amended by revising the definition of ''Class TF'' in paragraph (a) to read as follows:

§ 87.1 Definitions.

(a) * * *

Class TF means all turbofan or turbojet aircraft engines or aircraft engines designed for applications that otherwise would have been fulfilled by turbojet and turbofan engines except engines of class T3, T8, and TSS.

* * * * *

3. Section 87.2 is amended by adding the following abbreviations in alphabetical order to read as follows:

§ 87.2 Abbreviations.

* * * * *

CO Carbon Monoxide.

* * * * *

NO_X Oxides of nitrogen.

* * * * *

Subpart C—Exhaust Emissions (New Aircraft Gas Turbine Engines)

4. Section 87.21 is amended by revising the paragraphs (d), (d)(1), and (e)(3) to read as follows:

§ 87.21 Standards for exhaust emissions.

* * * * *

(d) Gaseous exhaust emissions from each new commercial aircraft gas turbine engine shall not exceed:

(1) Classes TF, T3, T8 engines greater than 26.7 kilonewtons rated output:

(i) Engines manufactured on or after January 1, 1984:

Hydrocarbons: 19.6 grams/kilonewton rO.

(ii) Engines manufactured on or after July 7, 1997.

Carbon Monoxide: 118 grams/kilonewton rO.

(iii) Engines of a type or model of which the date of manufacture of the first individual production model was on or before December 31, 1995 and for which the date of manufacture of the individual engine was on or before December 31, 1999.

Oxides of Nitrogen: (40 + 2(rPR)) grams/kilonewtons rO.

(iv) Engines of a type or model of which the date of manufacture of the first individual production model was after December 31, 1995 or for which the date of manufacture of the individual engine was after December 31, 1999:

Oxides of Nitrogen: (32 + 1.6(rPR)) grams/kilonewtons rO.

(v) The emission standards prescribed in paragraphs (d)(1) (iii) and (iv) of this section apply as prescribed beginning July 7, 1997.

(2) Class TSS: Engines manufactured on or after January 1, 1984:

Hydrocarbons=$140(0.92)^{rPR}$ grams/kilonewtons rO.

(e) * * *

(3) Class TP of rated output equal to or greater than 1,000 kilowatts manufactured on or after January 1, 1984:

$SN=187(ro)^{-0.168}$ (ro is in kilowatts)

* * * * *

Subpart G—Test Procedures for Engine Exhaust Gaseous Emissions (Aircraft and Aircraft Gas Turbine Engines)

5. Section 87.60 is amended by revising paragraph (c) to read as follows:

§ 87.60 Introduction.

* * * * *

(c) The exhaust emission test is designed to measure hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen concentrations, and to determine mass emissions through calculations during a simulated aircraft landing-takeoff cycle (LTO). The LTO cycle is based on time in mode data during high activity periods at major airports. The test for propulsion engines consists of at least the following four modes of engine operation: taxi/idle, takeoff, climbout, and approach. The mass emission for the modes are combined to yield the reported values.

* * * * *

6. Section 87.61 is revised to read as follows:

§ 87.61 Turbine fuel specifications.

For exhaust emission testing, fuel meeting the specifications listed in this section shall be used. Additives used for the purpose of smoke suppression (such as organometallic compounds) shall not be present.

Property and Allowable Range of Values

Density kg/m^3 at 15 °C: 780–820.

Distillation temperature, °C: 10% boiling point, 155–201; final boiling point, 235–285.

Net heat of combustion, MJ/kg: 42.86–43.50.

Aromatics, volume %: 15–23.

Naphthalenes, volume %: 1.0–3.5.

Smoke point, mm: 20–28.

Hydrogen, mass %: 13.4–14.1.

Sulfur, mass %: less than 0.3%.

Kinematic viscosity at −20 °C, mm^2/s: 2.5–6.5.

7. Section 87.62 is amended by revising paragraph (a)(2) to read as follows:

§ 87.62 Test procedure (propulsion engines).

(a) * * *

(2) The taxi/idle operating modes shall be carried out at a power setting of 7% rated thrust unless the Secretary determines that the unique characteristics of an engine model undergoing certification testing at 7% would result in substantially different HC and CO emissions than if the engine model were tested at the manufacturers recommended idle power setting. In such cases the Secretary shall specify an alternative test condition.

* * * * *

8. Section 87.64 is revised to read as follows:

§ 87.64 Sampling and analytical procedures for measuring gaseous exhaust emissions.

The system and procedures for sampling and measurement of gaseous emissions shall be as specified by Appendices 3 and 5 to International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993, which are incorporated herein by reference. 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. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. Frequent changes are not anticipated. Copies may be inspected at U.S. EPA, OAR, 401 M Street, Southwest, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC. Copies of this document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, P.O. Box 400, Succursale: Place de L'Aviation Internationale, 1000 Sherbrooke Street West, Suite 400, Montreal, Quebec, Canada H3A 2R2.

9. Section 87.71 is revised to read as follows:

§ 87.71 Compliance with gaseous emission standards.

Compliance with each gaseous emission standard by an aircraft engine shall be determined by comparing the pollutant level in grams/kilonewton/thrust/cycle or grams/kilowatt/cycle as calculated in § 87.64 with the applicable emission standard under this part. An acceptable alternative to testing every engine is described in Appendix 6 to International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993, which is incorporated herein by reference. 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. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. Frequent changes are not anticipated. Copies may be inspected at U.S. EPA, OAR, 401 M Street, Southwest, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of this document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, P.O. Box 400, Succursale: Place de L'Aviation Internationale, 1000 Sherbrooke Street West, Suite 400, Montreal, Quebec, Canada H3A 2R2. Other methods of demonstrating compliance may be approved by the Secretary with the concurrence of the Administrator.

10. Section 87.82 is revised to read as follows:

§ 87.82 Sampling and analytical procedures for measuring smoke exhaust emissions.

The system and procedures for sampling and measurement of smoke emissions shall be as specified by Appendix 2 to International Civil Aviation Organization (ICAO) Annex 16, Volume II, Environmental Protection, Aircraft Engine Emissions, Second Edition, July 1993, which are incorporated herein by reference. 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. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. Frequent changes are not anticipated. Copies may be inspected at U.S. EPA, OAR, 401 M Street, Southwest, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of this document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, P.O. Box 400, Succursale: Place de L'Aviation Internationale, 1000 Sherbrooke Street West, Suite 400, Montreal, Quebec, Canada H3A 2R2.

11. Section 87.89 is revised to read as follows:

§ 87.89 Compliance with smoke emission standards.

Compliance with each smoke emission standard shall be determined by comparing the plot of SN as a function of power setting with the applicable emission standard under this part. The SN at every power setting must be such that there is a high degree of confidence that the standard will not be exceeded by any engine of the model

being tested. An acceptable alternative to testing every engine is described in Appendix 6 to International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993, which is incorporated herein by reference. 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. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. Frequent changes are not anticipated. Copies may be inspected at U.S. EPA, OAR, 401 M Street, Southwest, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of this document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, P.O. Box 400, Succursale: Place de L'Aviation Internationale, 1000 Sherbrooke Street West, Suite 400, Montreal, Quebec, Canada H3A 2R2.

[FR Doc. 97–11676 Filed 5–7–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[AMS–FRL–5821–2]

RIN 2060–AF50

Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standards and Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking proposes to amend the existing United States regulations governing the exhaust emissions from new commercial aircraft gas turbine engines. Under the authority of section 231 of the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing new emission standards for oxides of nitrogen (NO_X) and carbon monoxide (CO) for newly manufactured and newly certified commercial aircraft gas turbine engines with rated thrust greater than 26.7 kilonewtons (kN). This action proposes to codify into United States law the current voluntary NO_X (a two-staged NO_X standard) and CO emission standards of the United Nations International Civil Aviation Organization (ICAO), and thereby would bring the United States emission standards into alignment with the internationally adopted standards. These ICAO CO and NO_X standards would be added to the current EPA regulations for smoke and hydrocarbon emissions that have been in effect since 1984. EPA is also proposing to adopt ICAO's requirement that these standards also apply to engine designs which are substitutes for turbojet and turbofan engines (e.g. propfan, unducted fan, and advanced ducted fan). In addition, EPA proposes to amend the test procedures for gaseous exhaust emissions and smoke exhaust emissions to correspond to recent amendments to the ICAO test procedures for these emissions. EPA also proposes to amend its certification test fuel specifications to make them consistent with ICAO's test fuel specifications.

All of the affected engines are already meeting the ICAO CO and first-stage NO_X emission standards that EPA is proposing to adopt today. Most engines also meet the ICAO second-stage NO_X standard; only a few models need minor reductions in emissions to meet this standard. In addition, most manufacturers routinely measure these emissions today even though it is not required by federal regulation. The proposed amendments to the emission test procedures are those recommended by ICAO and are widely used by the aircraft engine industry today. Thus, today's proposal would establish consistency between U.S. and international standards, test procedures, and other requirements. Since aircraft and aircraft engines are international commodities, there is some commercial benefit to consistency between U.S. and international emission standards and control program requirements (i.e., easier to qualify products for international markets since the Federal Aviation Administration (FAA) can certify engines for ICAO compliance). In addition, today's action ensures that domestic commercial aircraft would meet the current international standards, and thus, the public can be assured they are receiving the air quality benefits of the international standards.

Because the Agency views the provisions of this proposed rulemaking as noncontroversial and does not expect to receive adverse comments, these provisions are also being issued as a direct final rule in the Final Rules section of this **Federal Register**.

DATES: Comments on the regulations proposed by this action must be received on or before June 9, 1997. If EPA conducts public hearings on today's Notice of Proposed Rulemaking (NPRM), EPA will publish a timely document in the **Federal Register** that specifies the time and location of such hearings.

ADDRESSES: Interested parties may submit written comments in response to this notice (in duplicate if possible) to Public Docket No. A–94–66, at: Air Docket Section, U.S. Environmental Protection Agency, Attention: Docket No. A–94–66, First Floor, Waterside Mall, Room M–1500, 401 M Street SW., Washington, DC 20460. A copy of the comments should also be sent to Bryan Manning, U.S. EPA (EPCD–12), Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

Materials relevant to this notice have been placed in Docket No. A–94–66 by EPA. The docket is located at the above address and may be inspected from 8:00 a.m. to 5:30 p.m. on weekdays. EPA may charge a reasonable fee for copying docket materials.

A copy of this action and the Regulatory Support Document is available through TTNBBS under OMS, Rulemaking and Reporting, Aircraft Engine Emissions. TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 eastern standard time (EST), when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at 919–541–5384 in Research Triangle Park, North Carolina, during normal business hours EST. In addition, the TTNBBS can be accessed through the following internet addresses: World Wide Web: http://ttnwww.rtpnc.epa.gov or TELNET: ttnbbs.rtpnc.epa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Manning, U.S. EPA (EPCD–12), Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 741–7832.

SUPPLEMENTARY INFORMATION: Under the authority of section 231 of the CAA, EPA today proposes to adopt the 1986 ICAO CO and NO_X emission standards and ICAO's amendments of July 1993, which include a more stringent NO_X standard for the future and other test procedure changes. These proposed revisions pertain to 40 CFR part 87 subparts A, C, G, and H. EPA considers these proposed changes to the regulations to be noncontroversial, and thus, these changes will be finalized as a direct final rule in the Final Rules section of the **Federal Register**. For further supplemental information, the detailed rationale, and the revisions to the regulations, see the information provided in the direct final rule.

If no adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the Final Rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If adverse comments are timely received on the direct final rule, the rule will be withdrawn and all public comment received on it will be addressed in a subsequent final rule based on the proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

List of Subjects in 40 CFR Part 87

Environmental protection, Incorporation by reference, Aircraft engines.

Dated: April 29, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–11675 Filed 5–7–97; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday
May 8, 1997

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories; National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[IL–64–2–5807; FRL–5821–4]

RIN 2060–AE08

National Emission Standards for Hazardous Air Pollutants for Source Categories; National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for new and existing sources in mineral wool production plants. Hazardous air pollutants (HAPs) emitted by the facilities covered by this proposed rule include carbonyl sulfide, nine hazardous metals, formaldehyde, and phenol. Exposure to the hazardous air pollutant (HAP) constituents in these emissions may be associated with adverse carcinogenic, respiratory, nervous system, dermal, developmental, and/or reproductive health effects. Because there are only 16 plants and most of these plants are already meeting the floor level of control, implementation of the proposed requirements would reduce nationwide emissions of HAPs by an estimated 46 megagrams per year (Mg/yr) (51 tons per year (tpy)). In addition, emissions of particulate matter (PM) would be reduced by approximately 186 Mg/yr (205 tpy).

The standards are proposed under the authority of section 112(d) of the Clean Air Act as amended (the Act) and are based on the Administrator's determination that some mineral wool production plants are major sources of emissions of one or more of the HAPs listed in section 112(b) of the Act from the various process operations found within the industry. The proposed NESHAP would provide protection to the public by requiring all mineral wool production plants that are major sources to meet emission standards reflecting the application of the maximum achievable control technology (MACT).

DATES: *Comments.* Comments on the proposed rule must be received on or before July 7, 1997.

Public hearing. If anyone contacts the EPA requesting to speak at a public hearing by May 29, 1997, a public hearing will be held on June 9, 1997 beginning at 9 a.m.

ADDRESSES: *Comments.* Interested parties may submit written comments (in duplicate, if possible) to Docket No. A–95–33 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of the comments also be sent to the contact person listed below. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). Comments and data may also be submitted electronically by following the instructions under section VII.A of this document. No Confidential Business Information (CBI) should be submitted through electronic mail.

A copy of today's document, technical background information and other materials related to this rulemaking are available for review in the docket. Copies of this information may be obtained by request from the Air and Radiation Docket and Information Center by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Public hearing. If anyone contacts the EPA requesting a public hearing by the required date (see **DATES**), the public hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should notify Ms. Cathy Coats, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5422.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed regulation, contact Ms. Mary K. Johnson, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5025, facsimile number (919) 541–5600, electronic mail address, ''johnson.mary@epamail.epa.gov''.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those industrial facilities that manufacture mineral wool. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Mineral wool production plants (SIC 3296).
Federal government: Not affected	
State/local/tribal government: Not affected	

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by final action on this proposal. This table lists the types of entities that the EPA is now aware could potentially be regulated by final action on this proposal. To determine whether your facility is regulated by final action on this proposal, you should carefully examine the applicability criteria in section III.A of this document and in § 63.1175 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Technology Transfer Network

The text of today's document also is available on the Technology Transfer Network (TTN), one of the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 BPS modem. The TTN also is accessible through the Internet at ''TELNET ttnbbs.rtpnc.epa.gov.'' If more information on the TTN is needed, call the HELP line at (919) 541–5384. The HELP desk is staffed from 11 a.m. to 5 p.m.; a voice menu system is available at other times.

Outline. The information in this preamble is organized as shown below.

I. Statutory Authority
II. Introduction
  A. Background
  B. NESHAP for Source Categories
  C. Health Effects of Pollutants
  D. Mineral Wool Production Industry Profile
III. Summary of Proposed Standards
  A. Applicability
  B. Emission Limits and Requirements
  C. Performance Test and Compliance Provisions
  D. Monitoring Requirements
  E. Notification, Recordkeeping, and Reporting Requirements
IV. Selection of Proposed Standards
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A. Air Quality Impacts
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E. Unfunded Mandates Reform Act
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G. Paperwork Reduction Act
H. Pollution Prevention Act
I. Clean Air Act

I. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

II. Introduction

A. Background

Section 112(c) of the Act directs the EPA to list each category of major and area sources as appropriate emitting one or more of the HAPs listed in section 112(b) of the Act. ''Mineral Wool Production'' is one of the 174 categories of sources listed in a notice that includes an initial list of source categories. As defined in the EPA report, ''Documentation for Developing the Initial Source Category List'' (EPA–450/3–91–030, July 1992), the Mineral Wool Production source category includes any facility engaged in producing mineral wool fiber from slag or rock. Facilities that manufacture wool fiberglass from sand, feldspar, sodium sulfate, anhydrous borax, boric acid, or other similar materials are not included in the source category. The MACT standards for this source category must be promulgated no later than November 15, 1997.

The EPA estimates that 2,590 Mg/yr (2,860 tpy) of HAPs are emitted from sources in mineral wool production plants at the current level of control. The HAPs released from cupolas include carbonyl sulfide (COS) and hazardous metals (arsenic, antimony, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium). Formaldehyde and phenol are released from curing ovens on production lines where binder formulations are applied. A total of 30,720 Mg/yr (33,860 tpy) of PM and carbon monoxide (CO) also are released from these emission sources in the 16 plants that make up this industry.

B. NESHAP for Source Categories

Section 112 of the Act requires that the EPA promulgate regulations for the control of HAP emissions from both new and existing major sources. The statute requires the regulations to reflect the maximum degree of reduction in emissions of HAPs that is achievable taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as the maximum achievable control technology (MACT). For new sources, MACT standards cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. [See section 112(d)(3).] The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the best-performing 5 sources for categories or subcategories with fewer than 30 sources.

The control of HAPs is achieved through the promulgation of technology-based emission standards under sections 112(d) and 112(f) and work practice standards under 112(h) for categories of sources that emit HAPs. Emission reductions may be accomplished through the application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h); or (5) a combination of the above. (See section 112(d)(2).)

C. Health Effects of Pollutants

The Clean Air Act was created in part to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population. (See section 101(b)(1).) Section 112(b) of the Act lists HAPs believed to cause adverse health or environmental effects. Section 112(d) of the Act requires that emission standards be promulgated for all categories and subcategories of major sources of these HAPs and for many smaller ''area'' sources listed for regulation under section 112(c) in accordance with the schedules listed under section 112(c). Major sources are defined as those that emit or have the potential to emit at least 10 tpy of any single HAP or 25 tpy of any combination of HAPs.

On July 16, 1992 (57 FR 31576), the EPA published the initial list of categories of sources slated for regulation. This list included mineral wool production. The statute requires emissions standards for the listed source categories to be promulgated between November 1992 and November 2000. On December 3, 1993, the EPA published a schedule for promulgating these standards (58 FR 83841).

As previously explained, in the 1990 Amendments to the Clean Air Act, Congress specified that each standard for major sources must require the maximum reduction in emissions of HAPs that EPA determines is achievable considering cost, health and environmental impacts, and energy requirements. In essence, these MACT standards ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions. At the same time, this approach provides a level economic playing field, ensuring that facilities that employ cleaner processes and good emissions controls are not disadvantaged relative to competitors with poorer controls.

Emission data collected during development of the proposed rule, show that pollutants that are listed in section 112(b)(1) and are emitted by mineral wool production processes include HAP metals, formaldehyde, phenol, and COS. These pollutants would be reduced by implementation of the proposed emission limits. Following is a summary of the potential health and environmental effects associated with exposures to emitted pollutants that would be reduced by the standard.

Almost all metals appearing on the section 112(b) list of HAPs are emitted from mineral wool production facilities. The most important of these nonvolatile metals that would be reduced by the standard are arsenic, antimony, cadmium, chromium, nickel, beryllium, manganese, selenium, and lead compounds. These metals can cause effects such as mucous membrane irritation (e.g., bronchitis, decreased lung capacity), gastrointestinal effects, nervous system disorders (from loss of function to tremor and numbness), skin irritation, and reproductive and developmental disorders. Additionally,

several of the metals accumulate in the environment and in the human body. Cadmium, for example, is a cumulative pollutant, which can cause kidney effects after the cessation of exposure. Similarly, the onset of effects from beryllium exposure may be delayed 3 months to 15 years. Many of the metals also are known (arsenic, chromium VI, nickel refinery dust and nickel subsulfide) or probable (cadmium, lead, nickel carbonyl, and beryllium) human carcinogens.

Organic compounds that would be reduced by this standard include formaldehyde and phenol. Some of the effects of these pollutants are similar and include irritation from short-term exposures to eye, nose, and throat; respiratory effects (expressed as labored breathing, impaired lung function); and reproductive and developmental effects. Liver, kidney, and cardiac effects have been reported for phenol, which is considered to be quite toxic to humans via oral exposure. In addition to these noncancer effects, formaldehyde has been classified as a probable human carcinogen.

Emissions of COS also would be reduced by the standard. Information as to the potential health effects of COS are limited. Short-term inhalation of a high concentration of COS may cause narcotic central nervous system effects and skin and eye irritation in humans. No information is available on reproductive or developmental effects from COS exposure, and the EPA has not classified this pollutant with respect to its potential carcinogenicity.

