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Presidential Documents

Title 3—

The President

Proclamation 7087 of April 24, 1998

Jewish Heritage Week, 1998

By the President of the United States of America

A Proclamation

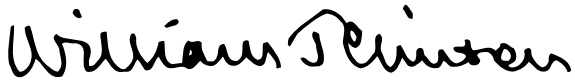
America's first Jewish immigrants arrived on our shores from Europe more than 100 years before the American Revolution. In subsequent decades, millions more Jewish men and women would follow, fleeing persecution, pogroms, and the horrors of the Holocaust, seeking a new life of freedom and opportunity for themselves and their children. While many came here in poverty, they brought with them the riches of their ancient Jewish heritage: faith in God; a strong commitment to family and community; a tradition of service to others; and a deep love of learning and the arts.

Drawing on these many strengths, Jewish citizens have made extraordinary contributions to every aspect of American life. Acutely conscious of the dangers of racism, prejudice, and political oppression, American Jews have been strong and effective advocates in the cause of social justice. They have dedicated their energies, talents, and resources to ensure that our Nation lives up to its promise of equality, making a lasting impact in the struggle for civil rights, labor reform, and women's equality. The Jewish philanthropic tradition, dating back to ancient times, has flourished in America, bringing hope and help to those in need through numerous Jewish charitable organizations and activities. In public service and education, in science and medicine, in entertainment, law, the arts, and many other fields of endeavor, Jewish men and women strengthen our national community and uphold the fundamental American ideals of faith, community, compassion, and responsibility.

Every spring, we set aside this special time to celebrate the many gifts that American Jews bring to our national life. This year, we also join with Jews around the world in celebrating the 50th anniversary of the founding of the modern state of Israel. This milestone is a tribute to the strength and resilience of the Jewish spirit in the face of great adversity. Israel's achievements in the past 5 decades of challenge and conflict continue to inspire all Americans and teach us anew the power of the human spirit to build reality out of our dreams.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 26 through May 3, 1998, as Jewish Heritage Week. I urge all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of April, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



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Rules and Regulations

Federal Register
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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

Agricultural Marketing Service

7 CFR Part 985

[FV98–985–2 IFR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1997–98 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule increases the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1997–98 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

DATES: Effective on April 30, 1998, through May 31, 1998; comments received by May 19, 1998, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724; Fax: (503) 326–7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada, and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1997–98 marketing year, which ends on May 31, 1998. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

This rule increases the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1997–98 marketing year, which ends on May 31, 1998. This rule increases the salable quantity from 1,125,351 pounds to 1,185,550 pounds and the allotment percentage from 56 percent to 59 percent for Native spearmint oil for the 1997–98 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1997–98 marketing year were recommended by the Committee at its October 2, 1996, meeting. The Committee recommended salable quantities of 996,522 pounds and 1,125,351 pounds, and allotment percentages of 55 percent and 56 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the January 7, 1997, issue of the **Federal Register** (62 FR 942). A final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1997–98 marketing year was published in the July 9, 1997, issue of the **Federal Register** (62 FR 36646).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, at its February 25, 1998, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 1997–98 marketing year be increased by 3 percent from 56 percent to 59 percent. Taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, the 1997–98 marketing year salable quantity of 1,125,351 pounds will therefore be increased to 1,185,550 pounds.

The original total industry allotment base for Native spearmint oil for the 1997–98 marketing year was established at 2,009,556 pounds and was revised during the year to 2,006,630 pounds to reflect loss of 2,926 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,006,630 pounds is applied to the originally established allotment percentage of 56, the 1997–98 marketing year salable quantity of 1,125,351 pounds is effectively modified to 1,123,713 pounds.

Further, § 985.56(a) of the order authorizes producers who have produced more than their salable quantity of spearmint oil during a marketing year to transfer such excess to producers who have produced less than their salable quantity for the same marketing year. If all producers having such an excess transfer their excess oil to producers having a deficiency, all of the annual allotment is utilized. If, on the other hand, this option is not utilized to its full extent, some annual allotment is essentially lost and the effective salable quantity for that year is reduced by the amount of excess oil that was not transferred to fill deficiencies. During the 1997–98 marketing year, producers who were deficient by 3,957 pounds of Native spearmint oil chose not to have this deficiency filled by producers having excess oil. This also effectively reduced the already modified 1997–98 salable quantity by 3,957 pounds leaving a net quantity of 1,119,756 pounds.

By increasing the salable quantity and allotment percentage, this rule makes an additional amount of Native spearmint oil available by releasing such oil from the reserve pool. When applied to each individual producer, the 3 percent allotment percentage increase allows each producer to take up to 3 percent of their allotment base from their Native spearmint oil reserve. If a producer does not have any reserve pool oil, or has less than 3 percent of their allotment base in the reserve pool, the increase in allotment percentage will actually make less than such amount available to the market. Currently, producers receiving 6,201 pounds of additional allotment through this increase do not have any Native spearmint oil in reserve. Thus, rather than 60,199 additional pounds, this action effectively makes an additional 53,998 pounds of Native spearmint oil available to the market.

The following table summarizes the Committee recommendation:

Native Spearmint Oil Recommendation

(a) Estimated 1997–98 Allotment Base—2,009,556 pounds. This is the estimate that the 1997–98 Native spearmint oil salable quantity and allotment percentage was based on.

(b) Revised 1997–98 Allotment Base—2,006,630 pounds. This is 2,926 pounds less than the estimated allotment base. This base was lost because some producers failed to produce all of their previous year's allotment.

(c) Initial 1997–98 Allotment Percentage—56 percent.

(d) Initial 1997–98 Salable Quantity—1,125,351 pounds. This figure is 56 percent of 2,009,556 pounds.

(e) Initial Adjustment to the 1997–98 Salable Quantity—1,123,713 pounds. This figure reflects the salable quantity initially available after the beginning of the 1997–98 marketing year due to the 2,296 pound reduction in the industry allotment base to 2,006,630 pounds.

(f) Final Adjustment to the 1997–98 Salable Quantity—1,119,756 pounds. This figure reflects the salable quantity actually available during the 1997–98 marketing year after the 3,957 pound deficiency was subtracted from the initially adjusted salable quantity of 1,123,713 pounds.

(g) Increase in Allotment Percentage—3 percent. This percentage increase was recommended by the Committee at its February 25, 1998, meeting.

(h) Revised 1997–98 Allotment Percentage—59 percent. This figure is derived by adding the 3 percent increase to the initial 1997–98 allotment percentage of 56 percent.

(i) Calculated Revised 1997–98 Salable Quantity—1,185,638 pounds. This figure is 59 percent of the estimated 1997–98 allotment base of 2,009,556 pounds.

(j) Computed Increase in the 1997–98 Salable Quantity—60,287 pounds. This is the product of the estimated 1997–98 allotment base of 2,009,556 and the revised 1997–98 allotment percentage of 59 percent.

(k) Effective Increase in the 1997–98 Salable Quantity—53,998 pounds. This figure represents the amount of Native spearmint oil actually being made available by this action based on the adjustments described herein.

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1997–98 marketing year began on June 1, 1997. Handlers have indicated that with this action, the available supply of both Scotch and Native spearmint oils appears adequate to meet anticipated demand through May 31, 1998. Without the increase, the Committee believes the industry would not be able to meet market needs. As of February 25, 1998, approximately 89,000 pounds of Native spearmint oil was available for market. Average demand for Native spearmint oil from March 1 to May 31 over the past 17 years has been 108,029 pounds. Therefore, based on past history the industry may not be able to meet market demand without this increase. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 1997–98 marketing year, it had anticipated that the year would end with an ample available supply. This action has the effect of adding 53,998 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the period February 25 through May 31, 1998, up to approximately 144,000 pounds.

The Department, based on its analysis of available information, has determined that the 1997–98 salable quantity and allotment percentage for Native spearmint oil for the 1997–98 marketing year should be increased to 1,185,638 and 59 percent, respectively.

This rule relaxes the regulation of Native spearmint oil and will allow growers to meet market needs and improved returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 1997–98 marketing

year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of revising the 1997–98 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The increase in the Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

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

There are 9 spearmint oil handlers subject to regulation under the marketing order and approximately 200 producers of spearmint oil in the regulated production area. Of the 200 producers, approximately 125 producers hold Class 1 (Scotch) spearmint oil allotment base, and approximately 110 producers hold Class 3 (Native) spearmint oil allotment base. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the nine handlers regulated by the order would be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 29 of the 124 Scotch spearmint oil producers and 14 of the 110 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would fall into the category of large businesses.

Small spearmint oil producers represent a minority of farming operations and are more vulnerable to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the resources to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because of stronger incomes from alternate crops which could support the operation for a period of time. Despite the advantage of larger producers, increasing the Native salable quantity and allotment percentage will help both large and small producers by improving returns. In addition, this change may potentially benefit the small producer more than large producers. This is because the change ensures that small producers are more likely to maintain a profitable cash flow and meet annual expenses.

Alternatives to this rule included not increasing the available supply of Native spearmint oil, which could potentially hurt small producers. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs. As of February 25, 1998, approximately 88,000 pounds of Native spearmint oil were available for market. Average demand for Native spearmint oil from March 1 to May 31 over the past 17 years has been 108,029 pounds. Therefore, based on past history the industry may not be able to meet market demand without this change. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 1997–98 marketing year, it had anticipated that the year would end with an ample available supply. This revision has the effect of adding 53,998 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the period February 25 through May 31, 1998, up to 144,158 pounds.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant matter presented, including that

contained in the prior proposed and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1997–98 marketing year, the Committee's recommendation and other available information, it is found that to revise section 985.216 (62 FR 36650) to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a revision to the salable quantity and allotment percentage for Native spearmint oil. A 20-day comment period is provided. This comment period is appropriate because the marketing year ends on May 31, 1998. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which ends on May 31, 1998; (2) the quantity of Native spearmint planted for the 1998–99 marketing year may be affected, thus handlers and producers should be apprised as soon as possible of the salable quantity and allotment percentage of Native spearmint oil contained in this interim final rule; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 20-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 985.216 is amended by revising paragraph (b) to read as follows:

[**Note:** This section will not appear in the annual Code of Federal Regulations.]

§ 985.216 Salable quantities and allotment percentages—1997–98 marketing year.

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,185,550 pounds and an allotment percentage of 59 percent.

Dated: April 24, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–11446 Filed 4–28–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–143–AD; Amendment 39–10499; AD 98–09–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 and A321 series airplanes, that requires replacement of two elevator aileron computers (ELAC) with ELAC's that contain new software. This amendment is prompted by a report indicating difficulty maintaining the intended flight path during landing in turbulent conditions. The actions specified by this AD are intended to prevent situations that could lead to reduced controllability of the airplane due to adverse airplane-pilot coupling characteristics.

DATES: Effective June 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 and A321 series airplanes was published in the **Federal Register** on January 7, 1997 (62 FR 949). That action proposed to require replacement of two elevator aileron computers (ELAC) with ELAC's that contain new software.

Comments

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

Two commenters support the proposed rule.

One commenter, Airbus, does not object to the proposed AD, but offers the following comments suggesting changes for clarity and accuracy. The commenter requests that the statement of unsafe condition, ''To prevent reduced controllability of the airplane due to problems associated with the ELAC, accomplish the following: * * *,'' be replaced with, ''In order to adapt lateral control law to real flap position in case of failure/jamming of flaps, and in order to harmonize the lateral behavior between 'full' and '3' configurations, in turbulence, of the ELAC, accomplish the following: * * *.'' The commenter states that its proposed wording of the unsafe condition is supported by the fact that the improvement of the ELAC is the result of an in-service event that arose from three conditions surrounding that event:

—Very strong turbulence during landing preparation;
—Flaps locked between ''full'' and ''3'' configurations resulting from flaps extension under strong turbulent conditions, the monitoring of the interconnecting strut between inner and outer flap having detected an abnormal surfaces displacement; and
—An electronic centralized aircraft monitor (ECAM) procedure requesting to select slat/flap lever to ''conf 3'' when flaps are locked between configurations ''3'' and ''full'' (lever in position ''full'').

Additionally, the commenter notes that no system failure initiated the reported event. In conjunction with its

request, the commenter also questions the accuracy of a number of statements made in the notice of proposed rulemaking (NPRM), such as whether the uncommanded roll angle experienced was actually as great as 30 degrees.

The FAA concurs partially. The FAA agrees that the statement of unsafe condition should be revised. However, the FAA does not agree with the commenter's suggested wording of the unsafe condition. The FAA notes that the preamble of the proposed rule indicates that the unsafe condition is due to uncommanded movements of the ailerons. The FAA finds that a more accurate statement of the unsafe condition would include the fact that it is actually associated with pilot response coupled with the handling characteristics of the airplane. In light of this, the FAA has revised the statement of unsafe condition throughout this final rule to state that the actions specified by this AD are intended to prevent situations that could lead to reduced controllability of the airplane due to adverse airplane-pilot coupling characteristics.

The commenter also notes that the proposed AD refers to part number C12370AAA01 in error. The FAA has revised the final rule to specify the correct part number: C12370AA01.

The commenter indicates that the referenced service bulletin has been revised from the original issue to Revision 1. The FAA acknowledges that Airbus has issued Service Bulletin A320–27–1082, Revision 1, dated September 6, 1995, since the issuance of the proposed rule. This service bulletin revision contains essentially the same information as that specified in the original issue of the service bulletin; however, the ELAC Configuration Chart (Figure 1) and the effectivity listing of the service bulletin has been revised in Revision 1 to reduce the number of affected airplanes. In light of this, the applicability of the final rule has been revised to reference Revision 1 of the service bulletin. In addition, since compliance with either the original issue or Revision 1 of the service bulletin is acceptable, the final rule has been revised to cite Revision 1 of the service bulletin as an additional source of service information.

One commenter states that the cost impact information included in the proposed AD specifies that 108 Model A320 and A321 series airplanes would be affected. The commenter notes that no Model A321 series airplanes are currently on the U.S. Register. The FAA acknowledges this remark; however, the cost of compliance is the same regardless of whether all 108 airplanes are A320's or some A321's are included. The AD applies to Model A321 series airplanes, as well as Model A320 series airplanes, to ensure compliance in the event one or more affected Model A321 series airplanes is imported after the effective date of this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 108 Model A320 and A321 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $19,440, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–09–18 Airbus: Amendment 39–10499. Docket 95–NM–143–AD.

Applicability: Model A320 and A321 series airplanes; as listed in Airbus Service Bulletin A320–27–1082, Revision 1, dated September 6, 1995; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent situations that could lead to reduced controllability of the airplane due to adverse airplane-pilot coupling characteristics, accomplish the following:

(a) Within 1 year after the effective date of this AD, replace the ELAC's having part numbers (P/N) 3945122307 and/or P/N C12370AA01 and located in aft electronics rack 80VU, with modified ELAC's having P/N 3945122502, in accordance with Airbus Service Bulletin A320–27–1082, dated April 25, 1995, or Revision 1, dated September 6, 1995.

Note 2: Airbus Service Bulletin A320–27–1082 references Sextant Service Bulletins 394512–27–014, dated August 11, 1995 (for airplanes on which Airbus Modification 24136P3436 has not been installed); and C12370A–27–001, dated May 2, 1995 (for airplanes on which Airbus Modification

24136P3436 has been installed); as additional sources of procedural service information for modification of the ELAC's.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with Airbus Service Bulletin A320–27–1082, dated April 25, 1995, or Airbus Service Bulletin A320–27–1082, Revision 1, dated September 6, 1995. Revision 1 contains the specified effective pages:

Page no.	Revision level shown on page	Date shown on page
1–2, 4–10, 12–14.	1	September 6, 1995.
3, 11, 15.	Original	April 25, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive (C/N) 95–203–072(B), dated October 11, 1995, as corrected by Erratum dated November 8, 1995.

(e) This amendment becomes effective on June 3, 1998.

Issued in Renton, Washington, on April 21, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11075 Filed 4–28–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–217–AD; Amendment 39–10502; AD 98–09–21]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that requires a one-time inspection for corrosion of electrical connectors in certain areas on the pressure bulkhead and rear baggage bay areas, and repair, if necessary; and installation of improved sealing. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the accumulation of moisture inside the electrical connectors, which could result in a short circuit and consequent autopilot disconnect, or a latent failure of the stick pusher system.

DATES: Effective June 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on February 23, 1998 (63 FR 8883). That action proposed to require a one-time inspection for corrosion of electrical connectors in certain areas on the pressure bulkhead and rear baggage bay areas, and repair, if necessary; and installation of improved sealing.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 37 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $714 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $93,018, or $2,514 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–09–21 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10502. Docket 97–NM–217–AD.

Applicability: Jetstream Model 4101 airplanes, constructors numbers 41004 through 41079 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the accumulation of moisture inside the electrical connectors, which could result in a short circuit and consequent autopilot disconnect, or a latent failure of the stick pusher system, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time inspection for corrosion of the electrical connectors on the rear pressure bulkhead, the ceiling area of the rear baggage bay, and the auxiliary power unit area; and improve the sealing of the electrical connectors for these areas; in accordance with Jetstream Service Bulletin J41–24–027, dated July 8, 1997, as revised by Erratum No. 1, dated August 8, 1997. If any corrosion is found, prior to further flight, repair in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with Jetstream Service Bulletin J41–24–027, dated July 8, 1997, as revised by Erratum No. 1, dated August 8, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–07–97 (undated).

(e) This amendment becomes effective on June 3, 1998.

Issued in Renton, Washington, on April 21, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11069 Filed 4–28–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–248–AD; Amendment 39–10501; AD 98–09–20]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, that requires repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracks and corrosion around and under chafing plates of the wing root, which could result in reduced structural integrity of the airplane.

DATES: Effective June 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes was published in the **Federal Register** on February 24, 1998 (63 FR 9163). That action proposed to require repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; and corrective actions, if necessary.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately 68 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $146,880, or $4,080 per airplane, per inspection cycle.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it will take approximately 45 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,229 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $4,929 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–09–20 Airbus Industrie: Amendment 39–10501. Docket 96–NM–248–AD.

Applicability: Model A310 series airplanes on which Airbus Modifications 8888 and 8889 have not been accomplished; 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking and corrosion around and under chafing plates of the wing root between fuselage frame (FR) 36 and FR 39, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Except as provided by paragraph (b) of this AD: Within 4 years since date of manufacture, or within 12 months after the effective date of this AD, whichever occurs later, perform an inspection to detect discrepancies around and under the chafing plates of the wing root, in accordance with paragraph B. of the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 1, dated September 19, 1995. If any discrepancy is found, prior to further flight, accomplish follow-on corrective actions (i.e., removal of corrosion, corrosion protection, high frequency eddy current inspection, x-ray inspection), as applicable, in accordance with the service bulletin. Repeat the inspections, as applicable, thereafter, at intervals specified in the service bulletin.

(b) If any discrepancy is found as a result of an inspection required by paragraph (a) of this AD, and Airbus Service Bulletin A310–53–2069, Revision 1, dated September 19, 1995, specifies to contact Airbus for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Where differences in the compliance times or corrective actions exist between the service bulletin and this AD, the AD prevails.

(c) Accomplishment of the replacement of the chafing plates in accordance with Airbus Service Bulletin A310–53–2070, dated October 3, 1994, constitutes terminating action for the repetitive inspection requirement of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(f) The actions shall be done in accordance with Airbus Service Bulletin A310–53–2069, Revision 1, dated September 19, 1995 and Airbus Service Bulletin A310–53–2070, dated October 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–008–175(B), dated January 3, 1996.

(g) This amendment becomes effective on June 3, 1998.