In addition to HAPs, the proposed standard also would reduce some of the pollutants whose emissions are controlled under the National Ambient Air Quality Standards (NAAQS). These pollutants include PM, CO, volatile organic compounds (VOCs), and lead. The health effects of PM, CO, VOCs, and lead that would be reduced by this standard are described in EPA's Criteria Documents, which support the NAAQS. Briefly, PM emissions have been associated with aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Volatile organic compounds (e.g., formaldehyde) are precursors to the formation of ozone in the ambient air, as well as cause effects on agricultural crops and forests. At elevated levels, ozone has been shown in human laboratory and/or community studies to be responsible for the reduction of lung function, respiratory symptoms (e.g., cough, chest pain, throat and nose irritation), increased hospital admissions for respiratory causes, and increased lung inflammation. Animal studies have shown increased susceptibility to respiratory infection and lung structure changes. Carbon monoxide enters the blood stream and reduces oxygen delivery to the body's organs and tissues. Exposure to CO can be associated with reduced time to onset of angina pain, impairment of visual perception, work capacity, manual dexterity, learning ability, and performance of complex tasks. Depending on the degree of exposure, lead can cause subtle effects on behavior and cognition, increased blood pressure, reproductive effects, seizures, and even death.

The EPA does recognize that the degree of adverse effects to health can range from mild to severe. The extent and degree to which the health effects may be experienced is dependent upon: (1) The ambient concentrations observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain), (2) the frequency of and duration of exposures, (3) characteristics of exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyle) which vary significantly with the population, and (4) pollutant specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence).

D. Mineral Wool Production Industry Profile

Mineral wool is a fibrous glassy substance, consisting of silicate fibers typically 4 to 7 micrometers in diameter, made from natural rock (such as basalt), blast furnace slag, or other similar materials. Products made from mineral wool are widely used in thermal and acoustical insulation as well as for other products, where mineral wool fiber is added to impart structural strength or fire resistance.

In 1980, 26 mineral wool production plants were in operation in the United States. Currently, 16 plants operate in 9 States. Seven of the ten companies that operate these plants are small businesses under the definition applied to this industry by the U.S. Small Business Administration (750 company employees or less). No new plants or lines are predicted to be constructed or reconstructed during the next 5 years due to the current economic condition of the industry. At this time, capacity utilization is believed to be approximately 45 percent.

In the mineral wool manufacturing process, rock and/or blast furnace slag and other raw materials (e.g., gravel), are melted in a furnace (cupola) using coke as fuel; the molten material is then formed into fiber. In the production of mineral wool products that do not require high rigidity, an oil typically is applied to suppress dust and add some strength to the fiber; the fiber is then sized and bagged or baled. This is known as a ''nonbonded'' product manufactured on a ''nonbonded'' production line.

For mineral wool products requiring a higher structural rigidity, a HAP-based (phenol/formaldehyde) binder may be applied to the fiber. This is known as a ''bonded'' product made on a ''bonded'' production line. The binder-laden fiber mat is then thermoset in a curing oven and cooled. The major differences between the ''nonbonded'' and ''bonded'' production lines are the application of binder and the presence of the curing oven process and the cooling area. Six of the 16 plants manufacture bonded products on a total of 6 production lines. Five of these six plants also have nonbonded products lines. Ten plants manufacture only nonbonded products. The 16 plants operate a total of 36 cupolas and 6 curing ovens.

No Federal air emission standards apply to HAP emissions from mineral wool production plants. However, emission control systems have been installed at some sites as a result of occupational safety regulations, primary and secondary ambient air standards for PM and PM_{10}, and State standards for odors. Some States also have developed ambient standards for COS and formaldehyde.

As a result of these State and Federal requirements, all of the 36 existing cupolas are equipped with some level of emission control. Five of the cupolas are controlled by cyclones, and three are controlled by a cyclone in combination with a fabric filter (i.e., baghouse). The majority of the cupolas (24) are currently controlled by a fabric filter. Four cupolas are controlled with an incinerator and a fabric filter. Of the six curing ovens in use at the plants, four are equipped with an incinerator and two are uncontrolled.

III. Summary of Proposed Standards

A. Applicability

The proposed standard applies to each new and existing cupola or curing oven in a mineral wool production facility that manufactures mineral wool fiber from slag, rock, or other materials (excluding sand or glass). All mineral wool production plants that are major sources would be subject to the standards. Two facilities that manufacture nonbonded products may be area sources. Because these two facilities are not believed to present an

adverse environmental or health risk, the EPA has determined not to include these facilities on the list of area sources. At both of these sites, the cupolas are equipped with above-MACT-floor level controls. A facility that is determined by EPA to be an area source would not be subject to the NESHAP.

B. Emission Limits and Requirements

Emission limits for PM control are proposed for existing cupolas at plants with bonded processes and at plants without bonded processes. For new cupolas, emission limits for CO control, in addition to PM control, are proposed. Emission limits for formaldehyde also are proposed for each existing and new curing oven.

A surrogate approach is used to allow easier and less expensive measurement and monitoring requirements. Particulate matter would serve as a surrogate for metal HAPs and CO would represent COS. A formaldehyde standard proposed for curing ovens would also serve as a surrogate for phenol emissions. Under the proposed NESHAP, the owner or operator may elect to comply with a numerical formaldehyde or CO emission limit expressed in mass of emissions per unit of production (kilograms per megagram (kg/Mg) or pound/ton (lb/ton) of melt) or a percent reduction standard. A numerical limit is proposed for PM emissions from the cupola. The proposed emission limits for existing sources and new sources are presented below.

Source	Pollutant	Emission limit
Summary of Proposed Emission Limits for Existing Sources		
Cupola	PM	0.03 kg/Mg (0.06 lb/ton) of melt.
Curing oven	Formaldehyde	0.03 kg/Mg (0.06 lb/ton) of melt or 80 percent formaldehyde removal.
Summary of Proposed Emission Limits for New Sources		
Cupola	PM	0.03 kg/Mg (0.06 lb/ton) of melt.
	CO	0.05 kg/Mg (0.10 lb/ton) of melt or 99 percent CO removal.
Curing oven	Formaldehyde	0.03 kg/Mg (0.06 lb/ton) of melt or 80 percent formaldehyde removal.

The EPA also proposes to allow affected firms up to 3 years to comply. And, as allowed under section 112(i)(3)(B) of the Act, the Administrator or delegated regulatory authority also may grant 1 additional year if necessary for the installation of controls.

C. Performance Test and Compliance Provisions

The proposed NESHAP requires the owner or operator to conduct a one-time emissions test to determine initial compliance with the emission limits or performance standards for cupolas and curing ovens. The owner or operator would measure PM emissions from the cupola using EPA Method 5 in appendix A to 40 CFR part 60, ''Determination of Particulate Matter Emissions from Stationary Sources'' and § 63.1180 (Test methods and procedures) of the proposed rule. The owner or operator also would measure emissions of CO from incinerators on new cupolas using EPA Method 10, ''Determination of Carbon Monoxide Emissions from Stationary Sources'' in appendix A to 40 CFR part 60 and § 63.1180 (Test methods and procedures) of the proposed rule.

To determine emissions of formaldehyde from curing ovens, the owner or operator would use EPA Method 318, ''Extractive FTIR Method for the Measurement of Emissions from the Mineral Wool and Wool Fiberglass Industries.'' [1] This Fourier Transform Infrared (FTIR) Spectrometry method uses a multicomponent measurement system to quantify a wide variety of pollutants, also can be used to determine compliance for the CO emission standard, and allows the measurement of additional HAPs and other pollutants [phenol, COS, sulfur dioxide (SO_2), and nitrous oxide (NO_X), among others] in one test at substantially lower costs than individual tests by manual or instrumental methods. Method 318 is an extractive FTIR procedure and has been validated by the EPA according to Method 301 requirements.

To comply with the CO or formaldehyde numerical limit for a cupola or curing oven controlled by an incinerator or the PM limit for a fabric filter-controlled cupola, measurements would be made at the outlet of the control device. If the owner or operator elected to comply with the percent removal performance standard for CO or formaldehyde, measurements of CO or formaldehyde would be required at the inlet and outlet of the control device.

During the initial performance test for each cupola and curing oven subject to the standards, the owner or operator would measure and record the amount of raw materials, excluding coke, being charged into and melted in each cupola during each test run and determine the average hourly melt rate for each test run. The arithmetic average of the melt rate for three test runs, plus 20 percent, would be used to monitor compliance. If the owner or operator plans to operate above the average melt rate established during the initial performance test, plus 20 percent, the rule would require that another performance test be conducted to verify compliance.

The owner or operator would conduct the initial performance test for each curing oven while manufacturing the product requiring the binder formulation with the highest formaldehyde content. During the performance test, the owner or operator would record the free formaldehyde content of the resin(s) used during the test and the binder formulation(s), including the formaldehyde content of the binder, used during the test. Although binder formulations can be changed as often as needed, if the owner or operator plans to use a binder with a higher formaldehyde content than that used in the initial performance test, the rule would require that another performance test be conducted to verify compliance.

The proposed rule would allow the owner or operator of curing ovens subject to the NESHAP to conduct short-term experimental production runs, where the formaldehyde content or other process parameter deviates from levels established during previous performance tests, without conducting additional performance tests. The owner or operator would have to apply for approval from the Administrator or delegated regulatory authority to conduct such experimental production

[1] Proposed method published in the March 31, 1997 **Federal Register** (62 FR 15228).

runs. The application would include information on the nature and duration of the test runs including plans to perform emission testing. Such experimental production runs are important to industry and allow them to develop new products, improve existing products, and determine the effects on product quality and on emissions of process modifications being considered, such as binder reformulation.

During the initial performance test for each cupola using a thermal incinerator to comply with the proposed emission limit for CO and each curing oven using a thermal incinerator to comply with the proposed formaldehyde emission limit, the owner or operator would determine the average operating temperature for each incinerator based on continuous temperature measurements and recorded 15-minute block averages during each of the three test runs. The arithmetic average of the three test runs would be used to monitor compliance. If the owner or operator plans to reduce the average operating temperature below the temperature established during the initial performance test, the rule would require that another performance test be conducted to verify compliance.

Using the results of each test run and information generated during the performance tests (i.e., average melt rate in tph), the owner or operator would then use the equations and procedures in the proposed rule to convert the emission rate of PM, CO, and formaldehyde into the units of the standard.

D. Monitoring Requirements

The EPA identified and analyzed several different options for compliance assurance monitoring of primary emissions from new and existing sources. In general, the options ranged from installation and operation of a continuous emission or opacity monitor to a one-time performance test. The EPA examined each option and numerous combinations of options to select the least-cost alternative suitable for use by small businesses (docket items II–B–34 and 36).

Each owner or operator subject to the proposed NESHAP would submit an operations, maintenance, and monitoring plan which becomes incorporated in the part 70 permit. The plan would include procedures for the proper operation and maintenance of processes and control devices used to comply with the proposed emission limits as well as the corrective actions to be taken when process or control device parameters deviate from allowable levels established during performance testing. The plan would also identify the process or control device parameters that would be monitored to determine compliance, a monitoring schedule, and procedures for keeping records to document compliance.

The proposed monitoring provisions require the owner or operator to measure and record the average hourly cupola production (melt) rate. If the melt rate exceeds, by more than 20 percent, the average established during the initial performance test for more than 5 percent of the total operating time in a 6-month reporting period, the owner or operator would be required to conduct additional performance tests at the higher melt rate to verify compliance. If the performance test results exceed any of the applicable emission standards, the owner or operator would be in violation of those emission standards for the entire period that the melt rate was more than 20 percent above the average level established during the initial performance test.

Under the proposed NESHAP, the owner or operator must install a bag leak detection system for each fabric filter used on a cupola to monitor emissions exiting the PM control system since opacity is not a good indicator of performance at the low, controlled PM levels characteristic of these sources. The bag leak detection system would be equipped with an audible alarm that automatically sounds when an increase in particulate emissions above a predetermined level is detected. The proposed rule requires that the monitor be capable of detecting PM emissions at concentrations of 1.0 milligram per actual cubic meter (0.0004 grains per actual cubic foot) and provide an output of relative or absolute PM emissions. Such a device would serve as an indicator of the performance of the fabric filter and would provide an indication of when maintenance of the fabric filter is needed. An alarm by itself does not indicate noncompliance with the PM limit, but would indicate an increase in PM emissions and trigger an inspection of the fabric filter to determine the cause of the alarm. The owner or operator would initiate corrective actions according to the procedures in their operation, maintenance, and monitoring plan. The owner or operator would be considered out of compliance upon failure to initiate corrective actions within 1 hour of the alarm. If the alarm is activated for more than 5 percent of the total operating time during the 6-month reporting period, the EPA proposes that the owner or operator develop and implement a written quality improvement plan (QIP) consistent with subpart D of the draft approach to compliance assurance monitoring (docket items II–B–38 and II–J–5).[2]

An owner or operator of an affected curing oven would monitor and record the free formaldehyde content of each resin lot and the binder formulation, including the formaldehyde content of each binder batch employed in the manufacture of bonded products. If binder formaldehyde content exceeds the initial performance test level, the owner or operator would be in violation of the formaldehyde emission standard.

For each thermal incinerator used to control emissions from affected cupolas or curing ovens, the proposed monitoring provisions require the owner or operator to continuously measure the incinerator operating temperature and determine and record the temperature in 15-minute block averages. The temperature monitoring device would be installed in the incinerator firebox. This is typically done using a thermocouple (a standard feature on most incinerators) and a strip chart recorder or data logger. Following the initial performance test, the owner or operator would maintain the temperature such that the average temperature in any 3-hour block period does not fall below the average temperature established during the initial performance test. If the average temperature in any 3-hour block period falls below the average established during the initial performance test, the owner or operator would be considered out of compliance with the applicable emission standard. At a minimum, valid 3-hour temperature averages would be required for 75 percent of the operating hours per day for 90 percent of the operating days per 6-month reporting period that the facility is producing mineral wool. The operations, maintenance, and monitoring plan for an incinerator would include procedures to follow in the event of a temperature drop. Examples of procedures that might be included in the plan for incinerators include: (1) Inspection of burner assemblies and pilot sensing devices for proper operation and cleaning; (2) adjusting primary and secondary chamber combustion air; (3) inspecting dampers, fans, blowers, and motors for proper operation; and (4) shutdown procedures.

The owner or operator may modify any of the control device or process parameter levels established during the initial performance tests for compliance

[2] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

monitoring. The proposed NESHAP contains provisions that would allow the owner or operator to change control device and process parameter values from those established during the initial performance tests by conducting additional emission tests to verify compliance at the modified parameter levels.

As required by the NESHAP general provisions (40 CFR part 63, subpart A), each owner or operator also must develop and implement a startup, shutdown, and malfunction plan. The plan would include procedures for the inspection and determination of the cause of a process or control device malfunction and the corrective actions to be followed to remedy the malfunction. Procedures for routine and long-term maintenance of process units and control devices, based on the manufacturer's instructions or recommendations, also would be included.

The EPA believes that these monitoring provisions will provide sufficient information needed to determine compliance or operating problems at the source. At the same time, the provisions are not labor intensive, do not require expensive, complex equipment, and are not burdensome in terms of recordkeeping needs.

E. Notification, Recordkeeping, and Reporting Requirements

The proposed standard would incorporate all requirements of the general provisions (40 CFR part 63, subpart A), except for requirements pertaining to the use of a continuous emission monitor (CEM). The general provisions (40 CFR part 63, subpart A) include requirements for notifications of applicability, date of performance test, and compliance status. The owner or operator also would submit reports of performance test results and semiannual excess emissions, which would include deviations from established parameters. If excess emissions and/or deviations from established parameters are reported, the owner or operator must report quarterly until a request to return the reporting frequency to semiannual is approved. A startup, shutdown, and malfunction plan would also be required. The development and implementation of the plan, including procedures for incinerators and fabric filters, will aid in reducing emissions from these events and in reducing malfunctions. A semiannual startup, shutdown, and malfunction report to EPA is required only when a reportable event occurs and the steps in the plan were not followed. Semiannual excess emission reports are required to ensure that the permitting authority is aware of any potential operating or compliance problems at the source. In addition to the requirements of the general provisions (40 CFR part 63, subpart A), the owner or operator would maintain records of the following, as applicable:

(1) Cupola production (melt) rate;

(2) bag leak detection system alarms, including the date and time, with a brief explanation of the cause of the alarm and the corrective action taken;

(3) free formaldehyde content of each resin lot and the binder formulation, including formaldehyde content, of each binder batch used in the manufacture of bonded products;

(4) incinerator operating temperature, including any period when the average temperature in any 3-hour block period falls below the average temperature established during the initial performance test, with a brief explanation of the cause of the deviation and the corrective action taken; and

(5) identification of the calendar dates for which the minimum number of hours of valid 3-hour incinerator operating temperature averages were not obtained, including reasons for not obtaining sufficient data and a description of the corrective action taken.

The NESHAP general provisions (40 CFR part 63, subpart A) require that records be maintained for at least 5 years from the date of each record. The owner or operator must retain the records onsite for at least 2 years but may retain the records offsite the remaining 3 years. The files may be retained on microfilm, microfiche, on computer disks, or on magnetic tape. Reports may be made on paper or on a labeled computer disk using commonly available and compatible computer software.

IV. Selection of Proposed Standards

A. Selection of Emission Sources

The mineral wool production source category, defined in the EPA report, ''Documentation for Developing the Initial Source Category List,'' defines the emission sources as including, but not limited to: (1) The cupola furnace for melting the mineral charge; (2) a blow chamber in which air and, in some cases, a binder is drawn over the fibers forming them to a screen; (3) a curing oven to bond the fibers; and (4) a cooling area. Because little or no HAP emission data for this source category were available at the beginning of this study, the EPA collected information and data through review of existing literature, a detailed information collection request (ICR) issued to seven facilities (docket items II–D–1, 12, and 14–18), site surveys of 12 facilities (docket items II–B–3, 4, 5, 8–14, 16, and 17), and EPA-funded tests at two facilities (docket items II–A–11, 12, and 13). Based on this information and data, and for the reasons described below, the EPA selected cupolas and curing ovens as the emission sources for control under the proposed rule.

Cupolas are typically large, water-cooled metal vessels with raw material melt capacities that range from 3.6 to 7.3 megagrams per hour (Mg/hr) (4 to 8 tons per hour (tph)). Alternating layers of fuel (coke) and raw materials are loaded into the furnace to melt the mixture of rock and/or slag and additives. Some units also use natural gas at startup to assist in melting the initial mineral charge. As the coke is ignited and burned, the mineral charge is heated to a molten state. Once the initial charge is melted, charging of raw materials continues to the top of the melt, where the raw materials melt and mix as the cupola temperature reaches 1,320°C to 1,650°C (2,400°F to 3,000°F). Mixing is accomplished by natural convection, by gases rising from chemical reactions, and in many operations, by preheated air or oxygen injection into the cupola.

Emissions of PM and a wide variety of HAP metals, including antimony, arsenic, beryllium, cadmium, chromium, manganese, nickel, lead, and selenium, are released from the cupola. Emissions of CO result primarily from the incomplete combustion of carbonaceous materials, such as the coke used as fuel for the cupola. Carbonyl sulfide is formed from the CO passing over the heated coke and/or the blast furnace slag that may contain a high level of sulfur. Emissions from cupolas are typically controlled by fabric filters. In some instances, a thermal incinerator is also used.

In the next stage of the process, fiberization, the molten mineral charge exits the bottom of the cupola into a water-cooled trough and flows onto a fiberization device. Various fiberization methods may be used, but in each process, fibers are formed as the melt is forced off the device by centrifugal force. Nonfiberized material, referred to as ''shot,'' is either incorporated into the fiber to become part of the finished product or is separated from the fiber and becomes a waste product. Shot may account for as much as 50 percent of the weight of mineral wool fibers.

Various chemical agents may be applied to the fiber immediately following fiber formation. An oil typically is applied to nonbonded products to suppress dust and to anneal

the fiber. If the fiber is intended for use as a nonbonded product, no further chemical treatment is necessary and it may be granulated for size, then bagged or baled.

In the manufacture of bonded products, a binder (typically composed of phenol-formaldehyde resin, water, urea, silane, ammonia, and ammonium sulfate) is applied to provide structural rigidity. The binder composition and application rate may vary with product type. The binder may account for up to 10 percent of the weight of the final mineral wool product.