Issued in Renton, Washington, on April 21, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11070 Filed 4–28–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–199–AD; Amendment 39–10500; AD 98–09–19]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, that requires modification of certain non-regulating shutoff valves on the engine starter, or installation of a pressure relief valve in the pneumatic supply line to the starter air shutoff valve on engines 1 and 2. This amendment is prompted by reports of uncontained failures of engine starters during flight and maintenance, which resulted from the application of excessive pressure on the engine starter that was associated with the installation of non-regulating shutoff valves on the starter. The actions specified by this AD are intended to prevent such uncontained failures of the engine starters, which could create a fire hazard in the engine nacelle.

DATES: Effective June 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Fluid Systems, Technical Publications Department, Building 1230–V, Mail Stop 65–92, P.O. Box 22200, Tempe, Arizona 85285–2200. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, was published in the **Federal Register** on October 23, 1996 (61 FR 54961). That action proposed to require modification of certain converted or first production non-regulating shutoff valves on the engine starter.

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

Support for the Proposal

One commenter supports the proposed AD.

Request to Allow Installation of Relief Valve in Lieu of Pressure Regulator

The Air Transport Association (ATA) of America, on behalf of several of its members, requests that the FAA require installation of a relief valve rather than a pressure regulator. One ATA member states that installation of a relief valve is considered to be a more cost efficient and expeditious method of compliance. Other ATA members state that the pressure regulator feature was removed previously from the start valve due to poor valve reliability caused by contamination.

The FAA concurs partially. The FAA does not agree that installation of a relief valve should be required in lieu of a pressure regulator. However, the FAA agrees that installation of a relief valve could be provided as an additional method of compliance for the requirements of this AD.

Since the issuance of the proposed rule, the FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–80–014, dated August 22, 1997, which describes procedures for installation of a pressure relief valve in the pneumatic supply line to the starter air shutoff valve on engines 1 and 2. Installation of the pressure relief valve and applicable pipe assembly in the muscle pressure line upstream of the starter air shutoff valve will prevent uncommanded opening of the starter valve and will prevent excessive air pressure to the engine starter. The FAA has revised paragraph (a) of this final rule to include accomplishment of the actions specified in this service bulletin as an additional method of compliance for the requirements of that paragraph.

Additionally, the FAA has revised the wording of this final rule to specify that the requirement of paragraph (a)(1) is to modify any converted or first production non-regulating shutoff valve on the starter of engines 1 and 2 by installing a pressure regulator on the valve.

Request for Extension of Compliance Time

Several commenters request that the proposed compliance time of 12 months be extended to as much as 24 months. Two commenters state that most valves must be sent to vendors for modification, which would make it difficult to accomplish the requirements of the proposal within 12 months. Another commenter indicates that an extension of the compliance time would provide an acceptable level of safety without having a negative impact on operations.

The FAA concurs with the commenters' requests. Paragraph (a) of this final rule has been revised to specify a compliance time of 24 months. This extension of compliance time should provide operators ample time to accomplish the required modification without compromising safety.

Request to Revise Cost Impact Information

One commenter indicates that the cost impact information, below, is understated. The commenter states that there are two valves per airplane, and unless AlliedSignal offers a compensatory program, the estimated cost will exceed the figure provided in the proposed rule. The FAA does not concur. The cost impact information specified in this final rule was provided to the FAA by the vendor based on the best available data to date. No change to this final rule is necessary.

Additional Service Information

Since the issuance of the proposed rule, the FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–80–010, dated August 22, 1997, which describes procedures for installation of an air pressure regulator in the starter air shutoff valve, which will minimize the possibility of excessive starter air pressure that could result in a starter uncontained failure. The FAA has revised paragraph (a) of this final rule to reference this service bulletin as an additional source of service information for accomplishment of this installation.

The FAA also has reviewed and approved Revision 1 of AlliedSignal

Aerospace Service Bulletin 979410–80–1611, dated March 13, 1997. Revision 1 of the service bulletin is essentially identical to the original issue; however, Figure 1 of the service bulletin has been revised to clarify certain measurements. The FAA has included a reference to this service bulletin revision in the final rule as an additional source of service information.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,970 Model DC–9, DC–9–80, and C–9 (military) series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,100 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $400 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,496,000, or $1,360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–09–19 McDonnell Douglas: Amendment 39–10500. Docket 96–NM–199–AD.

Applicability: Model DC–9, DC–9–80, and C–9 (military) series airplanes and Model MD–88 airplanes, on which a converted or first production non-regulating shutoff valve having AlliedSignal Aerospace part number (P/N) 979410–1–1 or 979410–2–1 has been installed on the engine starter; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the application of excessive pressure on the engine starter, which could cause uncontained failure of an engine starter and, consequently, could create a fire hazard in the nacelle of the engine, accomplish the following:

(a) Within 24 months after the effective date of this AD, accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Modify any converted or first production non-regulating shutoff valve, P/N 979410–1–1 or 979410–2–1, on the starter of engines 1 and 2 by installing a pressure regulator on the valve in accordance with AlliedSignal Aerospace Service Bulletin 979410–80–1611, dated November 27, 1995; or AlliedSignal Aerospace Service Bulletin 979410–80–1611, Revision 1, dated March 13, 1997; or McDonnell Douglas Service Bulletin DC9–80–010, dated August 22, 1997. Or

(2) Install a pressure relief valve in the pneumatic supply line to the starter air shutoff valve on engines 1 and 2 in accordance with McDonnell Douglas Service Bulletin DC9–80–014, dated August 22, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), 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, Los Angeles ACO.

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

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

(d) The actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9–80–010, dated August 22, 1997; McDonnell Douglas Service Bulletin DC9–80–014, dated August 22, 1997; AlliedSignal Aerospace Service Bulletin 979410–80–1611, dated November 27, 1995; and AlliedSignal Aerospace Service Bulletin 979410–80–1611, Revision 1, dated March 13, 1997. AlliedSignal Aerospace Service Bulletin 979410–80–1611, Revision 1, dated March 13, 1997, contains the specified effective pages:

Page Number	Revision level shown on page	Date shown on page
1, 6, 7, 14, 15, 17, 18.	1	March 13, 1997.
2–5, 8–13, 16.	Original	November 27, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Fluid Systems, Technical Publications Department, Building 1230__V, Mail Stop 65–92, P.O. Box 22200, Tempe, Arizona 85285–2200. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount

Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 3, 1998.

Issued in Renton, Washington, on April 21, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11071 Filed 4–28–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–303–AD; Amendment 39–10503; AD 98–09–22]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes, that requires an inspection to detect fatigue cracking of the windshield frame structure, and modification of the windshield frame structure. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent reduced structural integrity of the airplane resulting from fatigue cracking of the windshield frame structure.

DATES: Effective June 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200, –300, and –320 series airplanes was published in the **Federal Register** on February 19, 1998 (63 FR 8373). That action proposed to require an inspection to detect fatigue cracking of the windshield frame structure, and modification of the windshield frame structure.

Comments

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

The FAA estimates that 106 airplanes of U.S. registry will be affected by this AD.

It will take approximately 19 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $120,840, or $1,140 per airplane.

It will take approximately 191 work hours per airplane to accomplish the required modification specified in Aerospatiale Service Bulletin ATR42–53–0093, Revision 1, dated February 19, 1996, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $11,460 per airplane.

It will take approximately 281 work hours per airplane to accomplish the required modification specified in Aerospatiale Service Bulletin ATR42–53–0094, Revision 2, dated February 19, 1996, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $16,860 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–09–22 Aerospatiale: Amendment 39–10503. Docket 97–NM–303–AD.

Applicability: Model ATR42–200, –300, and –320 series airplanes, on which

Aerospatiale Modification 01392 has not been installed, 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the airplane resulting from fatigue cracking of the windshield frame structure, accomplish the following:

(a) Prior to the accumulation of 24,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later: Inspect to detect cracking of the windshield frame structure in accordance with Operation Description (B—Inspection) of the Accomplishment Instructions of Aerospatiale Service Bulletin ATR42–53–0093, Revision 1, or ATR42–53–0094, Revision 2, both dated February 19, 1996.

(1) If the inspection reveals no crack, or reveals cracking that does not exceed the specifications listed in Figure 6, Sheet 1, of Service Bulletin ATR42–53–0093, Revision 1, dated February 19, 1996: Prior to further flight, modify the windshield frame structure in accordance with either service bulletin.

(2) If the inspection reveals any crack that exceeds the specifications in Figure 6, Sheet 1, of Service Bulletin ATR42–53–0093, Revision 1, dated February 19, 1996, but does not exceed the cut-out areas specified in Figure 7, Sheet 1, of Service Bulletin ATR42–53–0094, Revision 2, dated February 19, 1996: Prior to further flight, modify the windshield frame structure in accordance with Service Bulletin 42–53–0094, Revision 2, dated February 19, 1996.

(3) If the inspection reveals any crack that exceeds the cut-out areas specified in Figure 7, Sheet 1, of Service Bulletin ATR42–53–0094, Revision 2, dated February 19, 1996: Prior to further flight, modify the windshield frame structure in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Note 2: Accomplishment of the modifications specified in ATR Service Bulletin ATR42–53–0093, Revision 1, or ATR42–53–0094, Revision 2, both dated February 19, 1996, is not equivalent to accomplishment of Aerospatiale Modification 01392. Therefore the ATR42 Time Limits Document inspection items with ''PRE MOD 1392'' effectivity are still applicable for airplanes modified by either of the previously described service bulletins.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with the following Aerospatiale Service Bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page number shown on page	Revision level shown on page	Date shown on page
ATR42–53–0093, Revision 1, February 19, 1996	1–4, 13	1	February 19, 1996.
	5–12, 14–41	Original	April 26, 1995.
ATR42–53–0094, Revision 2, February 19, 1996	1, 2, 8, 9, 16, 18, 39, 40, 48, 53, 54	2	February 19, 1996.
	3, 4, 7, 10–15, 17, 19–24, 26, 27, 29–32, 34–38, 47, 55, 56.	1	May 29, 1995.
	5, 6, 25, 28, 33, 41–46, 49–52	Original	April 24, 1995

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 95–126–061(B), dated June 21, 1995.