After fiberization and binder and/or oil application, high velocity air streams direct the fiber into a collection chamber where the fiber is drawn down onto a wire mesh conveyor by fans located beneath the conveyor. Fiber collection processes are typically controlled by filterhouses and wet sprays that remove large particulates, but do not remove organic HAPs or other organic pollutants.

For bonded mineral wool products, the binder-coated fiber mat is conveyed to a curing oven which is typically natural gas-fired with temperatures that range from 180°C to 370°C (350°F to 700°F). Curing of the fiber mat occurs as the oven forces hot air through the mat, driving off excess moisture and thermosetting the binder in the product. Gaseous HAP emissions, including formaldehyde and phenol, result from the vaporization of the binder. Curing oven emissions are typically controlled by thermal incinerators.

After curing, the fiber mat is conveyed to a cooling section, where ambient air is forced through the mat to eliminate ''hot spots'' in the product and to facilitate finishing and packaging. Cooling sections have low emissions and are all uncontrolled (docket items II–A–11, 12, and 13).

The EPA selected cupolas and curing ovens as the sources for control under the NESHAP. Nationwide emissions from cupolas (considering current controls) are estimated to be 2,520 Mg/yr (2,780 tpy) of COS and 1.0 Mg/yr (1.1 tpy) of metal HAPs. Nationwide emissions of CO and PM are estimated to be 30,480 Mg/yr (33,600 tpy) and 238 Mg/yr (263 tpy), respectively. The curing oven also is a source of HAP emissions. Nationwide emissions are estimated to be 54 Mg/yr (59 tpy) of formaldehyde and 14 Mg/yr (16 tpy) of phenol.

The EPA did not select fiber collection or cooling processes for control. Because no plants have equipped these sources with HAP controls, no MACT floor technology can be identified. This determination is further explained in section IV.C.2 of this document.

B. Selection of Pollutants

A variety of HAPs are emitted from mineral wool production processes. Emissions of metal HAPs, COS, formaldehyde, and phenol were detected during EPA emission tests of mineral wool production plants (docket items II–A– 11, 12, and 13). All of these pollutants are included on the list of HAPs under section 112(b) of the Act. The EPA proposes to regulate PM, a surrogate for metal HAP emissions, from existing and new cupolas, and CO, a surrogate for COS, from new cupolas. Additionally, the EPA proposes to regulate emissions of formaldehyde, a HAP and also a surrogate for phenol emissions, from existing and new curing ovens.

Large quantities of PM and CO are also emitted from the cupola (docket items II–A– 11, 12, and 13). Emissions test data collected from a cupola that is controlled by a fabric filter indicate a correlation between the removal of nonvolatile HAP metals and the removal of PM (docket item II–A–11). Thus, the EPA proposes PM as a surrogate measure of nonvolatile HAP metals for emission limits for existing and new cupolas.

Emissions test data collected from a cupola that is controlled by an incinerator show that CO destruction correlates with COS destruction (docket items II–A– 12 and 13). Consequently, the EPA proposes to regulate emissions of COS using CO as a surrogate measure for the proposed emission limit for new cupolas.

Emissions of formaldehyde from curing ovens result from volatilization of the binder. Formaldehyde is the most significant HAP emitted from mineral wool production processes in terms of potential carcinogenic hazard. Consequently, the EPA proposes to regulate formaldehyde emissions. Limits are not included in the proposed standard for phenol emissions from the curing oven because when the formaldehyde limit is met through use of an incinerator, phenol emissions are also reduced by the same incinerator. Therefore, formaldehyde is used in the proposed standard as a surrogate for phenol. The use of PM, CO, and formaldehyde as surrogates requires less testing and allows the use of less expensive measurement methods.

C. Selection of Proposed Standards for Existing and New Sources

1. Background

After EPA has identified the specific source categories or subcategories of major sources to regulate under section 112, it must set MACT standards for each category or subcategory. As discussed in section II.B of this document, section 112 establishes a minimum baseline or ''floor'' for standards. After the floor has been determined for a new or existing source in a source category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory. In establishing the standards, the EPA may distinguish among classes, types, and sizes of sources within a category or subcategory. (See section 112(d)(1).)

The next step in establishing MACT standards is traditionally the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be selected. Information about the industry is analyzed to develop model plants for projecting national impacts, including HAP emission reduction levels and cost, energy, and secondary impacts. Regulatory alternatives, which may be different levels of emissions control equal to or more stringent than the floor levels, are then evaluated to select the regulatory alternative that best reflects the appropriate MACT level. The selected alternative may be more stringent than the MACT floor, but the control level selected must be technically achievable. The regulatory alternatives and emission limits selected for new and existing sources may be different because of different MACT floors.

The EPA may consider going ''beyond-the-floor'' to require more stringent controls. Here, the EPA considers the achievable emission reductions of HAPs (and possibly other pollutants that are co-controlled), cost and economic impacts, energy impacts, and other non-air environmental impacts. The objective is to achieve the maximum degree of emissions reduction without unreasonable economic or other impacts. (See section 112(d)(2).)

Under the Act, subcategorization within a source category may be considered when there is enough evidence to demonstrate clearly that there are significant differences among the subcategories. The criteria to consider include process operations (including differences between batch and continuous operations), emission

characteristics, control device applicability, safety, and opportunities for pollution prevention.

Mineral wool production plants and emissions are differentiated by the operations needed to produce bonded or nonbonded products. Plants that manufacture bonded products have phenol/formaldehyde-based binder application, curing oven, and cooling processes, whereas plants that do not manufacture bonded products do not have these additional processes. Therefore, the EPA proposes to subcategorize the mineral wool production source category into plants that manufacture bonded products and those that do not manufacture bonded products.

2. MACT Floor

In establishing the MACT floor, section 112(d)(3) (A) and (B) of the CAA directs EPA to set standards for existing sources that are no less stringent than the ''average'' emission limitation achieved by the best performing 12 percent (for which there are emissions data) where there are more than 30 sources in the category or subcategory or the best performing five sources (for which there are emissions data) where there are fewer than 30 sources. Among the possible meanings for the word ''average'' as the term is used in the CAA, the EPA considered two of the most common. First, ''average'' could be interpreted as the arithmetic mean. The arithmetic mean of a set of measurements is the sum of the measurements divided by the number of measurements in the set. The EPA has determined that the arithmetic mean of the emission limitations achieved by the best performing 12 percent of existing sources (or best five sources where there are fewer than 30 sources) in some cases would yield an emission limitation that fails to correspond to the emission limitation achieved by any particular technology. In such cases, EPA would not select this approach. The word ''average'' could also be interpreted as the median emission limitation value. The median is the value in a set of measurements below and above which there are an equal number of values (when the measurements are arranged in order of magnitude). This approach identifies the emission limitation achieved by those sources within the top 12 percent (or top five where there are fewer than 30 sources), arranges those emissions limitations in order of magnitude, and the control level achieved by the median source is selected. Either of these two approaches could be used in developing standards for different source categories. The ''median'' approach was used in these proposed standards. For each source type, the median technology represented by the five best-controlled sources was selected as the MACT floor. A source having control technology representative of the MACT floor was then tested in order to determine an appropriate emission limitation.

Within the subcategory of plants that manufacture bonded products, there are 15 cupolas. Nine of these cupolas are controlled by fabric filters, three by cyclones, two by thermal incinerators and fabric filters, and one by a cyclone and fabric filter. Because there are less than 30 cupolas, the MACT floor is represented by the average, or median, of the best performing five sources. The MACT floor for existing cupolas within this subcategory is represented by a fabric filter. A fabric filter representative of this MACT floor is a pulse-jet type with nylon fiber filter material, an air-to-cloth ratio of about 0.9 cubic meter per minute/square meter [3 standard cubic feet per minute/square foot (scfm/ft^2)] and a pressure drop of approximately 15 centimeters (6 inches) of water column. Emissions tests were conducted on a cupola controlled by a fabric filter selected as representative of the floor control technology.

Of the six curing ovens also in this subcategory, four are controlled by thermal incinerators and two are uncontrolled. Because there are fewer than 30 curing ovens, the MACT floor is represented by the average, or median, of the best performing five sources. The MACT floor for existing curing ovens is represented by a thermal incinerator. An incinerator representative of this MACT floor has a combustion temperature of about 650°C (1,200°F), and a gas residence time of approximately 1 second. A curing oven with an incinerator representative of the floor control technology was tested. Thus, a fabric filter for existing cupolas and a thermal incinerator for existing curing ovens are the MACT floor technologies for this subcategory.

Within the subcategory of plants that do not manufacture bonded products there are 21 cupolas. Fifteen of these cupolas are controlled by fabric filters, two by incinerators and fabric filters, two by cyclones, and two by cyclones and fabric filters. Again, because there are less than 30 cupolas, the MACT floor is represented by the average, or median, of the best-performing five sources. The MACT floor is represented by a fabric filter. A fabric filter representative of the MACT floor within this subcategory has the same parameters as the fabric filter that represents the MACT floor for existing cupolas within the subcategory of plants that manufacture bonded products.

The MACT floors for new cupolas and curing ovens are based on the best-controlled sources. For new cupolas, MACT is a thermal incinerator and fabric filter. Because the fabric filter that represents the MACT floor for existing cupolas also represents the best control for PM and particulate metal HAPs for new cupolas, the fabric filter parameters remain the same. A thermal incinerator representative of MACT for new cupolas operates at approximately 815°C (1,500°F), and has a gas residence time of about 1 second. Because the MACT floor for existing curing ovens, an incinerator operating at 650°C (1,200°F) with a gas residence time of 1 second, also represents the best-controlled source, MACT for new curing ovens is the same as the MACT floor for existing curing ovens.

The EPA considered requiring thermal incinerators as beyond-the-MACT-floor control for existing cupolas. To comply with this requirement, 32 cupolas would have to add incinerators at estimated costs ranging from $218,300/yr for 3.6 Mg/hr (4 tph) cupolas to $349,700/yr for 7.3 Mg/yr (8 tph) cupolas. As a result of the addition of incinerators, COS emissions would be reduced by approximately 52 Mg/yr (57 tpy) for each 3.6 Mg/hr (4 tph) cupola and 104 Mg/yr (114 tpy) for each 7.3 Mg/hr (8 tph) cupola. In addition, CO emissions would be reduced by 628 Mg/yr (692 tpy) and 1,256 Mg/yr (1,384 tpy) for each 3.6 Mg/hr (4 tph) and 7.3 Mg/hr (8 tph) cupola, respectively. However, secondary emissions of SO_2 and NO_X would result from the natural gas combustion of sulfur-bearing raw materials and fuel. The increased emissions would range from 55 Mg/yr (61 tpy) to 112 Mg/yr (123 tpy) for SO_2, and 42 Mg/yr (46 tpy) to 83 Mg/yr (91 tpy) for NO_X, for each 3.6 Mg/hr (4 tph) and 7.3 Mg/hr (8 tph) cupola, respectively.

Under this beyond-the-MACT-floor control option, price increases are estimated to range from 5.94 percent to 6.98 percent, resulting in quantity adjustments of –4.75 and –8.38 percent, respectively. Additionally, loss of 87 employees is estimated. Facility unit-cost increases would be very significant. Two facilities would have unit-cost increases of more than 20 percent (one of 27 percent for bonded products and one of 22 percent for nonbonded products). Three other facilities would have unit-cost increases for at least one product of over ten percent, and an additional five facilities would have increases of over five percent. Seven facilities are projected to have control

costs greater than their increase in revenue due to the projected increase in market prices. This portion of the control costs that the facilities are projected to have to absorb ranges from 16 percent of before tax net income (B.T.N.I.) for one facility to 155 percent of B.T.N.I. for another facility. The projected market quantity decreases and changes in capital structure indicate that the costs associated with the beyond-the-floor control option would be expected to cause one or two facility closures. After assessing this information, the EPA concluded that the costs of increased control given the increase in secondary emissions do not justify beyond-the floor control for existing cupolas (docket items II–B–34 and 35).

As discussed earlier, no MACT floor could be determined for fiber collection and cooling operations. The EPA considered requiring controls that reduce organic HAP emissions from fiber collection and cooling processes by going beyond the floor. The beyond-the-floor control technology would be thermal incineration for both processes. Six fiber collection and cooling operations would be required to add incinerators ranging in cost from $1.75 million/yr to $2.85 million/yr for each fiber collection process, depending upon the process size, and about $400,000/yr for each cooling operation. Assuming an incinerator control efficiency of 80 percent, organic HAP emissions (formaldehyde, phenol, methanol) from fiber collection processes would be reduced by about 29 Mg/yr (32 tpy) for each 3.6 Mg/yr (4 tph) process and 59 Mg/yr (65 tpy) for each 7.3 Mg/yr (8 tph) process. Cooling process organic emissions (formaldehyde) would be reduced by approximately 0.4 Mg/yr (0.4 tpy) and 0.6 Mg/yr (0.7 tpy) for 3.6 Mg/yr (4 tph) and 7.3 Mg/yr (8 tph) processes, respectively. NO_X emissions from both processes would result from the combustion of natural gas used to operate the incinerator. Upon consideration of this information, the EPA concluded that the emissions reductions associated with controls beyond the floor do not offset the costs (docket items II–B–30 and 32).

3. Emission Limits

As part of this rulemaking, the EPA conducted comprehensive emission tests to characterize uncontrolled and controlled emissions from the various processes and to evaluate the effectiveness of existing control devices. Sources tested were those selected as representative of MACT. Using the test data, the EPA established the proposed emission limits for existing and new sources (docket items II–A–11, 12, and 13).

Because a fabric filter that represents the MACT floor for existing cupolas in the subcategory of plants that manufacture bonded products has the same design as a fabric filter that represents the MACT floor in the subcategory of plants that do not manufacture bonded products, the emission limits proposed for PM within each subcategory are the same. The emission limit proposed for PM for existing cupolas, 0.03 kg/Mg (0.06 lb/ton) of melt, is based on test results from a cupola equipped with a fabric filter, where PM emissions averaging 0.02 kg/Mg (0.04 lb/ton) of melt were measured. Because MACT for existing and new cupolas is the same, the EPA proposed the same PM limit, 0.03 kg/Mg (0.06 lb/ton) of melt, for new cupolas. In proposing the same PM emission limit for existing and new cupolas, the EPA recognizes that fabric filters used on existing cupolas are already efficient at controlling PM and particulate metal HAP emissions and there is no technology that has been documented to be more efficient.

The proposed CO limit for new cupolas, 0.05 kg/Mg (0.1 lb/ton) of melt, is based on test results from a cupola that is equipped with an incinerator and fabric filter where CO emissions averaging 0.035 kg/Mg (0.07 lb/ton) of melt were measured after control. The measured average efficiency for CO reduction across the control system was 99.6 percent. The owner or operator may alternatively meet a performance standard of 99 percent removal of CO across the control system. This alternative is offered because other cupolas may have a different inlet concentration and therefore may not meet the 0.05 kg/Mg (0.1 lb/ton) of melt numerical limit.

The emission limit proposed for formaldehyde for existing and new curing ovens, 0.03 kg/Mg (0.06 lb/ton) of melt, is based on test results from a curing oven equipped with an incinerator where formaldehyde emissions averaging 0.02 kg/Mg (0.04 lb/ton) of melt were measured. The measured average efficiency for formaldehyde reduction across the control system was 80 percent. The owner or operator may alternatively meet a performance standard of 80 percent removal of formaldehyde across the control system because other ovens may have higher inlet concentrations and therefore may not meet the numerical emission limit.

V. Impacts of Proposed Standards

A. Air Quality Impacts

Nationwide metal HAP and COS emissions from mineral wool production cupolas are estimated to be 2,522 Mg/yr (2,780 tpy) at the current level of control. Existing PM emissions are estimated to be 239 Mg/yr (263 tpy). Most of the existing cupolas are already well-controlled for PM and metal HAPs. Under the proposed NESHAP, it is expected that fabric filters would be added to the five cupolas currently controlled by cyclones, resulting in reductions in nationwide metal HAP emissions of 0.91 Mg/yr (1.0 tpy) and PM emissions of 186 Mg/yr (205 tpy). Formaldehyde and phenol emissions from existing curing ovens are estimated to be 54 Mg/yr (59 tpy) and 14 Mg/yr (16 tpy), respectively. Nationwide emissions of formaldehyde and phenol would be reduced by about 30 Mg/yr (34 tpy) and 14 Mg/yr (16 tpy), respectively, from the addition of thermal incinerators to two currently uncontrolled curing ovens. Because there is currently an estimated 55 percent excess capacity in the mineral wool production industry, the EPA does not anticipate any new cupolas or curing ovens within the next 5 years. If, however, a new cupola with a 7.3 Mg/hr (8 tph) capacity was built, COS and CO emissions would be reduced by 104 Mg/yr (114 tpy) and 1,256 Mg/yr (1,384 tpy), respectively, as a result of the required addition of a thermal incinerator.

Based on analyses of model processes, metal HAP and PM emissions from a cyclone-controlled small sized [3.6 Mg/hr (4 tph) melt capacity] cupola would be reduced by an estimated 24 Mg/yr (27 tpy). Estimated reductions of metal HAP and PM emissions from a large-sized [7.3 Mg/hr (8 tph) melt capacity] cupola similarly controlled would be 50 Mg/yr (55 tpy). Emissions of formaldehyde and phenol from an uncontrolled curing oven associated with a small-sized cupola would be reduced by approximately 10 Mg/yr (11 tpy) and 5 Mg/yr (5 tpy), respectively. Formaldehyde and phenol emissions from an uncontrolled curing oven associated with a large-sized cupola would be reduced by an estimated 20 Mg/yr (22 tpy) and 10 Mg/yr (11 tpy), respectively (docket items II–B–18 and 37).

Secondary emissions of NO_X from incinerator-controlled curing ovens are formed as a result of combustion of natural gas. Emissions of NO_X from the affected sources are predicted to increase by about 124 Mg/yr (137 tpy)

from a baseline level of about 248 Mg/yr (273 tpy) (docket item II–B–35).

B. Nonair Environmental and Health Impacts

Because the air pollution control devices associated with the control systems for mineral wool production processes are of a dry type (fabric filters and thermal incinerators), there are no water pollution impacts resulting from their use. Solid waste generated by fabric filter systems in the form of ash is disposed of by landfilling. With the addition of fabric filter control systems to five cupolas, the amount of solid waste is expected to increase by about 350 Mg/yr (390 tpy) from the current level of 24,800 Mg/yr (27,300 tpy) nationwide.

Reducing HAP levels may help lower occupational exposure levels and site-specific levels of PM and VOCs. Implementing the proposed equipment requirements may increase noise levels in the plant area.

Operating fabric filters and thermal incinerators requires the use of electrical energy to operate fans that move the gas stream. The additional electrical energy requirements are estimated to be 788,000 kilowatt hours per year (kWh/yr) for five fabric filters to be added to existing cupolas and 431,000 kWh/yr for two incinerators to be added to existing curing ovens. Thermal incinerators also may use natural gas as fuel. An additional 126,000 kilocubic feet per year (kft^3/yr) of natural gas would be required for the two incinerators that would be added to curing ovens.

C. Cost and Economic Impacts

The total nationwide capital and annualized costs for existing cupolas under the proposed NESHAP are estimated to be $1.5 million and $608,900/yr, respectively. These costs represent the addition of fabric filters to five cupolas but do not include the monitoring costs of bag leak detection systems required on all affected cupolas. Capital and annualized costs for a bag leak detection system are estimated at $9,100 and $1,800/yr per affected cupola, respectively.

The total nationwide capital and annualized costs of complying with the proposed NESHAP for existing curing ovens are estimated at $795,800 and $641,600/yr, respectively. These costs represent the addition of thermal incinerators to two curing ovens.

Under the proposed NESHAP, market-level price increases are estimated to range from 0.49 percent to 2.13 percent, resulting in quantity adjustments of -0.59 percent and -1.71 percent, respectively. The decreases in quantity demanded may lead to the loss of approximately nine jobs. Facility unit-cost increases would be less than one percent for all but three of the facilities. The highest unit-cost increase would be 6.3 percent for one facility for nonbonded products. These three facilities are also the only facilities projected to have control costs greater than their increase in revenue due to the projected increase in market prices. This portion of the control costs that the three facilities are projected to have to absorb would be 38 percent of B.T.N.I. for one facility and 29 percent for another facility. The third facility does not have positive B.T.N.I. in the pre-regulation baseline, so an estimate of a percentage change in B.T.N.I. is not meaningful (the unit cost increase for this facility is 3.9 percent for bonded products and 0.1 percent for nonbonded products). Neither the projected market quantity decreases or changes in capital structure indicate that the costs associated with the MACT floor control option would be expected to cause facility closure. However, if a facility would be closing in the absence of a regulation, the control costs might result in an earlier facility closure.

VI. Public Participation

The EPA seeks full public participation in arriving at its final decisions and encourages comments on all aspects of this proposal from all interested parties. Full supporting data and detailed analyses should be submitted with comments to allow the EPA to make maximum use of the comments. All comments should be directed to the Air and Radiation Docket and Information Center, Docket No. A–95–33 (see **ADDRESSES**). Comments on this document must be submitted on or before the date specified in **DATES**.

Commentors wishing to submit proprietary information for consideration should clearly distinguish such information from other comments and clearly label it ''Confidential Business Information'' (CBI). Submissions containing such proprietary information should be sent directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Mary Johnson, c/o Ms. Melva Toomer, U.S. EPA Confidential Business Information Manager, OAQPS (MD–13); Research Triangle Park, NC 27711. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the submission may be made available to the public without further notice to the commenter.

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Act.)

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A–95–33 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

Electronic comments can be sent directly to EPA's Air and Radiation Docket and Information Center at: ''A-and-R-Docket@epamail.epa.gov''. 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 disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–95–33). Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

B. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Act. If a public hearing is requested and held, the EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information

will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held. Persons wishing to present oral testimony or to inquire as to whether or not a hearing is to be held should contact the EPA (see **ADDRESSES**). To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each.

Any member of the public may file a written statement on or before July 7, 1997. Written statements should be addressed to the Air and Radiation Docket and Information Center (see **ADDRESSES**), and refer to Docket No. A–95–33. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or mailed upon request, at the Air and Radiation Docket and Information Center.

C. Executive Order 12866

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this regulatory action is not ''significant'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, the EPA involved State regulatory experts in the development of this proposed rule. No tribal governments are believed to be affected by this proposed rule. State and local governments are not directly impacted by the rule, i.e., they are not required to purchase control systems to meet the requirements of the rule. However, they will be required to implement the rule; e.g., incorporate the rule into permits and enforce the rule. They will collect permit fees that will be used to offset the resources burden of implementing the rule. Comments have been solicited from States and have been considered in the rule development process. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and the EPA intends to fully consider these comments in the development of the final rule.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA 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, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The EPA has determined that 7 of the 10 firms that potentially would be subject to the proposed standards are small firms. The EPA has met with all of these small firms and their trade association. They have been fully involved in this rulemaking and their concerns and comments have been considered in the development of this proposed rule. Also, the EPA Office of Asbestos and Small Business Ombudsman, Office of Regulatory Management and Information, participated in the development of the proposed NESHAP as a Work Group member to ensure that the requirements of the proposed standards were examined for potential adverse economic impacts. The economic impacts are summarized in section V.C of this document and in the economic impact analysis (docket item II–A–16).

Five of the 7 small firms would incur emission control costs that are less than 0.1 percent of sales, while one firm would incur control costs estimated to be 2.4 percent of the firm's sales. An estimate of control cost as a percentage of sales cannot be determined for one firm because they began producing mineral wool within the last year and sales information is not available. It is believed, however, that the emission control costs that would be incurred by

this firm would be in excess of 3 percent. Thus, this rule affects only a small number of small businesses. Further, most of the small businesses impacted by this rule will experience minimal increases in costs. Only two small businesses are projected to incur costs exceeding 0.1 percent of sales. Based on this information, the EPA has concluded that this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

In developing these proposed standards, the EPA has exercised the maximum degree of flexibility in minimizing impacts on small businesses through subcategorization of the source category. Also, these proposed standards, which are based on MACT-floor level control technology, reflect the minimum level of control allowed under the Act.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1799.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW., Washington, DC 20460, or by calling (202) 260–2740.

The proposed information requirements include the notification, recordkeeping, and reporting requirements of the NESHAP general provisions (40 CFR part 63, subpart A), which are mandatory for all owners or operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the Act (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B. The proposed rule does not require any notifications or reports beyond those required by the general provisions (40 CFR part 63, subpart A). Proposed subpart DDD does require additional records of specific information needed to determine compliance with the rule. These include records of: (1) Cupola production (melt) rate; (2) any bag leak detection system alarm, including the date and time, with a brief explanation of the cause of the alarm and the corrective action taken; (3) free formaldehyde content of each resin lot and the binder formulation, including formaldehyde content of each binder batch used in the manufacture of bonded products; and (4) incinerator operating temperature, including any period when the average temperature in any 3-hour block period falls below the average level established during the performance test.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the rule) is estimated to be 6,107 labor hours per year at a total annual cost of $196,206. This estimate includes a one-time performance test and report (with repeat tests where needed); one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports of any event where the procedures in the plan were not followed; semiannual excess emissions reports; notifications; and recordkeeping. Total capital costs associated with monitoring requirements over the 3-year period of the ICR is estimated at $309,400; this estimate includes the capital and startup costs associated with installation of a bag leak detection system for each cupola at a plant subject to the standard. The total operation and maintenance cost is estimated at $17,000/yr.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137), 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after May 8, 1997, a comment to OMB is best assured of having its full effect if OMB receives it by June 9, 1997. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. Pollution Prevention Act

During the development of these standards, the EPA explored opportunities to eliminate or reduce emissions through the application of new processes or work practices. By reducing or eliminating the formaldehyde and phenol in binder formulations, HAPs from the curing process would be reduced or eliminated without the use of air pollution control equipment. Alternative binders have been investigated by various mineral wool producers. Acceptable alternatives have been difficult to identify due to: the higher costs of the potential alternative binders; the problems associated with requalification of altered products to meet required product specifications; the production process changes necessitated by the use of modified binders; and the concerns regarding potential toxicity of new binder ingredients. Thus, at this time an acceptable alternative binder has not been commercially demonstrated.

I. Clean Air Act

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Mineral wool production,

Recordkeeping and reporting requirements.

Dated: April 29, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart DDD to read as follows:

Subpart DDD—National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production

Sec.

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Subpart DDD—National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production

§ 63.1175 Applicability.

(a) The requirements of this subpart apply to the owner or operator of each mineral wool production facility that is a major source as defined in § 63.2 of the general provisions in subpart A of this part.

(b) The requirements of this subpart apply to emissions of hazardous air pollutants, as measured according to the methods and procedures in this subpart, emitted from each new, existing, or reconstructed cupola and curing oven at a mineral wool production facility subject to this subpart.

§ 63.1176 Definitions.

Terms used in this subpart are defined in the Clean Air Act as amended (the Act), in § 63.2 of the general provisions in subpart A of this part, or in this section as follows:

Bag leak detection system means a monitoring device for a fabric filter that identifies an increase in particulate matter emissions resulting from a broken filter bag or other malfunction and sounds an alarm.

Bonded product means mineral wool to which a hazardous air pollutant-based binder (e.g., phenol, formaldehyde) has been applied.

CO means, for the purposes of this subpart, emissions of carbon monoxide that serve as a surrogate for emissions of carbonyl sulfide, a compound included on the list of hazardous air pollutants in section 112 of the Act.

Cupola means a large, water-cooled metal vessel which charges a mixture of fuel, rock and/or blast furnace slag, and additives; as the fuel is burned, the charged mixture is heated to a molten state for subsequent processing to form mineral wool.

Curing oven means a chamber in which heat is used to thermoset a binder on the mineral wool fiber used in the manufacture of bonded products.

Fabric filter means an air pollution control device used to capture particulate matter by filtering gas streams through fabric bags; also known as a baghouse.

Formaldehyde means, for the purposes of this subpart, emissions of formaldehyde that serve as a surrogate for organic compounds included on the list of hazardous air pollutants in section 112 of the Act, including but not limited to phenol.

Hazardous air pollutant means those chemicals and their compounds that are included on the list of hazardous air pollutants in section 112(b) of the Clean Air Act.

Incinerator means an air pollution control device that uses controlled flame combustion to convert combustible materials to noncombustible gases.

Melt means raw materials, excluding coke, that are charged into the cupola, heated to a molten state, and discharged to the fiber forming and collection process.

Melt rate means the mass of molten material discharged from a single cupola for use in the production of mineral wool over a specified time period.

Mineral wool means a fibrous glassy substance made from natural rock (such as basalt), blast furnace slag, or a mixture of rock and slag; it may be used as a thermal or acoustical insulation material or in the manufacturing of other products to provide structural strength, sound absorbency, or fire resistance.

PM means, for the purposes of this subpart, emissions of particulate matter that serve as a surrogate for metals (in particulate or volatile form) on the list of hazardous air pollutants in section 112 of the Act, including but not limited to: antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium.

§ 63.1177 Emission standards for cupolas and curing ovens.

(a) On and after the date the performance test is conducted or required to be conducted under § 63.7 of the general provisions in subpart A of this part and § 63.1179 of this subpart, whichever date is earlier, the owner or operator shall not discharge or cause to be discharged into the atmosphere any gases from an existing cupola in excess of 0.03 kilogram (kg) of particulate matter (PM) per megagram (Mg) (0.06 pound [lb] of PM per ton) of melt.

(b) On and after the date the performance test is conducted or required to be conducted under § 63.7 of the general provisions in subpart A of this part and § 63.1179 of this subpart, whichever date is earlier, the owner or operator shall not discharge or cause to be discharged into the atmosphere any gases from a new or reconstructed cupola in excess of:

(1) 0.03 kg of PM per Mg (0.06 lb of PM per ton) of melt; and

(2)(i) 0.05 kg of carbon monoxide (CO) per Mg (0.10 lb of CO per ton) of melt; or

(ii) The owner or operator shall reduce uncontrolled CO emissions by at least 99 percent.

(c)(1) On and after the date the performance test is conducted or required to be conducted under § 63.7 of the general provisions in subpart A of this part and § 63.1179 of this subpart, whichever date is earlier, the owner or operator shall not discharge or cause to be discharged into the atmosphere any gases from a new, existing, or reconstructed curing oven in excess of 0.03 kg of formaldehyde per Mg (0.06 lb of formaldehyde per ton) of melt; or

(2) The owner or operator shall reduce uncontrolled formaldehyde emissions by at least 80 percent.

§ 63.1178 Monitoring requirements.

(a) The owner or operator shall install, calibrate, maintain, and operate a device that measures and records the average hourly production (melt) rate for each cupola:

(1) Following the performance test required in § 63.1179 of this subpart, if the melt rate exceeds the average melt rate established during the performance test by more than 20 percent for more than 5 percent of the total operating time in a 6-month reporting period, the

owner or operator shall conduct a repeat performance test at the higher melt rate to demonstrate compliance; and

(2) If results from the repeat performance test exceed any of the applicable emission standards, the owner or operator is in violation of the emission standard(s) for the entire period that the melt rate was more than 20 percent above the average level established during the previous performance test.

(b) The owner or operator shall install, calibrate, maintain, and continuously operate a bag leak detection system for each cupola fabric filter control system:

(1) The bag leak detection system must be capable of detecting PM emissions at concentrations of 1.0 milligram per actual cubic meter (0.00044 grains per actual cubic foot) and greater;

(2) The bag leak detection system sensor must provide output of relative or absolute PM emissions;

(3) The bag leak detection system must be equipped with an alarm system that will sound when an increase in PM emissions over a preset level is detected;

(4) For positive pressure fabric filters, a bag leak detector must be installed in each fabric filter compartment or cell. If a negative pressure or induced air fabric filter is used, the bag leak detector must be installed downstream of the fabric filter. Where multiple bag leak detectors are required (for either type of fabric filter), the system instrumentation and alarm may be shared among detectors;

(5) The bag leak detection system shall be installed, operated, calibrated, and maintained in a manner consistent with available guidance from the U.S. Environmental Protection Agency or, in the absence of such guidance, the manufacturer's written specifications and recommendations;

(6) Calibration of the system shall, at minimum, consist of establishing the relative baseline output level by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time;

(7) The owner or operator shall not adjust the range, averaging period, alarm set points, or alarm delay time after the performance test required in § 63.1179 of this subpart without written approval from the Administrator;

(8) Following the performance test, if the alarm on a bag leak detection system is triggered, the owner or operator shall inspect the control device to determine the cause of the deviation and initiate within 1 hour of the alarm the corrective actions specified in the operation, maintenance, and monitoring plan. Failure to initiate the corrective action procedures within 1 hour of the alarm is a violation of the PM emission standard; and

(9) If the bag leak detection system alarm is activated for more than 5 percent of the total operating time during a 6-month reporting period, the owner or operator shall develop and implement a written quality improvement plan consistent with subpart D of the draft approach to compliance assurance monitoring.[1]

(c) The owner or operator shall monitor and record the free formaldehyde content of each resin lot and the binder formulation, including the formaldehyde content of each binder batch used in the manufacture of bonded products:

(1) Following the performance test required in § 63.1179 of this subpart, the owner or operator shall maintain the formaldehyde content of each binder formulation at or below the level established during the test; and

(2) If the binder formaldehyde content exceeds the level established during the performance test, the owner or operator is in violation of the formaldehyde emission standard.

(d) The owner or operator shall install, calibrate, maintain, and operate a device that continuously measures the operating temperature in the firebox of each thermal incinerator used to control process emissions from a cupola or curing oven and determines and records the temperature in 15-minute block averages:

(1) Following the performance test required in § 63.1179 of this subpart, the owner or operator shall maintain the operating temperature of each incinerator such that the average operating temperature in any 3-hour block period does not fall below the average temperature established during the performance test;

(2) Operation of an incinerator such that the average operating temperature in any 3-hour block period falls below the average level established during the performance test is a violation of the applicable emission standard in § 63.1177 (b)(2) or (c) of this subpart; and

(3) At a minimum, valid 3-hour temperature averages shall be obtained for 75 percent of the operating hours per day for 90 percent of the operating days per 6-month reporting period that the facility is producing mineral wool.

(e) All monitoring systems and equipment must be installed, operational, and properly calibrated prior to the performance test required by § 63.1179 of this subpart.

(f) For all control device and process operating parameters measured during the performance test required by § 63.1179 of this subpart, the owner or operator of cupola or curing ovens subject to this subpart may change the levels established during the performance test if additional performance testing is conducted to verify that, at the new control device or process parameter levels, the owner or operator is in compliance with the emission standards in § 63.1177 of this subpart.

§ 63.1179 Performance test requirements.

(a) *Compliance dates.* The owner or operator subject to the provisions of this subpart shall comply with the requirements of this subpart by no later than:

(1) [Date 3 years after effective date of the final rule] for an existing cupola or curing oven;

(2) [Date 4 years following the effective date of the final rule] for an existing source that is granted an extension by the applicable regulatory authority under section 112(i)(3)(B) of the Act; or

(3) Upon startup, for a new or reconstructed cupola or curing oven.

(b) *Performance test.* The owner or operator of each cupola or curing oven subject to this subpart shall conduct a performance test to demonstrate compliance with each of the applicable emission standards in § 63.1177 of this subpart according to the procedures in the general provisions in subpart A of this part and in this paragraph (b):

(1) Using the test methods and procedures in § 63.1180 of this subpart, the owner or operator shall measure emissions of PM (for each existing cupola) or PM and CO (for each new or reconstructed cupola) and emissions of formaldehyde from each existing, new, or reconstructed curing oven at the outlet of the control device (if complying with a numerical emission limit), or at the inlet and outlet of the control device (if complying with a percent reduction limit). The owner or operator shall compute and record the average of at least three runs and use the applicable equations in paragraph (b)(6) of this section to determine compliance with the applicable emission limit in the units of the standard. Compliance is demonstrated when the emission rate of the pollutant is equal to or less than each of the applicable emission limits in § 63.1177 of this subpart;

(2) The owner or operator of each cupola and curing oven shall monitor and record the amount of raw materials,

[1] Proposed rule published in the August 13, 1996 **Federal Register** (61 FR 41991).

excluding coke, charged into and melted in each cupola during each test run and determine the average hourly melt rate for each test run. The arithmetic average of the melt rate for the three test runs, plus 20 percent, shall be used to monitor compliance. If the owner or operator plans to operate above the average melt rate established during the performance test by more than 20 percent for more than 5 percent of the total operating time in a 6-month reporting period, another performance test at the higher melt rate shall be conducted;

(3) The owner or operator shall conduct the performance test for each curing oven during the manufacture of the product using the binder formulation with the highest formaldehyde content. During the performance test, the owner or operator shall record the free formaldehyde content of the resin(s) used during the test and the binder formulation(s), including the formaldehyde content of the binder, used during the test. If the owner or operator plans to use a binder with a higher formaldehyde content than that recorded during the performance test, another performance test of the curing oven during use of the binder with a higher formaldehyde content shall be conducted;

(4) With prior approval from the Administrator or delegated regulatory authority, an owner or operator of a curing oven regulated by this subpart may conduct short-term experimental production runs using binder formulations or other process modifications where the formaldehyde content or other process parameter values deviate from those established during previous performance tests without first conducting additional performance tests. An application to perform an experimental short-term production run shall include the following information:

(i) The purpose of the experimental run;

(ii) The affected curing oven;

(iii) How the established process parameters will deviate from previously approved levels;

(iv) The duration of the test run;

(v) The date and time of the test run; and

(vi) A description of any emission testing to be performed during the test;

(5) During the performance test, the owner or operator shall continuously measure the operating temperature for each cupola or curing oven incinerator, determine and record the 15-minute block average temperatures, and determine the arithmetic average of the recorded temperature measurements for each test run. The arithmetic average of the three test runs shall be used to monitor compliance. If the owner or operator plans to reduce the operating temperature below the temperature established during the performance test, another performance test at the reduced operating temperature shall be conducted; and

(6) Using the results of the emissions test, the owner or operator shall use Equation 1 to determine compliance with the PM emission standard for the cupola, Equation 2 to determine compliance with a numerical emission limit for formaldehyde or CO, and/or Equation 3 to determine compliance with the percent reduction performance standard for formaldehyde or CO:

$$E = \frac{C \times Q \times K_1}{P} \qquad \text{(Eq. 1)}$$

where:

E=Emission rate of PM, kg/Mg (lb/ton) of melt;

C=Concentration of PM, g/dscm (gr/dscf);

Q=Volumetric flow rate of exhaust gases, dscm/hr (dscf/hr);

K_1=Conversion factor, 1 kg/1,000 g (1 lb/7,000 gr); and

P=Average melt rate, Mg/hr (ton/hr).

$$E = \frac{C \times MW \times Q \times K_1 \times K_2}{K_3 \times P \times 10^6} \qquad \text{(Eq. 2)}$$

where:

E=Emission rate of measured pollutant, kg/Mg (lb/ton) of melt;

C=Measured volume fraction of pollutant, ppm;

MW=Molecular weight of measured pollutant, g/g-mole: CO=28.01, Formaldehyde=30.03;

Q=Volumetric flow rate of exhaust gases, dscm/hr (dscf/hr);

K_1=Conversion factor, 1 kg/1,000 g (1 lb/453.6 g);

K_2=Conversion factor, 1,000 L/m^3 (28.3 L/ft^3);

K_3=Conversion factor, 24.45 L/g-mole; and

P=Average melt rate, Mg/hr (ton/hr).

$$\%R = \frac{L_i - L_o}{L_i} \times 100 \qquad \text{(Eq. 3)}$$

where:

%R=Percent reduction, or collection efficiency of the control device;

L_i=Inlet loading of pollutant, kg/Mg (lb/ton); and

L_o=Outlet loading of pollutant, kg/Mg (lb/ton).

§ 63.1180 Test methods and procedures.

(a) The owner or operator shall use the following methods to determine compliance with the applicable emission standards:

(1) Method 1 in appendix A to part 60 of this chapter for the selection of the sampling port location and number of sampling ports;

(2) Method 2 in appendix A to part 60 of this chapter for stack gas velocity and volumetric flow rate;

(3) Method 3 or 3A in appendix A to part 60 of this chapter for oxygen (O_2) and carbon dioxide (CO_2) for diluent measurements needed to correct the concentration measurements to a standard basis;

(4) Method 4 in appendix A to part 60 of this chapter for moisture content of the stack gas;

(5) Method 5 in appendix A to part 60 of this chapter for the concentration of PM. Each run shall consist of a minimum run time of 2 hours and a minimum sample volume of 2.5 dscm (90 dscf);

(6) Method 10 in appendix A to part 60 of this chapter for the concentration of CO, using the continuous sampling option described in section 7.1.1 of the method. Each run shall consist of a minimum run time of 1 hour;

(7) Method 318[2] in appendix A to this part for the concentration of formaldehyde or CO; and

(8) Method contained in appendix A of this subpart for the determination of the free formaldehyde content of resin.