(e) This amendment becomes effective on June 3, 1998.

Issued in Renton, Washington, on April 21, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11068 Filed 4–28–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–59–AD; Amendment 39–10504; AD 98–09–23]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011 Series Airplanes Equipped With Rolls Royce Model RB211–22B Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Lockheed Model L–1011 series airplanes, that currently requires various modifications and corrective actions to prevent a potential fire hazard caused by heat damage to the flex fuel feed line from an undetected gearbox fire. In lieu of the various modifications and corrective actions, that AD also provides for an optional terminating action (i.e., installation of a vent air tube in the gear compartment and thickened gearbox housings) for another existing AD. For airplanes on which that optional terminating action has been accomplished, this amendment requires accomplishment of the various modifications and corrective actions. This amendment is prompted by a report indicating that, due to bearing failure, an in-flight fire occurred on an airplane on which a thickened gearbox housing was installed. The actions specified by this AD are intended to detect and correct bearing failure, which could lead to a fire in the gearbox.

DATES: Effective June 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 87–07–10, amendment 39–5597 (52 FR 10736, April 3, 1987), which is applicable to certain Lockheed Model L–1011 series airplanes, equipped with Rolls Royce Model RB211–22B engines, was published in the **Federal Register** on July 18, 1997 (62 FR 38491). That action proposed to continue to require various modifications and corrective actions to prevent a potential fire hazard caused by heat damage to the flex fuel feed line from an undetected gearbox fire. In lieu of the various modifications and corrective actions, that action also provided for an optional terminating action (i.e., installation of a vent air tube in the gear compartment and thickened gearbox housings) for another existing AD. For airplanes on which the optional terminating action has been accomplished, that action proposed to require accomplishment of the various modifications and corrective actions.

Comments

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

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that any alternative method of compliance approved previously for compliance with paragraphs (a) and (b) of AD 87–07–10 be approved as an alternative method of compliance for this proposed AD. The FAA concurs with the commenter's request. Paragraph (e) of this final rule has been revised to indicate that any approval of an alternative method of compliance that was granted previously for AD 87–07–10 is approved as an alternative method of compliance with the requirements of paragraphs (a) and (b) of this AD.

The ATA, on behalf of another commenter, states that the proposed AD is unnecessary. The commenter notes that the proposal is somewhat redundant in that it only eliminates an alternative method of compliance with AD 87–07–10. The commenter further states that neither AD 87–07–10 nor the proposed AD does anything to address the basic problem, which is failure of accessory gearbox bearings. According to the commenter, several enhancements have been made over the years to prevent bearing failures, which, if unnoticed by available monitoring methods (chip detectors), could result in fires. The commenter believes that proper management of the chip detector monitoring and improvements available to upgrade the accessory gearbox bearings make the proposed AD and contemplated breather temperature sensors unnecessary. Last, the commenter notes that the latest gearbox fires did not occur in an RB211–22B-style gearbox.

The FAA does not concur that issuance of this AD is unnecessary. The commenter is correct in noting that the latest gearbox fires did not occur in an RB211–22B-style gearbox. Rather, fires have occurred in engines with the thicker, RB211–524-style gearbox housings. In light of this more recent service experience, it is evident that the installation of the thicker gearbox housings is not, in itself, sufficient to eliminate the unsafe condition addressed in AD 87–07–10. Therefore, AD 87–07–10 is being superseded to eliminate the installation of those gearbox housings, without further action, as an approved method of compliance.

The commenter is also correct in noting that the basic problem is failure of accessory gearbox bearings. There are, however, no known means to completely eliminate the possibility that such bearings could fail and precipitate fires. It is, therefore, necessary to ensure that any fire that does occur in the gearbox housing can be detected in a timely manner. Compliance with the requirements of this AD will ensure that, in the event such a fire does occur, the flight crew can take corrective action, i.e., engine shutdown and discharge of the fire suppression system, on a timely basis.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 130 Lockheed Model L–1011 series airplanes equipped with Rolls Royce Model RB211–22B engines of the affected design in the worldwide fleet. The FAA estimates that 76 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 87–07–10 take approximately 3 work hours per engine (3 engines per airplane) to accomplish, at an average labor rate of $60 per work hour. Required parts for Walter Kidde systems will cost approximately $2,100 per engine. Required parts for Graviner systems will cost approximately $8,100 per engine. Based on these figures, the cost impact of the installation currently required by AD 87–07–10 on U.S. operators is estimated to be $6,840 per airplane (for Walter Kidde systems) or $24,840 per airplane (for Graviner systems).

The required modification will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $10,000 per airplane. Based on these figures, the cost impact on U.S. operators of the modification required by this AD is estimated to be $787,360, or $10,360 per airplane.

The introduction of a vent air tube will take approximately 3 work hours per engine (3 engines per airplane) to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $500 per engine. Based on these figures, the cost impact on U.S. operators of the introduction of a vent air tube required by this AD is estimated to be $155,040, or $2,040 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5597 (52 FR 10736, April 3, 1987), and by adding a new airworthiness directive (AD), amendment 39–10504, to read as follows:

98–09–23 Lockheed: Amendment 39–10504. Docket 96–NM–59–AD. Supersedes AD 87–07–10, Amendment 39–5597.

Applicability: Model L–1011 series airplanes equipped with Rolls Royce RB211–22B engines, certificated in any category.

Note 1: If an operator has accomplished the requirements of paragraphs (a) and (b) of this AD on any affected airplane and, subsequently, installs a different Model RB211–22B engine on that airplane, the airplane and all installed engines are still subject to the requirements of this AD.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct bearing failure, which could lead to a fire in the gearbox, accomplish the following:

(a) Within 8,000 flight hours or 30 months after May 8, 1987 (the effective date of AD 87–07–10, amendment 39–5597), whichever occurs first, accomplish the procedures specified in the Accomplishment Instructions of the service bulletins listed in paragraphs (a)(1) and (a)(2) of this AD.

(1) Lockheed Service Bulletin 093–26–036, dated April 1, 1986, *Installation of Fire Detector Segment;* and

(2) Lockheed Service Bulletin 093–71–067, Revision 1, dated April 1, 1986, *Gearbox Breather Duct Modification*.

(b) Within 8,000 flight hours or 30 months after May 8, 1987, whichever occurs first, accomplish the procedures specified in the Accomplishment Instructions of the service bulletins listed in paragraphs (b)(1) and (b)(2) of this AD.

(1) Rolls Royce Service Bulletin RB.211–72–4666, Revision 3, dated October 14, 1977, *Introduction of Vent Air Tube in Gear Compartment*; and

(2) Rolls Royce Service Bulletin RB.211–72–8138, dated March 21, 1986, *Installation of Additional No. 7 Fire Sensor.*

(c) For airplanes on which Rolls Royce Service Bulletin RB.211–72–4666, Revision 3, dated October 14, 1977, and Rolls Royce Service Bulletin RB.211–72–3878, Revision 3, dated June 25, 1976, have been accomplished in accordance with paragraph C. of AD 87–07–10: Within 48 months or 16,000 flight hours after the effective date of this AD, whichever occurs first, accomplish the actions specified in paragraphs (a) and (b) of this AD.

(d) Accomplishment of the requirements of paragraphs (a) and (b) of this AD; or accomplishment of the requirements of paragraph (c) of this AD; constitutes terminating action for the requirements of AD 85–09–03, amendment 39–5056. The AFM limitations required by AD 85–09–03 may be removed following accomplishment of the terminating action.

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small 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, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 87–07–10, amendment 39–5597, are approved as alternative methods of compliance with paragraphs (a) and (b) of this AD.

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

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

(g) The actions shall be done in accordance with the following service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
Lockheed Service Bulletin 093–26–036, April 1, 1986.	1–7	Original	April 1, 1986.
Lockheed Service Bulletin 093–71–067, Revision 1, April 1, 1986.	1–7, 9–11	1	April 1, 1986.
	8	Original	February 5, 1986.
Rolls Royce Service Bulletin RB.211–72–8138, March 21, 1986.	1–34	Original	March 21, 1986.

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
Rolls Royce Service Bulletin RB.211–72–4666, Revision 3, October 14, 1977.	1	3	October 14, 1977.
	2–6, 6A, 7–10	2	August 26, 1977.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 3, 1998.

Issued in Renton, Washington, on April 21, 1998.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11088 Filed 4–28–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. 96N–0320]

Radiology Devices; Classifications for Five Medical Image Management Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying five radiology devices that provide functions related to medical image communication, storage, processing, and display into class I (general controls) or class II (special controls). The medical image storage device and medical image communications device are classified into class I, and they are exempted from the requirement of premarket notification when they do not use irreversible compression. The medical image digitizer, the medical image hardcopy device, and the picture archiving and communications system are classified into class II. These actions are being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 and the Safe Medical Devices Act of 1990.

EFFECTIVE DATE: May 29, 1998.

FOR FURTHER INFORMATION CONTACT: Loren A. Zaremba, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 2, 1996 (61 FR 63769), FDA issued a proposed rule to classify five medical image management devices into class I or class II. The medical image storage device and medical image communications device were proposed to be classified into class I, and exempted from the requirement of premarket notification when they do not use irreversible compression. The medical image digitizer, medical image hardcopy device, and picture archiving and communications system were proposed to be classified into class II. FDA provided for interested persons to submit written comments on the proposal by March 3, 1997.

II. Response to Comments

The agency received six comments responding to the proposed rule. These comments were submitted by a law firm, two manufacturers of medical image management devices, two medical professional organizations, and a medical device manufacturers' association.

1. One comment expressed concern that exempting medical image storage devices from the requirement of premarket notification would encourage less experienced manufacturers to use the marketplace as a testing ground for their new products. This comment stated that the medical image management industry needs guidance from FDA on material choices, labeling, and quality assurance issues. The comment also suggested that FDA consider adopting minimum standards relating to specifications, device compatibility, lifetime, and labeling.