(b) The owner or operator may use an alternative method subject to approval by the Administrator.

§ 63.1181 Notification, recordkeeping, and reporting requirements.

(a) *Notifications.* As required by § 63.9 (b) through (h) of the general provisions in subpart A of this part, the owner or operator shall submit the following written initial notifications to the Administrator:

(1) Notification for an area source that subsequently increases its emissions such that the source is a major source subject to the standard;

(2) Notification that a source is subject to the standard, where the initial startup is before the effective date of the standard;

(3) Notification that a source is subject to the standard, where the source is new or has been reconstructed, the initial startup is after the effective date of the standard, and for which an application for approval of construction or reconstruction is not required;

(4) Notification of intention to construct a new major source or reconstruct a major source; of the date

[2] Proposed method published in the March 31, 1997 **Federal Register** (62 FR 15228).

construction or reconstruction commenced; of the anticipated date of startup; of the actual date of startup, where the initial startup of a new or reconstructed source occurs after the effective date of the standard, and for which an application for approval of construction or reconstruction is required (See § 63.9(b) (4) and (5).);

(5) Notification of special compliance obligations;

(6) Notification of performance test; and

(7) Notification of compliance status.

(b) *Performance test report.* As required by § 63.10(d)(2) of the general provisions in subpart A of this part, the owner or operator shall report the results of the initial performance test as part of the notification of compliance status required in paragraph (a)(7) of this section.

(c) *Startup, shutdown, and malfunction plan and reports.* The owner or operator shall develop and implement a written plan as described in § 63.6(e)(3) of the general provisions in subpart A of this part that contains specific procedures to be followed for operating the source and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and control systems used to comply with the standard. The owner or operator shall also keep records of each event as required by § 63.10(b) of the general provisions in subpart A of this part and record and report if an action taken during a startup, shutdown, or malfunction is not consistent with the procedures in the plan as described in § 63.6(e)(3). In addition to the information required in § 63.6(e)(3), the plan shall include:

(1) Procedures to determine and record the cause of the malfunction and the time the malfunction began and ended;

(2) Corrective actions to be taken in the event of a malfunction of a process or control device, including procedures for recording the actions taken to correct the malfunction or minimize emissions; and

(3) A maintenance schedule for each process and control device that is consistent with the manufacturer's instructions and recommendations for routine and long-term maintenance.

(d) *Operation, maintenance, and monitoring plan.* The owner or operator of each mineral wool production plant shall prepare for each cupola and curing oven subject to the provisions of this subpart, a written operations, maintenance, and monitoring plan. The plan shall be submitted to the Administrator for review and approval prior to being incorporated in the part 70 permit and shall include the following information:

(1) Process and control device parameters to be monitored to determine compliance, along with established operating levels or ranges for each process or control device;

(2) A monitoring schedule;

(3) Procedures for the proper operation and maintenance of control devices used to meet the emission limits of § 63.1177 of this subpart;

(4) Procedures for keeping records to document compliance; and

(5) Corrective actions to be taken when process or control device parameters deviate from the levels established during initial performance testing.

(e) *Excess emissions report.* As required by § 63.10(e)(3) of the general provisions in subpart A of this part, the owner or operator shall report semiannually if measured emissions are in excess of the applicable standard or a monitored parameter is exceeded. When no exceedances of measured emissions or monitored parameters have occurred, the owner or operator shall submit a report stating that no excess emissions occurred during the reporting period.

(f) *Recordkeeping.* (1) As required by § 63.10(b) of the general provisions in subpart A of this part, the owner or operator shall maintain files of all information (including all reports and notifications) required by the general provisions in subpart A of this part and this subpart:

(i) The owner or operator must retain each record for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The most recent 2 years of records must be retained at the facility. The remaining 3 years of records may be retained off site;

(ii) The owner or operator may retain records on microfilm, on a computer disk, on magnetic tape, or on microfiche; and

(iii) The owner or operator may report required information on paper or on a labeled computer disk using commonly available and compatible computer software.

(2) In addition to the general records required by § 63.10(b)(2) of the general provisions in subpart A of this part, the owner or operator shall maintain records of the following information:

(i) Cupola production rate [Mg/hr (tons/hr) of melt];

(ii) Any bag leak detection system alarm, including the date and time, with a brief explanation of the cause of the alarm and the corrective action taken;

(iii) The free formaldehyde content of each resin lot and the binder formulation, including formaldehyde content of each binder batch used in the manufacture of bonded products;

(iv) Incinerator operating temperature, including any period when the average temperature in any 3-hour block period falls below the average temperature established during the performance test, with a brief explanation of the cause of the deviation and the corrective action taken; and

(v) Identification of the calendar dates for which the minimum number of hours of valid 3-hour incinerator operating temperature averages is not obtained, including reasons for not obtaining sufficient data and a description of the corrective action taken.

§ 63.1182 Applicability of general provisions.

The requirements of the general provisions in subpart A of this part that are applicable to the owner or operator subject to the requirements of this subpart are shown in appendix B to this subpart.

§ 63.1183 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) § 63.1180(b) of this subpart, for approval of an alternative test method.

§ 63.1184—63.1199 [Reserved]

Appendix A to Subpart DDD of Part 63—Free Formaldehyde Analysis of Insulation Resins by Hydroxylamine Hydrochloride

1. Scope

The method in this appendix was specifically developed for water-soluble phenolic resins that have a relatively high free-formaldehyde (FF) content such as insulation resins. It may also be suitable for other phenolic resins, especially those with a high FF content.

2. Principle

2.1 a. The basis for this method is the titration of the hydrochloric acid that is liberated when hydroxylamine hydrochloride reacts with formaldehyde to form formaldoxine:

HCHO+NH2OH:HCl→CH2:NOH+H2O+HCl

b. Free formaldehyde in phenolic resins is present as monomeric formaldehyde, hemiformals, polyoxymethylene hemiformals, and polyoxymethylene glycols. Monomeric formaldehyde and hemiformals

react rapidly with hydroxylamine hydrochloride, but the polymeric forms of formaldehyde must hydrolyze to the monomeric state before they can react. The greater the concentration of free formaldehyde in a resin, the more of that formaldehyde will be in the polymeric form. The hydrolysis of these polymers is catalyzed by hydrogen ions.

2.2 The resin sample being analyzed must contain enough free formaldehyde so that the initial reaction with hydroxylamine hydrochloride will produce sufficient hydrogen ions to catalyze the depolymerization of the polymeric formaldehyde within the time limits of the test method. The sample should contain approximately 0.3 grams (g) free formaldehyde to ensure complete reaction within 5 minutes.

3. Apparatus

3.1 Balance, readable to 0.01 g or better.
3.2 pH meter, standardized to pH 4.0 with pH 4.0 buffer and pH 7 with pH 7.0 buffer.
3.3 50-mL burette for 1.0 N sodium hydroxide.
3.4 Magnetic stirrer and stir bars.
3.5 250-mL beaker.
3.6 50-mL graduated cylinder.
3.7 100-mL graduated cylinder.
3.8 Timer.

4. Reagents

4.1 Standardized 1.0 N sodium hydroxide solution.

4.2 Hydroxylamine hydrochloride solution, 100 grams per liter, pH adjusted to 4.00.
4.3 Hydrochloric acid solution, 1.0 N and 0.1 N.
4.4 Sodium hydroxide solution, 0.1 N.
4.5 50/50 v/v mixture of distilled water and methyl alcohol.

5. Procedure

5.1 Determine the sample size as follows:
a. If the expected FF is greater than 2 percent, go to Part A in 5.1.c to determine sample size.
b. If the expected FF is less than 2 percent, go to Part B in 5.1.d to determine sample size.
c. Part A: Expected FF ≥ 2 percent.

Grams resin = 60/expected percent FF.

i. The following table shows example levels:

Expected percent free formaldehyde	Sample size, grams
2	30.0
5	12.0
8	7.5
10	6.0
12	5.0
15	4.0

ii. It is very important to the accuracy of the results that the sample size be chosen correctly. If the milliliters of titrant are less than 15 mL or greater than 30 mL, reestimate the needed sample size and repeat the tests.
d. Part B: Expected FF < 2 percent.

Grams resin = 30/expected percent FF.

i. The following table shows example levels:

Expected percent free formaldehyde	Sample Size, grams
2	15
1	30
0.5	60

ii. If the milliliters of titrant are less than 5 mL or greater than 30 mL, reestimate the needed sample size and repeat the tests.

5.2 Weigh the resin sample to the nearest 0.01 grams into a 250-mL beaker. Record sample weight.
5.3 Add 100 mL of the methanol/water mixture and stir on a magnetic stirrer. Confirm that the resin has dissolved.
5.4 Adjust the resin/solvent solution to pH 4.0, using the prestandardized pH meter, 1.0 N hydrochloric acid, 0.1 N hydrochloric acid, and 0.1 N sodium hydroxide.
5.5 Add 50 mL of the hydroxylamine hydrochloride solution, measured with a graduated cylinder. Start the timer.
5.6 Stir for 5 minutes. Titrate to pH 4.0 with standardized 1.0 N sodium hydroxide. Record the milliliters of titrant and the normality.

6. Calculations

$$\% \text{ FF} = \frac{\text{mL sodium hydroxide} \times \text{normality} \times 3.003}{\text{grams of sample}}$$

7. Method Precision and Accuracy

Test values should conform to the following statistical precision:

Variance = 0.005.
Standard deviation = 0.07.
95% Confidence Interval, for a single determination = 0.2.

8. Author

This method was prepared by K. K. Tutin and M. L. Foster, Tacoma R&D Laboratory, Georgia-Pacific Resins, Inc. (Principle written by R. R. Conner.)

9. References

9.1 GPAM 2221.2.
9.2 PR&C TM 2.035.
9.3 Project Report, Comparison of Free Formaldehyde Procedures, January 1990, K. K. Tutin.

APPENDIX B TO SUBPART DDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD

Citation	Requirement	Applies to subpart DDD	Comment
63.1 (a)(1)–(a)(4)	General Applicability	Yes.	
63.1(a)(5)		No	[Reserved]
63.1 (a)(6)–(a)(8)		Yes.	
63.1(a)(9)		No	[Reserved]
63.1 (a)(10)–(a)(14)		Yes.	
63.1(b)	Initial Applicability Determination	Yes.	
63.1(c)(1)	Applicability After Standard Established	Yes.	
63.1(c)(2)		Yes	Some plants may be area sources.
63.1(c)(3)		No	[Reserved]
63.1 (c)(4)–(c)(5)		Yes.	
63.1(d)		No	[Reserved]
63.1(e)	Applicability of Permit Program	Yes.	
63.2	Definitions	Yes	Additional definitions in § 63.1176.
63.3	Units and Abbreviations	Yes.	
63.4 (a)(1)–(a)(3)	Prohibited Activities	Yes.	
63.4(a)(4)		No	[Reserved]
63.4(a)(5)		Yes.	

APPENDIX B TO SUBPART DDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD—Continued

Citation	Requirement	Applies to subpart DDD	Comment
63.4 (b)–(c)	Circumvention/Severability	Yes.	
63.5(a)	Construction/Reconstruction Applicability	Yes.	
63.5(b)(1)	Existing, New, Reconstructed Sources Requirements.	Yes.	
63.5(b)(2)		No	[Reserved]
63.5 (b)(3)–(b)(6)		Yes.	
63.5(c)		No	[Reserved]
63.5(d)	Application for Approval of Construction/ Reconstruction.	Yes.	
63.5(e)	Approval of Construction/Reconstruction	Yes.	
63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes.	
63.6(a)	Compliance with Standards and Maintenance Applicability.	Yes.	
63.6 (b)(1)–(b)(5)	New and Reconstructed Sources Dates	Yes.	
63.6(b)(6)		No	[Reserved]
63.6(b)(7)		Yes.	
63.6(c)(1)	Existing Sources Dates	Yes	§63.1179 specifies dates.
63.6(c)(2)		Yes.	
63.6 (c)(3)–(c)(4)		No	[Reserved]
63.6(c)(5)		Yes.	
63.6(d)		No	[Reserved]
63.6 (e)(1)–(e)(2)	Operation & Maintenance Requirements	Yes	§63.1181 specifies additional requirements.
63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	Yes.	
63.6(f)	Compliance with Emission Standards	Yes.	
63.6(g)	Alternative Standard	Yes.	
63.6(h)	Compliance with Opacity/VE Standards	No	Subpart DDD does not include VE/opacity standards.
63.6 (i)(1)–(i)(14)	Extension of Compliance	Yes	§63.1179 specifies dates.
63.6(i)(15)		No	[Reserved]
63.6(i)(16)		Yes.	
63.6(j)	Exemption from Compliance	Yes.	
63.7(a)	Performance Test Requirements Applicability.	Yes.	
63.7(b)	Notification	Yes.	
63.7(c)	Quality Assurance/Test Plan	Yes.	
63.7(d)	Testing Facilities	Yes.	
63.7(e)	Conduct of Tests	Yes	§63.1179 specifies additional requirements.
63.7(f)	Alternative Test Method	Yes	EPA retains approval authority.
63.7(g)	Data Analysis	Yes.	
63.7(h)	Waiver of Tests	Yes.	
63.8(a)(1)	Monitoring Requirements Applicability	Yes.	
63.8(a)(2)		No	Subpart DDD does not require CMS performance specifications.
63.8(a)(3)		No	[Reserved]
63.8(a)(4)		Yes.	
63.8(b)	Conduct of Monitoring	Yes.	
63.8 (c)(1)–(c)(3)	CMS Operation/Maintenance	Yes.	
63.8 (c)(4)–(c)(8)		No	Subpart DDD does not require COMS/ CEMS or CMS performance specifications.
63.8(d)	Quality Control	No	Subpart DDD does not require a CMS quality control program.
63.8(e)	CMS Performance Evaluation	No	Subpart DDD does not require CMS performance evaluations.
63.8 (f)(1)–(f)(5)	Alternative Monitoring Method	Yes.	
63.8(f)(6)	Alternative to RATA Test	No	Subpart DDD does not require CEMS.
63.8(g)(1)	Data Reduction	Yes.	
63.8(g)(2)		No	Subpart DDD does not require COMS or CEMS.
63.8 (g)(3)–(g)(5)		Yes.	
63.9(a)	Notification Requirements Applicability	Yes.	
63.9(b)	Initial Notifications	Yes.	
63.9(c)	Request for Compliance Extension	Yes.	
63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
63.9(e)	Notification of Performance Test	Yes.	

APPENDIX B TO SUBPART DDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD—Continued

Citation	Requirement	Applies to subpart DDD	Comment
63.9(f)	Notification of VE/Opacity Test	No	Subpart DDD does not include VE/opacity standards.
63.9(g)	Additional CMS Notifications	No	Subpart DDD does not require CMS performance evaluation, COMS, or CEMS.
63.9 (h)(1)–(h)(3)	Notification of Compliance Status	Yes.	
63.9(h)(4)		No	[Reserved]
63.9 (h)(5)–(h)(6)		Yes.	
63.9(i)	Adjustment of Deadlines	Yes.	
63.9(j)	Change in Previous Information	Yes.	
63.10(a)	Recordkeeping/Reporting-Applicability	Yes.	
63.10(b)	General Recordkeeping Requirements	Yes	§ 63.1181 includes additional requirements.
63.10(c)(1)	Additional CMS Recordkeeping	Yes.	
63.10(c)(2)–(c)(4)		No	[Reserved]
63.10(c)(5)		Yes.	
63.10(c)(6)		No	Subpart DDD does not require CMS performance specifications.
63.10 (c)(7)–(c)(8)		Yes.	
63.10(c)(9)		No	[Reserved]
63.10 (c)(10)–(c)(13)		Yes.	
63.10(c)(14)		No	Subpart DDD does not require a CMS quality control program.
63.10(c)(15)		Yes.	
63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements in § 63.1181.
63.10(d)(2)	Performance Test Results	Yes.	
63.10(d)(3)	Opacity or VE Observations	No	Subpart DDD does not include VE/opacity standards.
63.10 (d)(4)–(d)(5)	Progress Reports/Startup, Shutdown, and Malfunction Reports.	Yes.	
63.10 (e)(1)–(e)(2)	Additional CMS Reports	No	Subpart DDD does not require CEMS or CMS performance evaluations.
63.10(e)(3)	Excess Emissions/CMS Performance Reports.	Yes.	
63.10(e)(4)	COMS Data Reports	No	Subpart DDD does not require COMS.
63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
63.11(a)	Control Device Requirements Applicability.	Yes.	
63.11(b)	Flares	No	Flares not applicable.
63.12	State Authority and Delegations	Yes	Authority for approval of alternative test methods retained.
63.13	Addresses	Yes.	
63.14	Incorporation by Reference	Yes.	
63.15	Information Availability/Confidentiality	Yes.	

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Federal Register

Thursday
May 8, 1997

Part V

Department of Health and Human Services

Administration for Children and Families

Announcement of the Availability of Funds and Request for Applications To Carry Out Child Care Research Partnerships; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–CC–9701]

Announcement of the Availability of Funds and Request for Applications To Carry Out Child Care Research Partnerships

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Announcement of the availability of funds and request for applications to carry out Child Care Research Partnerships on child care issues affecting welfare recipients and low-income working families.

SUMMARY: This solicitation announces a competition for up to five cooperative agreements to carry out Child Care Research Partnerships. The purpose of this initiative is to increase and strengthen capacity for cross-cutting research on critical child care issues affecting welfare recipients and low-income working families. Each of the partnerships will focus on cross-cutting themes central to the implementation and success of subsidized child care programs under welfare reform, with an emphasis on data from State administrative systems, local child care data sources, and linkage with relevant research or evaluation studies. Each of the partnerships will participate in the Child Care Policy Research Consortium established by the Child Care Bureau. The primary goal of that Consortium is to better understand issues concerning: (1) The child care needs, utilization patterns and outcomes for low-income families, including welfare recipients, those moving from welfare to work, and the working poor; (2) the child care opportunities and constraints which affect low-income families and children under new welfare policies, changing State and local child care systems, and emerging market conditions; and (3) the availability, costs, quality, and other critical features of subsidized child care services.

DATES: The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on July 7, 1997. Applications received after 4:30 p.m. will be classified as late.

FOR FURTHER INFORMATION CONTACT: Dr. Pia Divine, Program Officer, Administration for Children and Families, Child Care Bureau, Room 320F, Hubert Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201; Phone: 202–690–6705; Fax: 202–690–5600; Email: pdivine@acf.dhhs.gov.

NOTICE OF INTENT TO SUBMIT APPLICATION: If you intend to submit an application, please send a post card with the number and title of this announcement, your organization's name and address, and your contact person's name, phone number, fax number, and email address to: Administration on Children, Youth and Families, Operations Center, 3030 Clarendon Blvd., Suite 240, Arlington, Virginia 22201, Attn: Child Care Research Partnerships.

The information will be used to determine the number of expert reviewers needed and to update the mailing list to whom program announcements are sent.

SUPPLEMENTARY INFORMATION: The ACF Application Forms and this Supplementary Information section contain all of the forms and instructions needed to apply for a Child Care Research Partnership. No additional application materials are needed.