FDA agrees that the integrity of medical image storage devices is important in health care. The agency does not believe, however, that premarket notification is necessary to ensure the safety and effectiveness of these products. The agency believes that other general controls, particularly the good manufacturing practices requirements (part 820) (21 CFR part 820)), which include controls on production, packaging, labeling, and recordkeeping, are sufficient to provide reasonable assurance of their safety and effectiveness. On November 21, 1997, the President signed into law the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115). Section 206(a)(2) of FDAMA added sections 510(l) and 510(m) to the act (21 U.S.C. 360(l) and (m)). Section 510(l) of the act provides that a premarket notification is not required for a class I device, unless the device is intended for a use that is of substantial importance in preventing impairment of human health or the device presents a potential unreasonable risk of illness or injury. Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements if FDA determines that a premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that the medical image storage device and the medical image communications device do not require premarket notifications in accordance with the criteria in section 510(l) of the act. Also, FDA has determined that the medical image digitizer, the medical image hardcopy device, and the picture archiving and communication system require premarket notification in order to provide reasonable assurance of their safety and effectiveness. The class II devices in this rule will be subject to the design control requirements in part 820, while the class I devices will be exempt from the design control requirements in accordance with § 820.30. FDA believes that design controls are not necessary for class I devices in this rule. To provide guidance to the industry, FDA will continue to participate in the activities of voluntary standards organizations in the development of recommendations relating to materials

specifications, compatibility, labeling, and quality assurance issues associated with these devices.

2. One comment stated that an additional classification is needed for digital image capture devices, such as computed radiography, which do not have an integral x-ray source.

FDA agrees that a classification for digital image receptors, which would be applicable to computed radiography, as well as other technologies such as thin-film transistor arrays, is needed. However, because a classification of this type of device was not included in the initial proposal, the agency believes it would be inappropriate to include such devices in this final rule. The agency intends to propose classification of these types of devices, and provide an opportunity for public comment, in a future rulemaking action.

3. One comment requested confirmation in the preamble of the final rule of their understanding that a ''physician practice management system'' is not a medical image management device, and is not subject to active regulation as a medical device if it does not possess any medical image management or processing functions.

FDA confirms that the classifications for medical image management devices include only devices which provide functions related to medical image communication, storage, processing, and display. Image capture programs, commonly called physician practice management systems or radiology information systems, which are restricted to the management of patient descriptive information, examination scheduling, billing, and other similar data, are not within the scope of these classifications.

4. One comment noted that it appears that the agency intends to place more stringent requirements on medical image management devices which utilize irreversible compression. The comment agreed that caution is advisable in evaluating such devices, and that images subjected to irreversible compression should be properly labeled. It was pointed out, however, that some degree of loss in data resulting from irreversible compression is acceptable in certain clinical applications.

The agency has concluded that devices that do not utilize irreversible compression should be exempt from the requirement of premarket notification. Because such products do not alter image content, FDA believes that premarket evaluation is not necessary for such devices, if good manufacturing practices are employed to ensure storage and communications fidelity. FDA believes that devices that do utilize irreversible compression should be evaluated prior to marketing because such devices induce a loss of information that can affect the suitability of the image for use in diagnosis. This evaluation will include an examination of the compression algorithm, the amount of information loss over the range of compression levels utilized as compared to established algorithm, and the labeling employed to inform users that irreversible compression has been applied.

5. The agency is also taking this opportunity to address the issue of the applicability of these classifications to devices that are intended for use in the management of visible light images.

The medical image storage device, the medical image communications device, the medical image digitizer, the medical image hardcopy device, and the picture archiving and communications system, which are classified by this final rule, are listed in 21 CFR part 892, which is a listing of radiology devices. The identifications of these devices, however, refer to medical images, and are not restricted to radiology images. Consequently, sponsors of devices intended for use in the management of visible light images or images obtained from other nonradiological imaging modalities may in general use these radiology classifications, for purposes of seeking to establish substantial equivalence, if there does not exist a classification for a similar product that is more specifically applicable to the images. However, decisions regarding the substantial equivalence of nonradiological devices to the medical image management device classifications being finalized here will be made on a case-by-case basis.

III. Final Classifications

After reviewing the public comments, the agency has determined that it is appropriate to classify the devices as proposed. Accordingly, the medical image storage device and medical image communications device when they do not use irreversible compression are classified into class I.

The medical image digitizer, the medical image hardcopy device, and the picture archiving and communications system are classified into class II. The following voluntary standards will serve as special controls to ensure the safe and effective use of these devices:

1. The Digital Imaging and Communications in Medicine standard, developed by the American College of Radiology and the National Electrical Manufacturers Association (NEMA), which specifies the format for the communication of digital images between individual devices as well as over networks. This standard has solved many of the problems of incompatibility between medical image management devices caused by the use of proprietary image file formats. A copy of the standard may be obtained from NEMA, 1300 North 17th St., Rosslyn, VA 22209.

2. The Joing Photographic Experts Group (JPEG) standard, which specifies methods for the compression (reversible and irreversible) of digital medical images (see Ref. 1).

3. The Society of Motion Picture and Television Engineers test pattern, which is used to test CRT monitors and printers used to display medical images for acceptance and quality control purposes (see Ref. 2).

IV. References

1. Wallace, G. K., ''The JPEG Still Picture Compression Standard,'' *Communications of the ACM*, vol. 34, No. 4, April 1991.

2. Gray, J. E. et al., ''Multiformat Video and Laser Cameras: History, Design Considerations, Acceptance Testing and Quality Control,'' Report of AAPM Diagnostic X-ray Imaging Committee Task Group No. 1, *Medical Physics*, vol. 20, No. 2, part 1, March/April 1993.

V. Environmental Impact

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

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354) (as amended by subtitle D of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). 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 final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule does not impose any new requirements, the Commissioner of Food and Drugs certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 892 is amended as follows:

PART 892—RADIOLOGY DEVICES

1. The authority citation for 21 CFR part 892 continues to read as follows:

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

2. Sections 892.2010, 892.2020, 892.2030, 892.2040, and 892.2050 are added to subpart B to read as follows:

§ 892.2010 Medical image storage device.

(a) *Identification*. A medical image storage device is a device that provides electronic storage and retrieval functions for medical images without irreversible data compression. Examples include devices employing magnetic and optical discs, magnetic tape, and digital memory.

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

§ 892.2020 Medical image communications device.

(a) *Identification*. A medical image communications device provides electronic transfer of medical image data between medical devices without irreversible data compression. It may include a physical communications medium, modems, interfaces, and a communications protocol.

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

§ 892.2030 Medical image digitizer.

(a) *Identification*. A medical image digitizer is a device intended to convert an analog medical image into a digital format. Examples include Iystems employing video frame grabbers, and scanners which use lasers or charge-coupled devices.

(b) *Classification*. Class II (special controls; voluntary standards—Digital Imaging and Communications in Medicine (DICOM) Std., Joint Photographic Experts Group (JPEG) Std.).

§ 892.2040 Medical image hardcopy device.

(a) *Identification*. A medical image hardcopy device is a device that produces a visible printed record of a medical image and associated identification information. Examples include multiformat cameras and laser printers.

(b) *Classification*. Class II (special controls; voluntary standards—Digital Imaging and Communications in Medicine (DICOM) Std., Joint Photographic Experts Group (JPEG) Std., Society of Motion Picture and Television Engineers (SMPTE) Test Pattern).

§ 892.2050 Picture archiving and communications system.

Identification. A picture archiving and communications system is a device that provides one or more capabilities relating to the acceptance, transfer, display, storage, and digital processing of medical images. Its hardware components may include workstations, digitizers, communications devices, computers, video monitors, magnetic, optical disk, or other digital data storage devices, and hardcopy devices. The software components may provide functions for performing operations related to image manipulation, enhancement, compression or quantification.

(b) *Classification*. Class II (special controls; voluntary standards—Digital Imaging and Communications in Medicine (DICOM) Std., Joint Photographic Experts Group (JPEG) Std., Society of Motion Picture and Television Engineers (SMPTE) Test Pattern).

Dated: April 13, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–11317 Filed 4–28–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–035–9807a; FRL–6004–8]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions for Transportation Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Georgia State Implementation Plan (SIP) submitted by the Department of Natural Resources on August 29, 1997, requesting the incorporation of several transportation control measures (TCMs) and the deletion of two TCMs from the existing SIP. This action will only address the incorporation of four of the five TCMs requested for incorporation. The other TCM actions will be handled under separate ruelmaking action. The four TCMs, subject to this action include: The addition of a high occupancy vehicle (HOV) lane, an employer-based program, a university ridershare program, development of transportation management associations. This action does not address the alternative fuel station vanpool project, the five express bus routes on Cobb Community Transportation (CCT) and two park and ride lots on CCT routes.

DATES: This final rule is effective June 15, 1998 unless adverse or critical comments are received by May 29, 1998. If adverse comments are received EPA will publish a timely withdrawal of this rule.

ADDRESSES: Written comments on this action should be addressed to Kelly A. Sheckler at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file GA35–9807. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4 Air Planning Branch, 61

Forsyth Street, SW, Atlanta, Georgia 30303. Attn: Kelly Sheckler, 404/562–9042

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Division, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Kelly A. Sheckler at 404/562–9042.

SUPPLEMENTARY INFORMATION:

I. Background

Section 108(e) of the Clean Air Act, as amended 1990 (Act), provides for transportation air quality planning guidance for the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. Section 108(f)(1)(A) provides a list of transportation control measures (TCMs) with emission reduction potential. The USEPA has further provided guidance in the final report entitled Transportation Control Measures: State Implementation Plan Guidance dated September 1990; and also in Transportation Control Measure Information Documents dated March 1992.