The Supplementary Information section consists of six parts. Part I provides general information about the Child Care Research Partnerships, funding requirements, and application procedures. Part II provides background information on ACYF, the Child Care Bureau, and the Child Care Policy Research Consortium. Part III describes goals for the new Partnerships and expectations for collaborative research. Part IV discusses the Project Narrative Statement and outlines additional requirements for applicants in designing their projects. Part V describes the proposal review process, evaluation criteria and selection process. Part VI provides additional instructions for the development and submission of applications. The contents are organized as follows:

Part I. General Information

A. Purpose
B. Citations
C. Number of Awards
D. Project Duration
E. Funding Levels and Budget Periods
F. Non-Federal Share of Project Costs
G. Eligible Applicants

Part II. Background and Context

A. The Child Care Bureau
B. Strategic Approach to Research
C. The Child Care Policy Research Consortium
D. Other Partnerships and Initiatives
E. Research Symposia
F. Research Dissemination

Part III. New Child Care Research Partnerships

A. Introduction
B. Goals, Expectations and Priorities
C. Cooperative Agreements

Part IV. Project Narrative Statement

A. Issues, Objectives and Significance
B. Technical Approach to Research and Management
C. Staff Qualifications, Organizational Capability, and Fiscal Resources

Part V. Evaluation and Selection

A. The Review Process
B. Evaluation Criteria
C. The Selection Process
D. Funding Date

Part VI. Development and Submission of Applications

A. State Single Point of Contact
B. Paperwork Reduction Act of 1995
C. Deadline for Submission of Applications
D. Preparing the Application and Completing Forms
E. Checklist for a Complete Application
F. Notification

Part I. General Information

A. Purpose

The purpose of this initiative is to develop and strengthen capacity for cross-cutting research on critical child care issues affecting welfare recipients and low-income working families.

B. Citations

1. Sponsorship

Cooperative agreements for research being awarded under this announcement are sponsored by the Child Care Bureau (the Bureau) of the Administration on Children, Youth and Families (ACYF) in the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (DHHS). The projects will be managed by the Bureau.

2. Funding Authority

Funding is being provided by ACF under Section 1110 of the Social Security Act, contingent upon the availability of funds.

3. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number is 93.647.

C. Number of Awards

Up to five projects will be funded in fiscal year 1997 (ending September 30, 1997), subject to the availability of funds and results of the evaluation process.

D. Project Duration

The total project period will be 48 months.

E. Funding Levels and Budget Periods

Initial awards will be for a one-year budget period. Individual projects will

receive up to $200,000 for the first budget period of 12 months, with a possibility of up to $200,000 per year in continuation funding to be awarded in fiscal years 1998, 1999, and 2000. The estimated total Federal funding for a four-year project is $800,000.

Applications for continuation of cooperative agreements funded under this announcement will be entertained in subsequent years on a non-competitive basis. The award of continuation funding beyond each one-year budget period (but within the four-year project period) will be subject to the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the government.

F. Non-Federal Share of Project Costs

A non-Federal match is required. Grantees must provide at least 25 percent of the total approved cost of the project. The non-Federal share may be met by cash or in-kind contributions.

The total approved cost of the project is the sum of the Federal share (75 percent) and the non-Federal share (25 percent). A project which is awarded a total of $800,000 in Federal funds (based on an award of $200,000 per 12-month budget period for four years) would have a total approved cost of $1,066,667 and a non-Federal share of $266,667.

G. Eligible Applicants

The application must identify only one partner as the official applicant and lead organization. This partner will receive the award if the project is funded and will be responsible for ensuring that the terms of the cooperative agreement are met. The official applicant must be a public or private non-profit agency or organization and may be either the research group or another partner. Profit-making organizations and non-federally recognized Indian Tribes are *not* eligible to act as the official applicant but may participate as members of the partnership.

Broadly based partnerships are encouraged. At least one member of the Partnership must be a research group affiliated with an accredited university or four-year college. One other member of the Partnership must be a state agency which administers subsidized child care programs for low-income families. In addition, the Partnership can include a wide variety of relevant organizations including but not limited to: (1) Resource and referral organizations which collect and maintain an ongoing data base of local or statewide information on child care demand and supply; (2) planning councils, commissions, advisory groups, and civic organizations which participate in child care planning and policy making; (3) non-academic research organizations which conduct studies on child care markets, populations, services, policies or other relevant aspects of child care and welfare reform; (4) Tribal, county or local agencies which administer child care subsidy programs; (5) early childhood programs such as public or private child care centers, Head Start and family child care networks; (6) professional organizations and associations; (7) providers of supportive services such as provider training, technical assistance, or consumer education; (8) child care consumer groups and community organizations; (9) foundations and charitable organizations; (10) businesses and business associations; and (11) other appropriate organizations or individuals.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS Code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Part II. Background and Context

A. The Child Care Bureau

The Child Care Bureau is that agency within the Federal government with the most far-reaching mandate for child care. Established in 1995 to provide new leadership and consolidate federal responsibilities for subsidized child care programs, the Bureau administers $2.9 billion in Federal child care dollars annually. The Bureau works closely with States, Territories, Tribes and local communities to develop cost-effective services and delivery systems, promotes joint ventures with the private sector, and provides information and other assistance to parents. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated, family-focused services and coordinated child care delivery systems. In all of these activities, the Bureau seeks to enhance the quality, availability and affordability of child care services, to support children's healthy growth and development in safe child care environments, to enhance parental choice and involvement in their children's care, and to facilitate the linkage of child care with other community services.

The Bureau's central responsibility is administration of the Child Care and Development Fund (CCDF) created by title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) which became effective October 1, 1996. This legislation consolidates four Federal child care funding streams, allowing States to design comprehensive, integrated service delivery systems to meet the needs of low-income working families. In this new statute, three programs collectively known as ''title IV–A'' child care were repealed and their funding incorporated under the requirements of the Child Care and Development Block Grant Program (CCDBG) as amended. These three programs included AFDC/JOBS Child Care, Transitional Child Care (TCC), and At-Risk of Welfare Dependency Child Care (ARCC). For ease of reference, the newly consolidated IV–A/CCDBG program is known as the ''Child Care and Development Fund'' (CCDF). In fiscal year 1997, States will receive more than $2 billion and Tribes $59 million in CCDF funds.

In administering the CCDF, the Bureau develops policies, monitors service delivery systems, and provides technical assistance in close cooperation with ten Regional Offices which in turn work directly with States, Territories and Tribes. The Regional Offices are further organized into five regional hubs headquartered in major cities as follows: (1) Regions I, II and III (New York City); (2) Region IV (Atlanta); (3) Regions V and VII (Chicago); (4) Regions VI and VIII (Dallas); and (5) Regions IX and X (San Francisco). The ten Regional Offices and the States they represent are shown in the table below:

Region	Regional office	States represented in region
I	Boston	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
II	New York City	New Jersey, New York, Puerto Rico, Virgin Islands.

Region	Regional office	States represented in region
III	Philadelphia	Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia.
IV	Atlanta	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V	Chicago	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
VI	Dallas	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII	Kansas City	Iowa, Kansas, Missouri, Nebraska.
VIII	Denver	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX	San Francisco	Arizona, California, Hawaii, Nevada, Guam, Trust Territory of Pacific Islands, American Samoa.
X	Seattle	Alaska, Idaho, Oregon, Washington.

B. Strategic Approach to Research

Although the Bureau is a relatively young organization within the ACYF, it carries on a long tradition of commitment to child care research and collaboration. Since the early 1970's, ACYF has been building a child care research agenda for valid, reliable and comprehensive information that can withstand the test of time, with each new initiative set in place as a building block for a more complex structure of knowledge. Much of contemporary child care policy, practice and ongoing research can be traced to the accumulated knowledge base, research technologies, and long-term trends derived from ACYF research and its contributions to other investigations.

The Bureau bears a major responsibility for assisting with, overseeing, and documenting the implementation of new policies and programs as the responsibility for child care progressively shifts to States, localities, and the private sector. States now have the opportunity to craft programs more directly suited to their citizenry, but are also faced with unprecedented challenges in meeting the needs of low-income, underserved, and other vulnerable populations. Young children are of special concern. The need for and use of child care for children from low-income families can be expected to increase substantially with mounting pressures to move families from welfare to work.

Faced with limited funding, a burgeoning need for child care services, and the need to immediately implement welfare reform, public agencies are under enormous pressure to use their child care dollars as effectively as possible. States and communities face a bewildering array of difficult, complex and costly decisions. Yet, existing data cannot be easily used for planning and policy-making. In addition, there is little detailed understanding of how the child care marketplace operates within the context of changing policies and population dynamics or what outcomes for children and families can be achieved under new policy constraints and opportunities.

Much needs to be done to help States learn from their own and each other's experiences. What is known, and what can be learned, about labor force attachment coupled with access to child care needs to be examined in the context of child health, safety, and well-being. Sound, research-based information needs to be amassed, developed and fed back to the States, localities, providers and parents. Topical areas for study and meaningful research questions need to be well-articulated from the field. Moreover, in order for child care issues to be understood in differing cultural, socio-economic and geopolitical contexts, there is a need for greater comparability among data systems which attempt to capture information on similar questions and themes.

There is thus a growing consensus about the critical need for more valid, reliable and integrated knowledge to guide the delivery of child care services, inform emerging policy debates, and point the way to more effective solutions of complex child care issues. Because child care issues are complex and affect many facets of family, work and community life, there is a particular need for strong partnerships among the Child Care Bureau and other Federal offices, academic and research communities, State and local program administrators, practitioners, resource and referral agencies, community planners, and consumers. In response to these issues, the Bureau has undertaken a variety of research initiatives and collaborative relationships which highlight the complex and evolving role of child care in contemporary society.

C. The Child Care Policy Research Consortium

In 1995, the Bureau launched a Child Care Policy Research Consortium focused on three cross-cutting themes: (1) The child care needs, utilization patterns and outcomes for low-income families, including welfare recipients, those moving from welfare to work, and the working poor; (2) the child care opportunities and constraints which affect low-income families and children under new welfare policies, changing State and local child care systems, and emerging market conditions; and (3) the availability, costs, quality, and other critical features of subsidized child care services. This Consortium is currently composed of three broadly-constituted research partnerships under the leadership of the National Center for Children in Poverty at Columbia University in New York City (working in Illinois and Maryland), the Florida Children's Forum in Tallahassee (working in Alabama, Florida and Massachusetts), and Portland State University (working in Oregon).

D. Other Partnerships and Initiatives

The Child Care Bureau invests considerable effort in collaboration with other Federal offices and agencies to more broadly address research issues of national importance. Within ACYF, ACF and the Department, key partners include the Head Start Bureau (HSB), the Office of Planning, Research and Evaluation (OPRE), and the DHHS Office of the Assistant Secretary for Planning and Evaluation (ASPE).

Within ACYF, the Bureau works closely with the Head Start Bureau to better understand interrelationships between Head Start and other child care services used by Head Start families as well as to promote a more integrated approach to early childhood policy and research. Key points of linkage include the Head Start Quality Research Consortium and the Early Head Start Evaluation which include samples, variables and measures of significance for child care policies and programs.

The ACF Office of Policy, Research and Evaluation has primary responsibility for the evaluation of State welfare programs. As the Department undertakes required research activities under TANF (Temporary Assistance to Needy Families), the Bureau will collaborate with OPRE in devising research strategies to assess the costs and benefits of subsidized child care

services in achieving the goals of this new legislation and creating performance standards to measure States' success.

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) also sponsors evaluations of welfare policies and child outcomes. The Bureau helps to ensure that child care issues and variables are included in ongoing analyses of existing studies and major new research. The Bureau and ASPE also cooperate in smaller studies of mutual interest, particularly feasibility or pilot research for future studies.

The Bureau also works with other Federal agencies whose research interests expand or enhance those of the Bureau. Two important partners include the DHHS National Institute of Child Health and Development (NICHD) and the Office of Educational Research and Improvement in the Department of Education, both of which are engaged in research with important implications for child care policy and practice.

E. Research Symposia

The Bureau sponsors a variety of symposia for researchers, administrators and policy makers whose purpose is to consider critical issues and how research might help. This ongoing dialogue asks (1) what are the most pressing policy issues facing child care administrators over the next several years; (2) what data are needed to arrive at informed decisions; and (3) how can the information be obtained without launching large scale new studies? For example, what is the capacity of state child care agencies and resource and referral networks to generate useful information? What types of systems would best meet competing needs for simplicity and comprehensiveness? How can new information systems better satisfy the need for diverse information to track welfare reform in differing policy contexts, for highly targeted data needed to answer specific policy questions, and for comparable state-level information needed for congressional reports?

F. Research Dissemination

The timely dissemination of research findings is also a high priority for the Bureau. New information and its relevance for families and their providers, for communities, States and Tribes, and for other researchers is featured in a variety of professional publications, conferences and other venues. The Bureau's National Child Care Information Center (NCCIC) operates an adjunct clearinghouse for the Education Research Information Center (ERIC), the nation's largest repository for child care related research. This partnership will make child care research findings and documents available on-line and easily accessible to child care stakeholders. In addition, the NCCIC highlights research in its nationally distributed Child Care Bulletin.

III. New Child Care Research Partnerships

A. Introduction

The Bureau anticipates funding up to five new Child Care Research Partnerships by September 30, 1996. It is anticipated that approved Partnerships will receive up to $800,000 over a total project period of four years, with up to $200,000 per 12-month budget period. Non-competitive funding each year will be based on the availability of funds, satisfactory progress, and needs of the Bureau.

The purpose of this initiative is to increase and strengthen capacity for cross-cutting research on critical child care issues affecting welfare recipients and low-income working families. The new Partnerships being funded under this announcement represent an important strategy for the Bureau in the ongoing process of helping States and Tribes develop service delivery systems which are more efficient, effective, and responsive to the needs of children and families. Although there is a growing body of knowledge about child care demand and supply, only limited research has been directed to the child care needs, options, and utilization patterns of low-income families. In particular, the Bureau is concerned with the role of subsidized child care as a support to low-income families in achieving and sustaining economic self-sufficiency while rearing their children and balancing the competing demands of work and family life. Equally important is the quality of care that children are receiving and the implications of available options for their development and well-being.

B. Goals, Expectations, and Priorities

The Bureau's overriding goal in funding new Child Care Research Partnerships is to develop a broader knowledge base and improve the capacity for on-going, data-based information to help resolve critical child care issues. In addressing these concerns, a high priority for the Bureau is to increase dialogue and understanding among researchers, administrators and other Federal and State policy makers in order to make research more relevant for policy.

As members of the Child Care Policy Research Consortium, each of the new Partnerships will be expected to focus in some significant way on three cross-cutting themes considered central to the implementation and success of subsidized child care programs under welfare reform: (1) The child care needs, utilization patterns and outcomes for low-income families, including welfare recipients, those moving from welfare to work, and the working poor; (2) the child care opportunities and constraints which affect low-income families and children under new welfare policies, changing State and local child care systems, and emerging market conditions; and (3) the availability, costs, quality, and other critical features of subsidized child care services. These themes were established by the Bureau in 1995 with formation of the consortium and are reflected in the initiatives being carried out by the three existing Partnerships. Within this context, each new Partnership will be expected to work with other consortium members to contribute to a more complete understanding of child care policy issues, to help translate issues into research questions, and to assist in the analysis of questions as applied to different populations, geographic areas, and policy environments. Priority will be given to Partnerships which address critical policy issues and show strong promise of helping States understand how changing conditions are affecting their child care needs and outcomes.

Another expectation for the Partnerships is to contribute to collaborative planning for improved data systems, linkage with other current studies, and secondary analysis of existing data. It is often possible for teams working cooperatively to produce a more cohesive, conceptually integrated set of studies or approaches than would otherwise be possible. For this reason, researchers are challenged to develop innovative strategies which leverage existing knowledge and resources, and which contribute to more effective, efficient and useful methodologies. For example, subsidized program data, local resource and referral data, and Census data might be analyzed to characterize local and statewide patterns of demand and supply as well as point to possible future trends. Two or more States might produce comparable analyses to better understand child care in inner cities, rural areas, or some other cross-cutting theme. Ongoing studies might also be replicated, expanded, linked, or otherwise utilized in the development of a comprehensive and cohesive

research strategy. Priority will be given to Partnerships which demonstrate the ability to obtain valid, reliable and important data for cost-effective and cross-cutting analyses of complex issues from one or more of the following sources: (1) State administrative data systems; (2) resource and referral networks or other locally-based systems with a capacity for ongoing data collection; (3) data linkages with major studies which are currently underway or about to be launched; and (4) large-scale demographic data bases.

Effective collaboration for child care policy research requires the ability and willingness to (1) establish an effective mode of communication among the network of researchers, administrators and practitioners; (2) establish mutually beneficial relationships within the individual Partnership and with other members of the Child Care Policy Research Consortium; and (3) establish a network of data sources and a dependable cadre of data collectors. Partnerships will be expected to share technical approaches, methods, products, and findings with other researchers, States and communities. Priority will be given to partnerships which demonstrate the ability to launch studies involving multiple partners, including the ability to bring together interdisciplinary specialties linking child care research, public policy, program administration, community planning, business development and other aspects of child care and welfare reform.

In addition to collaboration in the technical aspects of research, an important feature of successful Partnerships is the ability to gain State and local buy-in for studies which support specific policy goals and to elicit financial support for research initiatives which benefit the field more broadly. Although the non-Federal share may be met by cash or in-kind contributions, applicants are encouraged to meet their match requirements through cash contributions. Applicants are also encouraged to develop more extensive funding relationships in order to propose a project of greater importance, scope and complexity than would be possible within the funding levels specified in this announcement. Funding partnerships with foundations, businesses and State or local governments are especially encouraged. As reflected in the evaluation criteria, priority will be given to partnerships which would be supported by multiple funding partners and which demonstrate the ability to obtain significant funding or in-kind contributions from their partners beyond the required non-Federal match.

C. Cooperative Agreements

The Child Care Research Partnerships are being funded as cooperative agreements in order to facilitate a high degree of coordination between the projects and to accommodate the flexibility in project design needed to carry out collaborative research. By applying for financial assistance under this announcement, applicants agree to enter into a cooperative agreement with the Child Care Bureau. The general roles of research partners and Federal staff are outlined in the following sections. Specific terms and conditions of each cooperative agreement will be negotiated prior to the award of funds.

1. The Grantee Role

The grantee is the official applicant to whom a financial assistance award is made and who is responsible for ensuring that terms of the cooperative agreement are met. The grantee is responsible for the performance of subgrantees or subcontractors, and for ensuring that agreements with co-partners are carried out in good faith and to a high level of quality. The grantee is expected to participate and cooperate fully with the Bureau in carrying out the Child Care Research Partnership detailed in the cooperative agreement.

Each of the Partnerships will participate in the Child Care Policy Research Consortium established by the Bureau to: (1) Coordinate and assist the individual Partnerships; (2) help produce a more sophisticated and comprehensive body of research than would be achievable by any project alone; (3) provide a forum for consideration of technical research issues; and (4) assist in developing research strategies to effectively examine complex child care issues.

Each of the Partnerships will participate in two-day meetings of the Consortium to be convened quarterly in Washington, DC. Whenever possible, these meetings will be scheduled to allow members of the Consortium to participate in other conferences and leadership forums, including the Bureau's annual meeting of State Child Care Administrators. In addition, members of the Consortium are invited to serve on panels or make special presentations during national conferences held by various organizations throughout the year.

2. The Federal Role

The Federal Project Officer (FPO) will work closely with each of the Child Care Research Partnerships and with the coordinator of the Consortium to share priorities and plans, identify and resolve common issues, and ensure that final plans and products comprehensively address the goals of this announcement. Such involvement may include, but is not limited to: (1) Provision of technical assistance to grantees; (2) consultation on and participation in the formulation of research plans; (3) arrangement of meetings to support research activities; (4) membership in committees and working groups established to facilitate accomplishment of the individual Partnership and Consortium goals; (5) review of major activities and products; and (6) participation in negotiations for revised cooperative agreements to carry out each succeeding phase of the research. The FPO will also participate in meetings of the Consortium as a whole.

Part IV. Project Narrative Statement

The Project Narrative Statement is that section of the application which provides most of the information on which proposals for Child Care Research Partnerships will be competitively reviewed. The standard set of Program Narrative requirements apply broadly to all ACF program announcements. Specific requirements for Child Care Research Partnerships are detailed below. Applicants should tailor their Project Narrative to these specific requirements.

The Project Narrative should be carefully developed in accordance with the research goals and expectations described in Part III, the proposal preparation requirements described in this Part, and the evaluation criteria and selection factors described in Part V.

The Project Narrative sets forth the technical proposal and describes how it will be carried out. This statement should be organized according to the evaluation criteria contained in Part V as follows: (1) Issues, Objectives and Significance; (2) Technical Approach to Research and Management; and (3) Staff Qualifications, Organizational Capability and Fiscal Resources.

Clarity and conciseness are of utmost importance. The entire Project Narrative Statement (including text, tables, charts, graphs, resumes, corporate statements and appendices) may not exceed 100 pages single-spaced (200 pages double-spaced) with standard one-inch margins and 10–12 point fonts. Excess pages will not be reviewed. (Note: Applicants are asked to print their statement in double-spaced format for ease of review.)

A. Issues, Objectives, and Significance

In this section, applicants demonstrate their understanding of issues and present the conceptual framework for their proposed research, showing how their partnership would address the Bureau's research objectives and fit into a broader framework for collaborative research made possible by the Consortium. Applicants should discuss the importance of their approach and indicate how their project would address major child care policy issues. This section should also describe how the proposed research would relate to, coordinate with, or build upon other relevant research, particularly that which is currently underway or planned for the near future.

In this section applicants portray their understanding of (1) Critical child care issues affecting low-income families and the challenges they face; (2) the complex interrelationships among major variables affecting child care supply and demand; (3) the significance of these issues and variables for child care policies and programs; (4) how the proposed research fits into a broader theoretical or conceptual framework for child care and welfare reform; (5) how the proposed project would help improve the state-of-the-art in policy research and applied methodologies; and (6) how the project would benefit various stakeholders in the field.

Applicants are expected to demonstrate a command of the policy and research literature in child care and welfare reform, as well as emerging issues of major concern. The proposal is expected to demonstrate understanding of current welfare and child care policies and programs, to show how the proposed research would further such understanding, and to suggest practical applications which might be derived from the findings. Applicants should clearly show how their proposed research will build on the current knowledge base and contribute to policy, practice and future research.

In their review of the literature, applicants are asked to consider the significance, reliability, and validity of existing data pertaining to important policy questions. In addition, applicants should identify important gaps in the literature and areas in which findings are contradictory or ambiguous. It will also be important to consider what demographic, economic, and social data are available as a context for child care research. Applicants should describe how data from the Census Bureau, Bureau of Labor Statistics, and other statistical organizations could be used to help profile market parameters and trends. If especially important data bases from completed child care studies are identified, applicants are asked to suggest ways in which such data could be used. A bibliography of relevant references must be supplied.

B. Technical Approach to Research and Management

The Technical Approach section details a specific research design and implementation plan. This section should address two broad areas: (1) The proposed research methodology; and (2) management, coordination, and quality control at each stage of the research process.

1. Research Design

The methodological discussion must include technical details of the proposed research design, including (a) the applicant's conceptual framework showing research objectives, hypotheses, and variables; (b) data sources, sampling plans and data collection strategies; (c) data processing and statistical analysis; and (d) product development and dissemination. As part of the design section, applicants should discuss the strengths and limitations of all proposed approaches and techniques. Applicants are also asked to lay out a flow chart or table showing interrelationships among the proposed research issues, questions, variables, and data elements. Applicants should also discuss how the proposed methodology might reasonably fit into a broader research scheme carried out at the Consortium level and what design flexibility would exist for coordination with other approaches.

a. *Conceptual Framework and Research Variables.* Present the conceptual framework that will guide other aspects of the research design, including (1) areas of inquiry to be explored; (2) specific research questions and hypotheses; and (3) research variables and constructs. This discussion should flow out of the earlier discussion of Issues, Objectives and Significance and lead into the design elements that follow.

b. *Data Sources, Sampling and Data Collection.* Include a plan for obtaining an appropriate sample and collecting the data needed to achieve objectives of the proposed research.

- If data would be compiled from service delivery records of State or local agencies, from resource and referral files, from records maintained by child care facilities, or from other primary data sources, describe the nature of the data and how they would be accessed, what sampling procedure would be employed and how confidentiality of individual records would be maintained.
- If secondary analyses would be conducted on completed data sets, describe the appropriateness and limitations of the original research for this study. Describe the nature, scope and representativeness of the original sample and characteristics of the data (including data quality).
- If the proposed project would involve linkage with ongoing research, describe the ongoing research design and stage of progress, how the applicant's proposed study would benefit from and contribute to it, how the technical aspects of the linkage would be structured and carried out, and how the linked studies would address the goals of this announcement. Include a letter of cooperation from the individual/organization conducting the research which details the status of the data collection, procedures to ensure data quality, timeliness of data availability and applicant access.
- If new data are to be collected on human subjects in conjunction with another ongoing study (e.g., adding a new sample or an additional measure), describe the characteristics of the target population and provide a rationale for any sample stratification based on personal characteristics of individuals (such as ethnicity, income, marital status, age of child, etc.). Describe data collection procedures and safeguards for data quality. Discuss procedures to protect human subjects, to maintain confidentiality of data, and to obtain consent for participation (if applicable).

c. *Data Processing and Statistical Analysis.* Include a detailed plan for the processing and analysis of data from all sources which illustrates how the analyses will meet the goals of this research. Discuss the procedures which would be used to clean data, ensure data quality, and prepare data tapes. Discuss plans for the analysis of data, including units of analysis, analytic techniques to be used with various types of data, statistical considerations, and the linkage of data sets.

d. *Product Development and Information Dissemination.* Include a product development and information dissemination plan which describes the products to be generated during the course of this research (such as technical papers or reports, summaries, briefings, conference presentations, doctoral dissertations, journal articles, applications software and public use data tapes, and the final report). Describe the audiences for various products and the dissemination strategies that would be employed. Discuss which products which might be

collaboratively developed or disseminated to effectively reach intended audiences.

2. Implementation Plan

The Technical Approach section must contain a sound and workable plan of action which describes how the proposed project would be carried out. This section should detail how the project would be structured and managed, how roles and functions would be coordinated, how the timeliness of activities would be ensured, how quality control would be maintained, and how costs would be controlled. Applicants should discuss their management of the project as a whole, and the management and coordinating roles of their partners.

- Describe the strengths of the Partnership as an effective entity for carrying out the proposed project.
- Provide a diagram showing the organizational structure of the partnership and the functional relationships among partners.
- Describe the how the project would be managed by the lead organization to ensure that members of the partnership operate as a cohesive research team and that cross-cutting goals of the project are carried out efficiently and cost-effectively;
- Describe how participating organizations would coordinate their management of project tasks and other functions.
- Describe how members of the partnership would be represented in management committees, technical work groups, advisory panels, and other coordinating bodies.
- Lay out the major tasks to illustrate the sequence and timing of tasks, time commitments of staff, important milestones, reports, and completion dates.
- Discuss potential problems or difficulties with the proposed management approach, including factors which might affect the quality of the research or its outcomes, factors which might undermine the ability of partners to collaborate effectively, and factors which might hinder the early sharing, review and dissemination of information.

C. Staff Qualifications, Organizational Capability, and Fiscal Resources

In this section, applicants must provide evidence that they and their partners have the experience, expertise and resources to carry out the proposed project on time, within budget, and with a high degree of quality.

1. Staff Qualifications

- Identify all key staff positions for this project, the professional requirements for each, the proportion of time to be committed to the project, the period of time for which staff holding these positions would be employed, and whether their continued employment would be dependent solely on the funds to be awarded under this announcement.
- Provide evidence that individuals proposed for key positions have the necessary technical skill and experience to successfully carry out their assigned roles. Where key positions are currently vacant, include a position description outlining the qualifications necessary to carry out the duties and responsibilities of each.
- Identify the authors of the proposal and describe their continuing role in the project if funded.
- Describe how an appropriate data collection team would be assembled, what expertise would be represented, and how individuals would be selected.
- Identify all proposed consultants or advisors, document their expertise, and describe how their services will be utilized. Include letters of commitment or intent if possible.

2. Organizational Capability

- Provide evidence that all partners have the ability, willingness and flexibility to collaborate effectively with one another in carrying out the proposed project, and that the partnership as a whole could effectively participate in the Consortium. Include examples of past or current partnerships which demonstrate the ability to carry out collaborative research.
- Provide evidence of sufficient organizational resources within the lead organization to ensure successful project management, compliance with terms and conditions of the cooperative agreement, and oversight of the proper use of Federal funds. Provide evidence of the lead organization's capacity to coordinate the activities of research partners, resolve collaboration issues arising during the course of the research, and provide the leadership needed for a complex and evolving project.
- Describe how each partner was included in the planning of the project. Include letters of specific commitment or support from each partner. Describe all cooperative agreements, subcontracts and other formal relationships within the partnership. Partners who will provide access to data or records must provide a letter stipulating the terms of their agreement with the researchers. Describe the future commitment each partner will make to ensure success of the collaboration as it evolves.
- Include a separate two-page organizational capability statement for each partner which documents the partner's ability to carry out it's assigned roles and functions.
- Describe the relationship between this project and other relevant work planned, anticipated or underway by the applicant or its partners. Include funding sources for work in progress.
- Provide a list of research and financial partners including the name and address of each organization, the names of its director and primary contact for this proposal, and the telephone, fax and internet numbers of each.

3. Fiscal Resources

Present a detailed budget to demonstrate that the partnership would have adequate resources to carry out the work on time and with a high degree of quality.

- Include a detailed budget narrative which describes and justifies line item expenses within the budget categories listed on the Standard Form 424. (Line item allocations and justification are required for both Federal and matching funds). If project funds would be subcontracted, a detailed budget for the use of those funds must be included.
- Describe the extent of financial participation from all sources. Describe the extent to which funds, staff time, in-kind services, and other resources have been committed to the research effort during the planning period. Describe what other resources are expected to help support the proposed research, including existing commitments and negotiations in progress. Discuss what commitments are expected of financial partners in the second, third and fourth years. Describe anticipated efforts to obtain other funding partners throughout the project.

Part V. Evaluation and Selection

A. The Review Process

1. Screening

Each application will be screened to determine whether the applicant organization is eligible as specified in Part I, section G, above. Applications from ineligible organizations will be excluded from the review. In addition, inadequate preparation, omission of essential components, or failure to comply with format specifications as described in Part VI will result in the application being withdrawn from further consideration and the applicant so informed.

2. Competitive Review

Eligible applications will be scored competitively against the published evaluation criteria described below. The review will be conducted in Washington, D.C. Expert reviewers will include researchers, Federal or State staff, child care administrators and/or other individuals experienced in the study of child care demand and supply, child care delivery systems, welfare and supportive services, early child development and education, parental choice and involvement, and other relevant areas.

A panel of at least three reviewers will evaluate each application to determine the strengths and weaknesses of the proposal in terms of the Bureau's research goals and expectations as discussed in Part III, requirements for the Project Narrative Statement described in Part IV, and the evaluation criteria listed in Part V, Section B below. Panelists will provide written comments and assign numerical scores for each application. The indicated point value for each criterion is the maximum numerical score for that criterion. The assigned scores for each criterion will be summed to yield a total evaluation score for the proposal.

In addition to the panel review, the Bureau may solicit comments from other Federal offices and agencies, from the States, from relevant non-governmental organizations, and from individuals whose particular expertise is identified as necessary for the consideration of technical issues arising during the review. Their comments, along with those of the panelists, will be considered by the Bureau in making funding decisions. The Bureau will also take into account the best combination of proposed projects to meet overall research goals.

B. Evaluation Criteria

The criteria listed below will be used in conjunction with other expectations, priorities and requirements set forth in Parts III and IV above to evaluate how well each proposal addresses the goals of this announcement.

1. Significance, Issues, and Objectives (Maximum of 25 Points)

- The extent to which the application reflects a solid understanding of critical issues, information needs, and research goals.
- The extent to which the conceptual model, research issues, objectives and hypotheses are significant, well-formulated and appropriately linked.
- The extent to which the collaborative framework is appropriate, feasible, and would significantly contribute to the importance, comprehensiveness, and quality of the proposed research.
- The effectiveness with which the application articulates the current state of knowledge relative to issues being addressed, including: (1) Critical child care issues and the complex interrelationships among major variables; (2) the significance of these issues and variables for child care policies and programs; (3) how current knowledge would be brought to bear on the proposed research; and (4) how the research would benefit various audiences.

2. Technical Approach (Maximum of 50 Points)

- The extent to which the applicant's proposed Research Design: (1) Appropriately links critical research issues, questions, variables, data sources, samples, and analyses; (2) employs technically sound and appropriate approaches, design elements and procedures; (3) reflects sensitivity to technical, logistical, cultural and ethical issues that may arise; (4) includes realistic strategies for the resolution of difficulties; (5) adequately protects human subjects, confidentiality of data, and consent procedures, as appropriate; (6) includes an effective plan for the dissemination and utilization of information by researchers, policy-makers, and practitioners in the field; and (7) effectively utilizes collaborative strategies.
- The extent to which the Implementation Plan: (1) Presents a sound, workable and cohesive plan of action demonstrating how the work would be carried out on time, within budget and with a high degree of quality; (2) includes a reasonable schedule of target dates and accomplishments; (3) presents a sound administrative framework for maintaining quality control over the implementation and ongoing operations of the study; (4) presents a sound plan for coordination of activities carried out by partners and demonstrates an effective approach to team-building, including project staff, consultants and advisors, and other members of the Consortium; and (5) demonstrates the ability to gain access to necessary organizations, subjects, and data.

3. Staff Qualifications, Organizational Capability, and Fiscal Resources (Maximum of 25 Points)

- The extent to which the applicant (1) Proposes key staff, consultants, data collectors and other necessary personnel with demonstrated competence in areas addressed by the proposed research, including relevant background, experience, training and work on related research or similar projects; and (2) would provide adequate staffing for research design, sampling, field work, data processing, statistical analysis, reporting and information dissemination, and participation in the Consortium.
- The extent to which the application demonstrates that: (1) The partnership is well structured, with important and relevant roles for participating organizations; (2) partners are appropriate and significantly committed to research goals; (3) the partners have the ability to carry out collaborative research, both within the proposed Partnership and as a member of the larger Consortium; (4) the partners will contribute adequate organizational resources; and (5) the partnership has significant fiscal commitment and support.
- The extent to which the application demonstrates that (1) Facilities and organizational experience of all partners are adequate to carry out the tasks of the proposed project; (2) the lead organization can effectively and efficiently administer a project of the proposed size, complexity and scope; (3) the applicant has the capacity to coordinate activities with other organizations for the successful accomplishment of project objectives; and (4) research partners have the capacity to carry out their proposed functions and roles.
- The extent to which (1) Proposed project costs are reasonable, the funds are appropriately allocated across component areas, and the budget is sufficient to accomplish the objectives; and (2) non-Federal matching funds beyond the level required in this announcement would be contributed by the Partnership (as discussed in Section III.B.).

C. The Selection Process

The Acting Commissioner, Administration on Children, Youth and Families, will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on: (1) The rank order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects which best meets the Bureau's research objectives; (4) the funds available; and (5) other relevant considerations.

Selected applicants will be notified through the issuance of a Financial Assistance Award which sets forth the

amount of funds granted, the terms and conditions of the cooperative agreement, the effective date of the award, the budget period for which support is given, and the total project period for which support is provided.

D. Funding Date

It is anticipated that successful applications will be funded by September 30, 1997.

Part VI. Development and Submission of Applications

This Part contains additional information and instructions for submitting applications in response to this announcement. Applicants should read this Part carefully in conjunction with other information and proposal requirements contained within this announcement.

A. State 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, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty one 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: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Appendix A of this announcement.

B. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Department is required to submit to OMB for review and approval any reporting and record keeping requirements or program announcements. This program announcement meets all information collection requirements approved for ACF grant applications under OMB Control Number 0970–0139.

C. Deadline for Submission of Applications

1. Deadline

Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447, Attention: Application for Child Care Research Partnerships, CCRP–9701. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding weekends and Federal holidays). Any application received after 4:30 p.m. on the deadline date will not be considered for competition. Applicants using express/overnight services should allow for two working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

2. Late Applications

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadlines

ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

D. Preparing the Application and Completing Forms

Applicants should closely tailor their applications to the specific requirements of this announcement. Previous experience has shown that an application which is broader and more general in concept than outlined in the agency's request for proposals is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns and objectives outlined in the announcement.

1. Front Matter

Applications must have a cover letter followed by the Table of Contents and Project Abstract (Executive Summary).

The Project Abstract should be a short, concise, and accurate portrayal of the proposed project. This summary, together with the information on the SF 424 is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application. It should provide a snapshot of the project objectives, the approaches to be used, and the outcomes expected. The summary should also include a list of major products that would result from the

proposed project, such as research reports, public summaries, data tapes, and technical papers.

The summary should be clearly marked with the applicant's name as shown in item 5 of the SF 424, the announcement number and title, and the title of the project as shown in item 11 of the SF 424. At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. These key words will be used for computerized information retrieval. Key words should be selected from commonly used research and policy terminology.

2. Standard Forms

Applicants for Child Care Research Partnerships should fill out SFs 424, 424A, and 424B, all of which have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page. Make single-sided copies and use them.

3. Project Narrative Statement

The Project Narrative Statement should be clear, concise, and address the specific expectations and requirements described in Parts III and IV. The narrative should also provide information concerning how the application meets the evaluation criteria described in Part V. Inclusion and discussion of the evaluation criteria is important since the reviewers will rate the application against the evaluation criteria. Applicants should use the following section headings:

(a) *Significance, Issues, and Objectives;*
(b) *Technical Approach to Research and Project Management;* and
(c) *Staff Qualifications, Organizational Capacity and Fiscal Resources.*

The specific information to be included under each of these headings is described in Part IV, Project Narrative, and Part V, Section B, Evaluation Criteria.

The narrative should be double-spaced and single-sided on 8½″×11″ plain white paper, with 1″ margins on all sides. Use 10 or 12 pitch throughout the proposal. All pages of the narrative (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning with ''Significance, Issues, and Objectives'' as page number one. Applicants should not submit reproductions of larger sized paper reduced to meet the size requirement. Applicants should not send pamphlets, brochures, or other printed material along with their applications, as these items pose copying difficulties. These materials, if submitted, will not be included in the review process, although they will be kept on file.

The clarity and conciseness of proposals are of the utmost importance. The entire Project Narrative Statement (including text, tables, charts, graphs, resumes, tables, maps, exhibits, references, footnotes, and appendices) may not exceed 100 pages single-spaced (200 pages double-spaced). Excess pages will not be reviewed. (Note: Applicants are asked to print their statement in double-spaced format for ease of review.)

4. Certification, Disclosure, and Assurance

Applicants must provide all applicable certifications, disclosures and assurances included in the ACF Uniform Discretionary Grant Application Form.

5. End Matter

All supporting materials, such as resumes, letters of support, and other documents should be organized into appropriate appendices and securely bound into the application package. Applicants are reminded that the total page limitation applies to both narrative text and supporting materials.

E. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

____ One original, signed and dated application, plus two copies.
____ Application is from an organization which is eligible under the eligibility requirements defined in Part I (screening requirement).

A complete application consists of the following items in this order:

____ Cover Sheet
____ Project Abstract (Executive Summary)
____ Table of Contents

Standard Forms

____ (SF 424, REV 4–92); a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 (if applicable).
____ Budget Information—Non-Construction Programs (SF 424A, REV 4–92);
____ Budget justification for Section B—Budget Categories;
____ Letter from the Internal Revenue Service to prove non-profit status, if necessary;
____ Copy of the applicant's approved indirect cost rate agreement, if appropriate;
____Project Narrative Statement organized by Evaluation Criteria

Certification, Assurance and Disclosure

____Assurances—Non-Construction Programs (Standard Form 424B, REV 4–92);
____Certification Regarding Lobbying;
____Certification Regarding Drug-Free Workplace Requirements;
____Certification Regarding Debarment and Other Responsibilities;
____Certification Regarding Environmental Tobacco Smoke; and
____Certification of Protection of Human Subjects, if necessary.
____End Matter (appendices, resumes, letters of support, etc.)

Each copy of the application should be stapled securely (front and back if necessary) in the upper left-hand corner. Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, brochures, videos, or any other items that cannot be photocopied.

F. Notification

All applicants will be notified automatically about the receipt of their application and of the four digit identification number assigned to the application. This number and the priority area must be referred to in all subsequent communication with the Child Care Bureau, ACYF, or ACF concerning the application. If you do not receive acknowledgment of your application within eight weeks after the deadline date, please notify the ACYF Operations Center by telephone at 1–800–351–2293.