Section 108(f)(1)(A) of the Act lists sixteen TCMs for consideration by States and planning agencies to use to reduce emissions and maintain the national ambient air quality standards. Programs to reduce motor vehicle emissions consistent with title II of the Act are listed in section 108(f)(1)(A)(xii).

II. Evaluation of the State Submittal

On August 29, 1997, Georgia submitted to the U.S. EPA a SIP revision request for Atlanta TCMs, specifically, the addition of an HOV lane, an employer-based program, a university ridershare program, development of transportation management associations and, an alternative fuel station. In addition, Georgia requested the removal of two existing TCMs because they will not be implemented. These include five express bus routes on Cobb Community Transit and two park and ride lots on Cobb Community Transit routes. A public hearing was held on August 27, 1997. The SIP submission was found complete by the USEPA in a letter dated October 27, 1997.

The TCMs for the Atlanta Metropolitan Area are described below. An emissions analysis was performed for all the TCMs being added to the SIP, which demonstrated that an emission benefit would result from the implementation of these TCMS. However, the State is not claiming emission credit in the SIP for these measures. Therefore, the emissions analysis was review only to determine that no further air quality degradation would result from the implementation of these TCMs. EPA's reviewed determined that the data assumptions and calculations, while not exact, provided a reasonable assurance that an air quality benefit would occur.

HOV Lane

This project is referred to as AR 073B is the addition of HOV lanes on I–85 from Chamblee-Tucker Road to State Route 316. An emissions analysis performed by the Atlanta Regional Commission (ARC) indicated that this project will result in reductions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the 13-county Atlanta ozone nonattainment area by reducing congestion, reducing single occupancy vehicles and improving traffic flows.

This project was formally endorsed by the Georgia Department of Transportation (DOT) letters dated April 14, 1997 and subsequently February 27, 1998. The primary funding source for this project is interstate maintenance funds from the Georgia Department of Transportation. Georgia DOT will be responsible for monitoring the I–85 HOV lanes. Georgia DOT currently monitors volumes and speeds in both SOV and HOV lanes with ATMS equipment in each HOV corridor. The I–85 corridor will also have similar ATMS equipment. With the ATMS system, traffic volumes are continuously monitored. Georgia DOT commits to produce weekly summary reports of vehicle volumes and speeds for the HOV lanes.

This project is included in the Atlanta Interim Transportation Plan (ITIP) contingent upon approval in the SIP. Based upon the schedule provided for in the ITIP, the HOV lane will be implemented in a timely manner and given funding priority. The project was proposed to begin construction in March 1998, based upon the assumption funding would be approved/awarded by January 1998. The schedule projected the lanes to be open to the traffic in September 1999 with the estimated emissions benefit being realized in December after stabilization. This schedule will be adjusted accordingly from the effective date of this document.

MARTA Transit Incentives Program

This project is referred to as AR–231. This program is sponsored by MARTA to work with employers to provide incentives such as free/ and /or reduced fare passes to encourage employees to try transit or other alternative to driving alone. Through this partnership program, employers will be able to purchase MARTA TransCards at a discount of four to fifteen percent, based upon the volume purchased.

An emissions analysis performed by ARC indicates that this project will result in reductions of VOC and NO_X in the 13-county Atlanta ozone nonattainment area. In commitment letters dated May 6, 1997 and February 26, 1998, MARTA formally endorsed the project. The primary funding source is Congestion Mitigation and Air Quality (CMAQ) funds from the Department of Transportation (DOT).

This project is included in the Atlanta Interim Transportation Plan (ITIP) contingent upon approval in the SIP. Based upon the schedule provided for in the ITIP, the rider share incentive program with Marta will be implemented in a timely manner and given funding priority. The schedule for implementation of this project, provides for the distribution of transit incentives to new potential riders in the spring of 1998, assuming a spring approval of this TCM into the SIP. The estimated emission benefits occur in December 1999 when the incentive program has totally distributed incentives to new potential riders. This schedule of implementation will be adjusted accordingly from the effective date of this rulemaking.

Ridershare Program

This project is referred to as AR–220 and is a lump sum eligible to all colleges and universities with the 10 county ARC region. The intent is to provide start-up funds for a student and staff based ridershare program to encourage car and van pooling. An emissions analysis performed by the Atlanta Regional Commission (ARC) indicated that this project will result in reductions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the 13-county Atlanta ozone nonattainment area.

This project was formally endorsed by the Atlanta Regional Commission (ARC) in letters dated May 6, 1997 and March 2, 1998. The primary funding source for this project is CMAQ funds from the DOT.

This project is included in the Atlanta Interim Transportation Plan (ITIP) contingent upon approval in the SIP. Based upon the schedule provided for in the ITIP, the university rider share program will be implemented in a timely manner and given funding priority. The schedule for implementation, based upon a spring 1998 authorization, provides for the

phase-in of Ridershare programs at participating schools in later 1998—early 1999. The Atlanta Regional Commission Task Force held meeting with participating schools in February 1998 to discuss implementation of the Ridershare programs. Complete implementation of the Ridershare programs will be in late 199??? with estimated emission benefits occuring in December 2005. Again, the schedule will be adjusted accordingly to the effective date of this rulemaking action.

Transportation Management Associations

Referred to as project AR 221 is to set up a ''pot'' of funds set aside specially to assist in the development of transportation management associations and start-up ridershare services in the areas that are considered to be highly congested throughout the Region. ARC's Commute Connections staff will develop a selection process to identify those activity centers where the money would be best spent. An emissions analysis performed by the ARC indicated that this project will result in reductions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the 13-county Atlanta ozone nonattainment area.

This project was formally endorsed by the ARC in letters dated May 6, 1997, and March 2, 1998. The primary funding source for this project is CMAQ funds from the DOT.

This project is included in the Atlanta Interim Transportation Plan (ITIP) contingent upon approval in the SIP. Based upon the schedule provided for in the ITIP, the Clifton Corridor TMA, Perimeter Center TMA and Buckhead TMA will be fully operational in spring 1998. The remaining two TMAs are estimated to become operational in January 2000–2003. It is anticipated that limited transportation improvements in the FY 1998–2000 ITIP and resulting traffic congestion will encourage the development of TMAs in the Atlanta region.

This SIP revision request thus meets the requirement for a TCM, as defined in section 108 of the Act.

III. USEPA Action

EPA is approving the aforementioned changes to the SIP. The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective June 15, 1998 without further notice unless the Agency receives relevant adverse comments by May 29, 1998.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 15, 1998 and no further action will be taken on the proposed rule.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(d)(3) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' allows an agency to make a rule effective prior to the 30-day delayed effective date otherwise provided for in the APA. Today's rule simply approves nonregulatory transportation control measures.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Regional Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of June 15, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 29, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 6, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. Section 52.582 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.582 Control strategy: Ozone.

* * * * *

(b) On August 29, 1997, Harold F. Reheis, Director, Georgia Department of Natural Resources submitted to John Hankinson, Regional Administrator, United States Environmental Protection Agency Region IV, a State Implementation Plan revision including the following transportation control measures.

(1) *HOV Lane*—This project referred to as AR 073B is the addition of HOV lanes on I–85 from Chamblee-Tucker Road to State Route 316.

(2) *Ridershare Program*—This project is referred to as AR–220 and is a lump sum eligible to all colleges and universities with the 10 county ARC region.

(3) *Transportation Management Associations*—Referred to as project AR 221 is to set up a ''pot'' of funds set aside specially to assist in the development of transportation management associations and start-up ridershare services in the areas that are considered to be highly congested throughout the Region.

(4) *MARTA Transit Incentives Program*—This project is referred to as AR–231.

[FR Doc. 98–11378 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

OPP–300641; FRL–5784–7]

RIN 2070–AB78

Tebufenozide; Tolerance Extension for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide tebufenozide in or on apples at 1.0 part per million (ppm); apple pomace at 2.0 ppm; milk at 0.05 ppm; cattle, sheep and goat meat at 0.02 ppm, fat at 0.10, kidney at 0.02 ppm, liver at 1.0 ppm and meat byproducts at 0.10 ppm; and horse meat at 0.02 ppm for an additional 18 month period, to December 30, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on apples. Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective April 29, 1998. Objections and requests for hearings must be received by EPA, on or before June 29, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300641], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300641], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300641]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington,

DC 20460. Office location and telephone number: Rm. 278, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9367; e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of July 2, 1997 (62 FR 35683) (FRL–5719–9), which announced that on its own initiative and under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of tebufenozide and its metabolites in or on apples at 1.0 part per million (ppm); apple pomace at 2.0 ppm; milk at 0.05 ppm; cattle sheep and goat meat at 0.02 ppm, fat at 0.10, kidney at 0.02 ppm, liver at 1.0 ppm and meat byproducts at 0.10 ppm; and horse meat at 0.02 ppm, with an expiration date of June 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of tebufenozide on apples for this year growing season due to the persistence of the tufted apple budmoth (TABM) (the primary fruit-feeding pest of apples in Pennsylvania, West Virginia, Virginia, Maryland and New Jersey) and the oblique banded leafroller (the primary fruit-feeding pest of apples in New York, Michigan, Ohio and southern Ontario and Quebec, Canada). The applicants indicated that TABM and OBLR are serious, fruit damaging pests due to their ability to develop resistance to currently registered insecticides. Apple growers and processors are experiencing losses from these pests due to quality downgrading and storage deterioration. It is anticipated that significant economic losses will occur this year based on the continuing trend of loss of efficacy of registered insecticides over the past several years. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of tebufenozide on apples for control of the tufted apple budmoth and the oblique banded leafroller in Maryland, Michigan, New Jersey, New York, Pennsylvania, Virginia, and West Virginia.

EPA assessed the potential risks presented by residues of tebufenozide in or on apples; apple pomace; milk; cattle, sheep, and goat meat, fat, kidney, liver, and meat byproducts; and horse meat. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of July 2, 1997 (FRL–5719–9). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 18 month period. Although these tolerances will expire and are revoked on December 30, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on apples, apple pomace, milk, meat, meat fat, kidney, liver, and meat byproducts of cattle, sheep, and goats or horse meat after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 29, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will

also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300629. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations asrequired by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 17, 1998

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.482, by amending paragraph (b) by changing the date for apples; apple pomace; milk; cattle, meat; cattle, fat; cattle, kidney; cattle, liver; cattle, meat byproducts; sheep, meat; sheep, fat; sheep, kidney; sheep, liver; sheep, meat byproducts; goats, meat; goats, fat; goats, kidney; goats, liver; goats, meat byproducts; and horses, meat from ''6/30/98'' to read ''12/30/99''.

[FR Doc. 98–11271 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300645; FRL 5786–9]

RIN 2070–AB78

Clopyralid; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide clopyralid in or on cranberries at 2 parts per million (ppm) for an additional 1½ year period, to January 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cranberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective April 29, 1998. Objections and requests for hearings must be received by EPA, on or before June 29, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300645], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300645], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272,

CM#2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of March 12, 1997 (62 FR 11360) (FRL 5593–1), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of clopyralid in or on cranberries at 2 ppm, with an expiration date of July 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of clopyralid on cranberries for this year growing season due to the continued need for control of various weeds. Cancellations of the most effective registered alternatives have left growers with few tools to control weeds in a crop which cannot be cultivated. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of clopyralid on cranberries for control of various weeds in cranberries.

EPA assessed the potential risks presented by residues of clopyralid in or on cranberries. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of March 12, 1997 (62 FR 11360) (FR 5593–1). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1–year period. Although this tolerance will expire and is revoked on January 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cranberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 29, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES''at the beginning of this document

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 51/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300645]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR

58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 17, 1998

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [Amended]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§180.431 [Amended]

2. In §180.431, by amending the tolerance listed for ''cranberries'' in the table under paragraph (b) by changing the date ''July 31, 1998'' to read ''January 31, 2000''.

[FR Doc. 98–11272 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300634; FRL–5781–8]

RIN 2070–AB78

Esfenvalerate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes permanent tolerances for residues of esfenvalerate, the s,s-enriched isomer of fenvalerate in or on head lettuce at 5.0 parts per million (ppm), 5.0 ppm for sorghum grain, 10.0 ppm for sorghum forage, 10.0 ppm for sorghum fodder, 0.03 ppm for whole eggs, 0.03 ppm for poultry meat, 0.3 ppm for poultry fat, 0.3 for poultry meat by-products (except liver), 0.03 ppm for poultry liver, 5 ppm for sugar beet tops, 0.5 ppm for sugarbeet roots and 2.5 ppm for sugar beet pulp . DuPont Agricultural Products requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective April 29, 1998. Objections and requests for hearings must be received by EPA on or before June 29, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300634], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300634], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300634]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Beth Edwards, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5400, e-mail: edwards.beth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of February 25, 1998 (63 FR 9519)(FRL–5768–4), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition, (petition numbers 4F3003, 4F3120 and 0F3852) for residues of esfenvalerate on the raw agricultural commodities sorghum, eggs, poultry fat, poultry meat by-products, poultry liver, sugar beets and lettuce by DuPont Agricultural Products, PO Box 80038, Wilmington, DE 19880–0038. This notice included a summary of the petition prepared by DuPont Agricultural Products, as required under the FFDCA as amended by the Food Quality Protection Act (FQPA) of 1996. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide esfenvalerate (Asana XL Insecticide), ((*S*)-cyano-(3-phenoxyphenyl) methyl

(*S*)-4-chloro-alpha-(1-methylethyl)benzeneacetate) in or on the raw agricultural commodities (RACs) head lettuce at 5.0 ppm, 5.0 ppm for sorghum grain, 10.0 ppm for sorghum forage, 10.0 ppm for sorghum fodder, 0.03 ppm for whole eggs, 0.03 ppm for poultry meat, 0.3 ppm for poultry fat, 0.3 for poultry meat by-products (except liver), 0.03 ppm for poultry liver, 5 ppm for sugar beet tops, 0.5 ppm for sugarbeet roots and 2.5 ppm for sugar beet pulp.

Esfenvalerate is the s,s-isomer of fenvalerate and has been regulated under section 3 as fenvalerate in the past. DuPont Agricultural Products no longer markets products with fenvalerate as the active ingredient. Thus, all new tolerances will be expressed in terms of esfenvalerate, the principal isomer. A petition is pending (PP 4F4329) proposing conversion of tolerances for fenvalerate (40 CFR 180.379) to esfenvalerate tolerances.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants <1 year old) was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of esfenvalerate and to make a determination on aggregate exposure, consistent with section 408(b)(2). EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by esfenvalerate are discussed below. Note that the studies discussed below were conducted using either fenvalerate or esfenvalerate. Fenvalerate is a racemic mixture of four isomers (S,S; R,S; S,R; and R,R). Technical Asana (esfenvalerate) is enriched in the insecticidally active S,S-isomer (84%).

1. A battery of acute toxicity studies places technical esfenvalerate in Toxicity Category II for acute oral LD_{50} (LD_{50} = 87.2 milligrams per kilogram (mg/kg)), Category III for acute dermal (LD_{50} > 2,000 mg/kg) and primary eye irritation, Category IV for primary skin irritation. Esfenvalerate is a non-sensitizer. Acute inhalation on technical grade active ingredient is waived due to negligible vapor pressure. The Acute Delayed Neurotoxicity remains a data gap.

2. In a 90–day feeding study, rats were administered 0, 4.7, 6.2, 7.8 or 18.7 milligrams per kilogram per day (mg/kg/day) of esfenvalerate. The Lowest Observed Effect Level (LOEL) is 18.7 mg/kg/day based on neurological dysfunction. The no observed effect level (NOEL) is 7.8 mg/kg/day.

In another 90–day feeding study, rats were administered 0, 5, 15, 30 or 50 mg/kg/day of esfenvalerate. The LOEL is 15 mg/kg/day based on neurological dysfunction. The NOEL is 5 mg/kg/day.

Esfenvalerate was administered to mice at dose levels of 0, 10.5, 30.5 or 106 mg/kg/day (male) and 0, 12.6, 36.8 or 113 mg/kg/day (female). The LOEL for esfenvalerate is 106 mg/kg/day. The NOEL is 30.5 mg/kg/day.

3. In a chronic/carcinogenicity feeding study rats were administered 0.050, 0.25, 1.25 or 12.5 mg/kg/day of fenvalerate in the diet for 2 years. The LOEL was ≧ 12.5 mg/kg/day. There was no increase in tumors at 250 ppm. The NOEL was determined to be 12.5 mg/kg/day (the highest dose tested (HDT) in the 2 year study.) The study is Supplementary and does not satisfy the requirement for a combined chronic/carcinogenicity study in rats.

In a lifetime feeding study rats were administered 0 or 50.0 mg/kg/day of fenvalerate in the diet. Spindle cell sarcomas were produced in male rats only. The LOEL was 50.0 mg/kg/day based on loss of weight and neurological effects. The NOEL was 12.5 mg/kg/day.

The conclusion that fenvalerate is associated with the production of spindle cell sarcomas was later retracted by EPA. The study is supplementary and does not satisfy the requirement for a combined chronic/carcinogenicity study in rats. When taken together with chronic/carcinogenicity feeding study the guideline requirement for a cancer study in the rat is satisfied.

4. In a 2–year feeding study mice were administered 0, 0, 1.5, 7.5, 38.0 or 187.5 mg/kg/day fenvalerate in the diet. The LOEL was 7.5 mg/kg/day based on granulomatous changes (related to fenvalerate only, not esfenvalerate). The NOEL was 1.5 mg/kg/day. This study satisfies the requirement for combined chronic feeding carcinogenicity study in mice.

In an 18–month feeding study, mice 0, 15.0, 45.0, 150.0 or 450.0 mg/kg/day of fenvalerate in the diet. The LOEL is 45.0 mg/kg/day based on granulomatous changes in the liver and spleen. The NOEL is 15.0 mg/kg/day. No carcinogenicity was observed. The study is Supplementary and does not satisfy the requirement for a carcinogenicity study in mice.

In a life span feeding study, mice were administered 0, 1.5, 4.5, 15.0 or 45.0 mg/kg/day of fenvalerate in the diet. The LOEL was determined to be 15 mg/kg/day based on the granulomatous lesions observed and on the change in hematological parameters. Fenvalerate was determined not to be carcinogenic in the ddy strain of the mouse. The NOEL was determined to be 3.48 mg/kg/day. The study is supplementary and

does not satisfy the requirement for a carcinogenicity study in mice.

5. In a 21–day probe for a 1 year feeding study 2 male and 2 female beagles were administered 0, 2.80, 6.40 or 9.38 mg/kg/day in males and 0, 2.25, 7.37 or 8.50 mg/kg/day of esfenvalerate. The LOEL was determined to be 6.40 mg/kg/day based on nervous system involvement and decreases in body weight and food consumption. The NOEL is 2.25 mg/kg/day.

In a 1–year feeding study, 6 male and 6 female beagles/group were administered 0, 0.68, 1.36 or 5.29 mg/kg/day esfenvalerate. The LOEL was determined to be 6.40 mg/kg/day based on nervous system involvement and decreases in body weight and food consumption. The NOEL was determined to be 5.29 mg/kg/day. These studies are acceptable and satisfy the requirement for a chronic feeding study in dogs.

6. Esfenvalerate was administered to female rats by gavage at doses of 0, 2.5, 5.0, 10.0 or 20.0 mg/kg/day from gestation days 6 through 15 (pilot study doses were 1.0, 2.0, 3.0, 4.0, 5.0 and 20 mg/kg/day). The LOEL is 2.5 mg/kg/day based on behavioral/Central Nervous System (CNS) clinical signs. The NOEL for maternal toxicity is 2.0 mg/kg/day (from the pilot study). There was no evidence of developmental toxicity at any dose. The NOEL is 20 mg/kg/day, the highest dose tested.