Dated: May 1, 1997.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184–01–P

Appendix A—OMB State Single Point of Contact Listing

Arizona
Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144

Arkansas
Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

Delaware
Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia
Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

Florida
Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

Georgia
Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W.—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938

Illinois
Virginia Bova, State Single Point of Contact, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana
Amy Brewer, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa
Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

Kentucky
Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, , Kentucky 40601–8204, Telephone: (502) 573–2382, FA (502) 573–2512

Maine
Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland
William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 225–4490, FAX: (410) 225–4480

Michigan
Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi
Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

Missouri
Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada
Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

New Hampshire
Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico
Robert Peters, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York
New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605

North Carolina
Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota
North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 244–2094, FAX: (701) 224–2308

Ohio
Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400

Rhode Island
Daniel W. Varin, Associate Director, Department of Administration/Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina
Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 477, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0385

Texas
Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1888

Utah
Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia
Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin
Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, FAX: (608) 267–6931

Wyoming
Sheryl Jeffries, State Single Point of Contact, Office of the Governor, State Capital, Room 124, Cheyenne, Wyoming 82002, Telephone: (307) 777–5930, FAX: (307) 632–3909

Territories

Guam
Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico
Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444 or (809) 723–6190, FAX: (809) 724–3270 or (809) 724–3103

North Mariana Islands
Mr. Alvaro A. Santos, Executive Officer, State Single Point of Contact, Office of Management and Budget, Office of the Governor, Saipan, MP, Telephone: (670) 664–2256, FAX: (670) 664–2272
Contact Person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 644–2289, FAX: (670) 644–2272

Virgin Islands
Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069

Appendix B—Program Narrative

This program narrative section was designed for use by many and varied programs. Consequently, it is not possible to provide specific guidance for developing a program narrative statement that would be appropriate in all cases. Applicants must refer the relevant program announcement for information on specific program

requirements and any additional guidelines for preparing the program narrative statement. The following are general guidelines for preparing a program narrative statement.

The program narrative provides a major means by which the application is evaluated and ranked to compete with other applications for available assistance. It should be concise and complete and should address the activity for which Federal funds are requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those which will not be used in support of the specific project for which funds are requested.

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Narratives are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities which will not be directly funded by the grant or information which does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered for easy reference.

Prepare the program narrative statement in accordance with the following instructions:

- Applicants submitting *new applications* or *competing continuation applications* should respond to Items A and D.
- Applicants submitting *noncompeting continuation applications* should respond to Item B.
- Applicants requesting *supplemental assistance* should respond to Item C.

A. Project Description—Components

1. Project Summary/Abstract

A summary of the project description (usually a page or less) with reference to the funding request should be placed directly behind the table of contents or SF–424.

2. Objectives and Need for Assistance

Applicants must clearly identify the physical, economic, social, financial, institutional, or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation such as letters of support and testimonials from concerned interests other than the applicant may be included. Any relevant data based on planning studies should be included or referenced in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the narrative, the applicant may volunteer or be requested to provide information on the total range of projects currently conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

3. Results or Benefits Expected

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking this approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. (Note that clearance from the U.S. Office of Management and Budget might be needed prior to an information collection.) List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

5. Evaluation

Provide a narrative addressing how you will evaluate (1) the results of your project and (2) the conduct of your program. In addressing the evaluation of results, state how you will determine the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program. Discuss the criteria to be used to evaluate results; explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of your program, define the procedures you will employ to determine whether the program is being conducted in a manner consistent with the work plan you presented and discuss the impact of the program's various activities upon the program's effectiveness.

6. Geographic Location

Give the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

7. Additional Information (include if Applicable)

Additional information may be provided in the body of the program narrative or in the appendix. Refer to the program announcement and ''General Information and Instructions'' for guidance on placement of application materials.

Staff and Position Data—Provide a biographical sketch for key personnel appointed and a job description for each vacant key position. Some programs require both for all positions. Refer to the program announcement for guidance on presenting this information. Generally, a biographical sketch is required of original staff and new members as appointed.

Plan for Project Continuance Beyond Grant Support—A plan for securing resources and continuing project activities after Federal assistance has ceased.

Business Plan—When federal grant funds will be used to make an equity investment, provide a business plan. Refer to the program announcement for guidance on presenting this information.

Organization Profiles—Information on applicant organizations and their cooperating partners such as organization charts, financial statements, audit reports or statements from CPA/Licensed Public Accountant, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with federal/state/local government standards, documentation of experience in program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dissemination Plan—A plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements—Written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements may detail scope of work, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Waiver Request—A statement of program requirements for which waivers will be needed to permit the proposed project to be conducted.

Letters of Support—Statements from community, public and commercial leaders which support the project proposed for funding.

B. Noncompeting Continuation Applications

A program narrative usually will not be required for noncompeting continuation applications for nonconstruction programs. Noncompeting continuation applications shall be abbreviated unless the ACF Program Office administering this program has issued a notice to the grantee that a full application will be required.

An abbreviated application consists of:

1. The Standard Form 424 series (SF–424, SF–424A, SF–424B)
2. The estimated or actual unobligated balance remaining from the previous budget period should be identified on an accurate SF–269 as well as in Section A, Columns (c) and (d) of the SF–424A.
3. The grant budget, broken down into the object class categories on the 424A, and if category ''other'' is used, the specific items supported must be identified.
4. Required certifications.

A full application consists of all elements required for an abbreviated application plus:

1. Program narrative information explaining significant changes to the original program narrative statement, a description of accomplishments from the prior budget period, a projection of accomplishments throughout the entire remaining project period, and any other supplemental information that ACF informs the grantee is necessary.
2. A full budget proposal for the budget period under consideration with a full cost analysis of all budget categories.
3. A corrective action plan, if requested by ACF, to address organizational performance weaknesses.

C. Supplemental Requests

For supplemental assistance requests, explain the reason for the request and justify the need for additional funding. Provide a budget and budget justification *only* for those items for which additional funds are requested. (See Item D for guidelines on preparing a budget and budget justification.)

D. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both federal and non-federal resources should be detailed and justified in the budget and narrative justification. For purposes of preparing the program narrative, ''federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other federal and non-federal resources. It is suggested that for the budget, applicants use a column format: Column 1, object class categories; Column 2, federal budget amounts; Column 3, non-federal budget amounts, and Column 4, total amounts. The budget justification should be a narrative.

Personnel. Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, show name/title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include costs of consultants or personnel costs of delegate agencies or of specific projects(s) or businesses to be financed by the applicant.

Fringe Benefits. Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel. Costs of project related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF sponsored workshops as specified in this program announcement should be detailed in the budget.

Equipment. Costs of all non-expendable, tangible personal property to be acquired by the project where each article has a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the applicant organization for financial statement purposes, or (b) $5000.

Justification: For each type of equipment requested, provide a description of the equipment, cost per unit, number of units, total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies. Costs of all tangible personal property (supplies) other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual. Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if a sole source procurement is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Also provide back-up documentation where necessary to support selection process.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must provide a detailed budget and budget narrative for each delegate agency by agency title, along with the required supporting information referenced in these instructions.

Applicants must identify and justify any anticipated procurement that is expected to exceed the simplified purchase threshold (currently set at $100,000) and to be awarded without competition. Recipients are required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. under the conditions identified at 45 CFR Part 74.44(e).

Construction. Costs of construction by applicant or contractor.

Justification: Provide detailed budget and narrative in accordance with instructions for other objects class categories. Identify which construction activity/costs will be contractual and which will assumed by the applicant.

Other. Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges. Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

Justification: With the exception of most local government agencies, an applicant which will charge indirect costs to the grant must enclose a copy of the current rate agreement if the agreement was negotiated with a cognizant Federal agency other than the Department of Health and Human Services (DHHS). If the rate agreement was negotiated with the Department of Health and Human Services, the applicant should state this in the budget justification. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant. Also, if the applicant is requesting

a rate which is less than what is allowed under this program announcement, the authorized representative of your organization needs to submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income. The estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from program support and income generated for other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the budget or reference pages in the program narrative statement which contain this information.

Non-Federal Resources. Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF-424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process.

Total Direct Charges, Total Indirect Charges, Total Project Costs. (self explanatory)

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Appendix C

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier	
	3. DATE RECEIVED BY STATE	State Application Identifier	
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J Private University
K Indian Tribe
L Individual
M Profit Organization
N Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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BILLING CODE 4184–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1–4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter Column (e) the amount of the increase or decrease Federal funds and enter in Column (f) the amount the increase or decrease of non-Federal funds. Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expenses.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers,

or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing: (i) any other nondiscrimination provisions in the specific statute(s) under which application of Federal assistance is being made and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C.§§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1996, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Applicant Organization

Title

Date Submitted

Appendix D—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

the undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction impose by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

if any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit

Standard Form-LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____

Federal Use Only: **Authorized for Local Reproduction**
Standard Form - LLL

Appendix E

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184–01–C

Appendix F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification is this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction , participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix G—Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

BILLING CODE 4184–01–M

Appendix H

OMB No. 9999-0020
OMB No. 0925-0418
Approved for use through 12/31/97

Protection of Human Subjects
Assurance Identification/Certification/Declaration
(Common Federal Rule)

POLICY: Research activities involving human subjects may not be conducted or supported by the Departments and Agencies adopting the Common Rule (56FR28003, June 18, 1991) unless the activities are exempt from or approved in accordance with the common rule. See Section 101(B) the common rule for exemptions. Institutions submitting applications or proposals for support must submit certification of appropriate Institutional Review Board (IRB) review and approval to the Department or Agency in accordance with the common rule. Institutions with an assurance of compliance that covers the research to be conducted on file with the Department, Agency or the Department of Health and Human Services (HHS) should submit certification of IRB review and ap- proval with each application or proposal unless otherwise advised by the De- partment or Agency. Institutions which do not have such an assurance must submit an assurance and certification of IRB review and approval within 30 days of a written request from the Department or Agency.

1. Request Type	2. Type of Mechanism	3. Name of Federal Department or Agency and, if known, Application or Proposal Identification No.
☐ ORIGINAL ☐ FOLLOWUP ☐ EXEMPTION	☐ GRANT ☐ CONTRACT ☐ FELLOWSHIP ☐ COOPERATIVE AGREEMENT ☐ OTHER:_____	

4. Title of Application or Activity	5. Name of Principal Investigator, Program Director, Fellow, or Other

6. Assurance Status of this Project *(Respond to one of the following)*

☐ This assurance, on file with the Department of Health and Human Services, covers this activity:

Assurance identification no. M-_____ IRB identification no._____.

☐ This Assurance, on file with *(agency/dept.)*_____, covers this activity:

Assurance identification no. _____ IRB identification no._____*(if applicable)*

☐ No assurance has been filed for this project. This institution declares that it will provide an Assurance and Certification of IRB review and approval upon request.

☐ *Exemption status:* Human subjects are involved, but this activity qualifies for exemption under Section 101 (b), paragraph_____.

7. Certification of IRB Review *(Respond to one of the following IF you have an Assurance on file)*

☐ This activity has been reviewed and approved by the IRB in accordance with the common rule and any other governing regulations and subparts on *(date)*_____ by: ☐ Full IRB Review or ☐ Expedited Review.

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by the common rule will be reviewed and approved before they are initiated and that appropriate further certification will be submitted.

8. Comments

9. The official signing below certifies that the information provided above is correct and that, as required, future reviews will be performed and certification will be provided.		10. Name and Address of Institution
11. Phone No. *(with area code)*	12. Fax No. (with area code)	
13. Name of Official		14. Title
15. Signature		16. Date

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Federal Register

Thursday
May 8, 1997

Part VI

Department of Health and Human Services

Announcement of Availability of Grants for Family Planning Male Research Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Availability of Grants for Family Planning Male Research Projects

AGENCY: Office of Family Planning, OPHS.

ACTION: Notice.

SUMMARY: The Office of Family Planning (OFP) requests applications for grants for research in certain behavioral and program implementation fields related to family planning.

DATES: To receive consideration, applications must be received by the Grants Management Office no later than June 23, 1997. Applications will be considered as meeting the deadline if they are either (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legible date receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will not be accepted for review. Applications which do not conform to the requirements of the program announcement will not be accepted for review. Applicants will be notified, and applications will be returned.

ADDRESSES: Requests for application kits may be faxed to (301) 594–5980. Application kits may also be obtained from, and applications must be submitted to, the Office of Population Affairs, Grants Management Office, 4350 East-West Highway, Suite 200, West Tower, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Ms. June L. Dow, (301) 594–4000, for assistance on technical and program aspects; Grants Management Office, (301) 594–4012, to answer questions and provide technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title X of the PHS Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services to award grants for projects to provide research in behavioral and program implementation fields related to family planning. The Office of Family Planning (OFP) intends to make available approximately $1 million to support an estimated four community-based service programs to investigate innovative approaches for providing family planning/reproductive health related information and services specifically targeted to males.

Statutory Background

Title X of the PHS Act, enacted by Public Law 91–572, authorizes programs related to family planning. Section 1004 of the Act, as amended, authorizes the Secretary to make grants to entities to conduct research in behavioral and program implementation fields related to family planning. Implementing regulations appear at 42 CFR Part 52. This announcement seeks to encourage the investigation and development of effective approaches that facilitate the provision of family planning/reproductive health related information and services to males and approaches that involve males in building community support for pregnancy prevention and contraception.

Purposes of Grant

The family planning program authorized by Section 1001 of Title X is required by law to provide family planning services, including education and counseling, to all persons desiring such services. One subgroup of the population that has been under-represented in the traditional family planning delivery system is males. For example, in the Title X family planning program, less than two percent of the approximately 5,000,000 persons served are males.

Experience has shown that it is difficult to draw males into family planning/reproductive health related information and services. The reasons posited for low male participation in family planning range from the belief that family planning/reproductive health related information and services is synonymous with contraception and is ''a woman's province'' to the fact that the environment surrounding most traditional family planning/reproductive health related information and services is largely female-oriented. In other words, the under-representation of males may be related to how little is really known about what most appropriately constitutes family planning/reproductive health for males. In addition, most of the highly effective contraceptive methods are those used by females, and the fact that pregnancy occurs in females may lead to the conclusion that they have the greatest self-interest in managing contraception. As the incidence of STD/HIV infection has increased, so too has the attention given to barrier methods of contraception, such as the condom, and to the motivation of males to use this method to prevent disease transmission, as well as pregnancy. Findings from a number of studies suggest that males believe that contraception is a joint responsibility and that more efforts to involve males may indeed proved successful. Research also suggests that contraceptive use by females is greatly affected by their male partners' communication and attitudes and that encouragement from the male partner is the strongest predictor of female use of contraception.

Federal programs have recently begun to focus more attention on male involvement in family planning/reproductive health related information and services, as evidenced by the President's Fatherhood Initiative, the National Campaign to Prevent Teen Pregnancy, and the emphasis on male responsibility contained in the ''Personal Responsibility and Work Opportunity Reconciliation Act of 1996'', P.L. 104–193.

Proposals should focus on one or more of the following areas, as they relate to males: (1) Determining the appropriate mix of activities that positively affect the retention of basic information and education needed for responsible family planning/reproductive health decision-making; (2) developing and testing approaches for providing family planning services to males or for encouraging males to seek access to services that already exist; (3) developing and testing approaches that involve adult males in providing information that encourages responsible family planning/reproductive health decision-making in adolescent males; (4) developing and testing ways to involve males in building community support for the prevention of unintended pregnancy.

Funds are available under this announcement to encourage the development and implementation of projects that will test a variety of approaches as they relate to involving males in family planning/reproductive health related information and services. Applicants must review and consider policy and program goals of the Title X family planning program and must work with a network of entities, which should include other federal, State, local or community-based health and social service agencies in implementing the project. Successful applicants who do not provide clinical services must have referral mechanisms in place for the provision of such services. Applicants choosing an educational approach should specify what curricula will be implemented. Grants under this announcement are not intended for curriculum or material development; existing curricula, or adaptations of existing curricula, should be used.

An applicant for a grant under this announcement may elect to develop a

family planning/reproductive health related information and services component which includes any one or more of the following services as appropriate:

(1) Educational services or other activities relating to family planning/reproductive health;

(2) Counseling relating to family planning/reproductive health issues;

(3) Outreach services to males and their families on family planning/reproductive health issues;

(4) Clinical services appropriate to family planning/reproductive health;

(5) Public information and education on family planning/reproductive health issues.

Applicants should clearly state how such component relates to the general research goals of the proposed project.

Evaluation

In order to accomplish the research goals of the program, all applicants are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding level. Project evaluations should monitor program processes to determine whether the program has been carried out as planned and to measure the program's outcomes.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. Grants are awarded only to those organizations or agencies which are determined to demonstrate the capability of providing the proposed services and meet the statutory requirements. Organizations that are experienced in providing a variety of services to males, such as social, educational, vocational, and legal services (e.g., tutoring, mentoring, job skills training), and have the capability of expansion to include development and testing of family planning/reproductive health related information and services, are encouraged to apply for a grant under this announcement.

Application Requirements

Applications must comply with the applicable requirements at 42 CFR 52.4 and be submitted on the forms supplied (PHS–5161–1) (OMB Approval No. 0937–0189) and in the manner prescribed in the application kits available from the Office of Grants Management. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

Accepted applications will be subjected to a competitive review process. The results of this review will assist the Deputy Assistant Secretary for Population Affairs (DASPA) in considering competing applications and in making the final funding decision.

Any public or private nonprofit organization or agency is eligible to apply for a grant. Awards will be made only to those organizations or agencies which have demonstrated the capability of providing the proposed services, and which have met all applicable requirements.

A copy of the legislation governing this program will be sent to applicants as part of the application kit. Applicants should use the legislation and other information included in this announcement to guide them in developing their applications. Applications should be limited to 35 double-spaced pages, not including appendices providing curriculum vitae or statements of organizational capabilities.

Review Under Executive Order 12372

Applicants under this announcement are subject to the requirements of Executive Order 12372.

Application Consideration and Assessment

Eligible grant applications will be reviewed by a multidisciplinary panel of independent reviewers and assessed according to the following criteria:

1. A clear description of the project, including goals and objectives, methods of achieving objectives, a reasonable workplan and timetable, and a clear statement of results or benefits expected. (20 points)

2. The feasibility of the project and the likelihood of its producing meaningful results, as evidenced by the applicant's presentation of an evaluation plan, reflecting a practical, technically sound methodology to measure the extent to which the proposed approach enhances the delivery of family planning/reproductive health education, counseling and/or services to males, their partners and their families and its potential for replication. (30 points)

3. The history of the applicant organization in successfully providing a variety of services to males, such as social, educational, vocational and legal services. (30 points)

4. The administrative and management capability of the applicant organization in relation to the type of research proposed, the project period, and the adequacy of the applicant's resources for the project. (20 points)

Final grant award decisions will be made by the DASPA. In making these decisions, the DASPA will take into account the extent to which grants approved for funding will provide an appropriate geographic distribution of resources, and will take into consideration:

(1) The scientific merit and significance of the proposed projects;

(2) The applicant's capacity to administer funds responsibly;

(3) The population to be served;

(4) The organizational model(s);

(5) The usefulness for policymakers and service providers of the proposed project and the likelihood of its producing meaningful results;

(6) The reasonableness of the estimated cost to the government considering the anticipated results; and,

(7) Empowerment zones and enterprise communities be designated as target areas for these projects.

Grants are funded in annual increments (budget periods). Projects may be funded for up to three (3) years. Funding for all approved budget periods beyond the first year of a grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of federal funds.

The OFP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantees the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding, if any, to be contributed by the grantee to project costs.

Dated: May 1, 1997.

Thomas C. Kring,

Acting Deputy Assistant Secretary for Population Affairs.

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Jetstream; comments due by 5-15-97; published 4-4-97
New Piper Aircraft, Inc.; comments due by 5-16-97; published 2-19-97
Pilatus Britten-Norman Ltd.; comments due by 5-12-97; published 3-6-97
Class D airspace; comments due by 5-15-97; published 4-9-97
Class E airspace; comments due by 5-15-97; published 4-21-97

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:
Federal regulatory review; comments due by 5-12-97; published 3-27-97

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

Long Beach, CA

WHEN: May 20, 1997 at 9:00 am to 12:00 noon

WHERE: Glenn M. Anderson Federal Building
501 W. Ocean Blvd.
Conference Room 3470
Long Beach, CA 90802

San Francisco, CA

WHEN: May 21, 1997 at 9:00 am to 12:00 noon

WHERE: Phillip Burton Federal Building and Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Anchorage, AK

WHEN: May 23, 1997 at 9:00 am to 12:00 noon

WHERE: Federal Building and U.S. Courthouse
222 West 7th Avenue
Executive Dining Room (Inside Cafeteria)
Anchorage, AK 99513

RESERVATIONS: For Long Beach, San Francisco, and Anchorage workshops please call Federal Information Center
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