Esfenvalerate was administered to rabbits by gavage at doses of 0, 3.0, 10.0 or 20.0 mg/kg/day from gestation days 7 through 19 (pilot study doses were 0, 2.0, 3.0, 4.0, 4.5, 5.0 or 20.0 mg/kg/day). The LOEL is 3.0 mg/kg/day based on behavioral/CNS clinical signs. The NOEL is 2.0 mg/kg/day (from the pilot study). There was no evidence of developmental toxicity at any dose. The LOEL is greater than 20.0 mg/kg/day. The NOEL is equal to or greater than 20.0 mg/kg/day, the highest dose tested.

7. In a 2–generation reproduction study in rats esfenvalerate was administered to rats at dose levels of 0, 3.75, 5.0, 17.5 and 35.0/17.5 mg/kg/day. The LOEL for parental toxicity is 3.75 mg/kg/day based on decreases in mean body weights of F_1 females and an increased incidence of skin lesions. The NOEL could not be determined. The LOEL for reproductive toxicity is 5.0 mg/kg/day based on decreases in F_1 pup weights on day 21 of lactation; decreases in litter size and F_2 pup weights and an increased incidence of subcutaneous hemorrhage. The NOEL is 3.75 mg/kg/day.

8. In a reverse gene mutation assay in bacteria, *S. typhimurium* and *Escherichia coli* were exposed to fenvalerate in DMSO at concentrations of 15, 50, 150, 500, 1,500, or 5,000 µg/plate in the presence and absence of mammalian metabolic activation (S9-mix). There was no evidence of induced mutant colonies over background.

In a mammalian cell gene mutation assay at the HGPRT locus, Chinese hamster V79 cells cultured *in vitro* were exposed to fenvalerate in DMSO at concentrations of 12.6, 42, 126, 420 µg/ml in the presence of mammalian metabolic activation (S9-mix) and at concentrations of 4.2, 12.6, 42, 126 µg/ml in the absence of S9-mix. There was no evidence of induced mutant colonies over background. In Chinese hamster lung fibroblasts (V79 cells) forward gene mutation assay the test was negative up to cytotoxic and/or precipitating levels (126 µg/ml in the absence of metabolic activation -S9; 420 µg/ml in the presence of metabolic activation +S9).

In a mammalian cell cytogenetics chromosomal aberration assay CHO-K1 cell cultures were exposed to fenvalerate in DMSO at concentrations of 4.2 µg/ml, 8.4 µg/ml, 21 µg/ml, and 42 µg/ml, respectively without exogenous metabolic activation (S9-mix) and at concentrations of 21 µg/ml, 42 µg/ml, 84 µg/ml, and 210 µg/ml, respectively with S9-mix. There was no evidence of a significant induction of chromosomal aberrations or polyploid cells over background.

A mouse micronucleus assay was negative in male ICR mice up to the HDT (150 mg/kg) administered by intraperitoneal injection. Since there appears to be no sex specific difference in the toxicity of esfenvalerate, the use of males only is justifiable. No overt toxicity was observed, but suggestive evidence of bone marrow cytotoxicity was seen 48 hours post-administration at the highest dose level tested.

Other genetic toxicology studies submitted on racemic fenvalerate indicate that the mixture containing equal parts of the four stereoisomers is not mutagenic in bacteria. The racemic mixture was also negative in a mouse host mediated assay and in a mouse dominant lethal assay.

9. The following are considered data gaps in the toxicology data base: general metabolism, 21 day dermal, dermal penetration, and acute and subchronic neurotoxicity. These studies will be required under a special Data Call-in letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking EPA has sufficient toxicity data to support these tolerances and these additional studies are not expected to significantly change its risk assessment.

B. Toxicological Endpoints

1. *Acute toxicity*. EPA has established a NOEL of 2.0 mg/kg/day through the dietary route in rat and rabbit developmental studies. This NOEL is based on behavioral and central nervous system clinical signs. An MOE of 100 is required.

2. *Short- and intermediate-term toxicity.* To assess risk from (nonfood) short- and intermediate-term dermal exposure, EPA has established a NOEL of 2.0 mg/kg/day from the rat and rabbit developmental studies. No dermal penetration/absorption study is available and the NOEL incorporates a 25% dermal absorption based on the weight-of-evidence available for structurally related pyrethroids. This NOEL is based on behavioral and CNS clinical signs. For exposure via inhalation the Agency used an oral NOEL of 2.0 mg/kg/day an assumed 100% absorption (based on the 2 mg/kg/day used for the dermal risk assessment since no appropriate inhalation toxicity studies are available).

3. *Chronic toxicity*. EPA has established the RfD for esfenvalerate at 0.02 mg/kg/day. This RfD is based on a NOEL of 2.0 mg/kg/day through the dietary exposure route in developmental study in rats. The NOEL is based on behavioral changes and clinical signs of neurotoxicity. This RfD is based on an uncertainty factor of 100.

4. *Carcinogenicity*. Esfenvalerate is classified as a Group E. There is no evidence of carcinogenicity in either rats or mice.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.379) for the residues of fenvalerate, in or on a variety of raw agricultural commodities.

EPA notes that the acute dietary risk assessments used Monte Carlo modeling (in accordance with Tier 3 of EPA June 1996 ''Acute Dietary Exposure Assessment'' guidance document) incorporating anticipated residues and percent of crop treated refinements. Field trial data and FDA monitoring data were used to generate anticipated residues or residue distribution for Monte Carlo analyses. Chronic dietary risk assessments used anticipated residues and percent crop treated refinements. Risk assessments were conducted by EPA to assess dietary exposures and risks from esfenvalerate as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an

effect of concern occurring as a result of a 1–day or single exposure. The NOEL used for the acute dietary exposure was 2.0 mg/kg/day. Potential acute exposures from food commodities were estimated using a Tier 3 acute dietary risk assessment (Monte Carlo Analysis). The MOE's (99.9th percentile) for the U.S. population based on an acute dietary exposure of 0.011717 mg/kg/day are 171. For children 1–6 years old (most highly exposed population) the MOE's based on an acute dietary exposure of 0.019445 mg/kg/day are 103. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields an MOE of 100 or larger.

ii. *Chronic exposure and risk.* Potential chronic exposures were estimated using NOVIGEN's DEEM (Dietary Exposure Evaluation Model). The RfD used for the chronic dietary analysis is 0.02 mg/kg/day. Using tolerance values and anticipated residues discussed above the risk assessment resulted in use of 1.9 % of the RfD for the general U.S. population and 4.6% of the RfD for children 1–6 years.

Section 408 (b)(2)(E) authorizes EPA to consider available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. Section 408 (b)(2)(F) allows the Agency to use data on the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings: (1) That the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for esfenvalerate were derived from Federal and market survey data. EPA considers these data reliable. A range of estimates are supplied by this data and the upper end of this range was used for the exposure assessment. By using this upper end estimate of percent crop treated, the Agency is reasonably certain that exposure is not underestimated for any significant subpopulation. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To meet the requirement for data on anticipated residues, EPA will issue a Data Call-In (DCI) notice pursuant to FFDCA section 408(f) requiring submission of data on anticipated residues in conjunction with approval of the registration under FIFRA.

2. *From drinking water.* Esfenvalerate is immobile in soil and will not leach into groundwater. Additionally, due to their insolubility and lipophilic nature, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment. A screening evaluation of leaching potential of a typical potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM1). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero (much less than 0.001 parts per billion).

i. *Acute exposure and risk.* Acute drinking water exposure is estimated for the U.S. population to be 0.000039 mg/kg/day with an MOE of 51,743. For Non-nursing infants less than 1 year old the exposure is 0.000074 with and MOE of 27,042.

ii. *Chronic exposure and risk.* Chronic drinking water exposure is estimated for the U.S. population to be 0.000001 mg/kg/day and for the non-nursing infants 0.000005 mg/kg/day. Zero percent of the RfD is occupied by both population groups.

3. *From non-dietary exposure.* Esfenvalerate is registered for non-crop uses including spray treatments in and around commercial and residential areas, treatments for control of ectoparasites on pets, home care products including foggers, pressurized sprays, crack and crevice treatments, lawn and garden sprays, and pet and pet bedding sprays. For the non-agricultural products, the very low amounts of active ingredient they contain, combined with the low vapor pressure (1.5×10^{-9} mm Mercury at 25° C.) and low dermal penetration, would result in minimal inhalation and dermal exposure. Individual non-dietary risk exposure analyses were conducted using a flea infestation scenario that included pet spray, carpet and room treatment, and lawn care, respectively. For short- and intermediate-term exposure and risk, the total aggregate non-dietary exposure including lawn, carpet, and pet uses (mg/kg/day) are: 0.000023 for adults; 0.00129 for children aged 1–6 years; and 0.00138 for infants less than 1 year old.

It can be concluded that the potential non-dietary exposure for esfenvalerate is associated with substantial margins of safety.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are

toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Although esfenvalerate is similar to other members of the synthetic pyrethroid class of insecticides, EPA does not have, at this time, available data to determine whether esfenvalerate has a common method of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, esfenvalerate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that esfenvalerate has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute aggregate risk assessment takes into account exposure from food and drinking water. The potential acute exposure from food and water to the overall U.S. population provides an acute dietary exposure of 0.011756 mg/kg/day with an MOE of 170. This acute dietary exposure estimate is considered conservative using anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis. Therefore, EPA concludes that there is a reasonable certainty that no harm will result from acute aggregate exposure to esfenvalerate residues.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to esfenvalerate from food and water will utilize 1.9% of the RfD for the U.S. population based on a dietary exposure or 0.000377 mg/kg/day. The major identifiable subgroup with the highest aggregate exposure are children 1– 6 years old discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to esfenvalerate residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. The potential short- and intermediate-term aggregate risk for the U.S. population is an exposure of 0.0082 mg/kg/day with an MOE of 244.

EPA concludes that there is reasonable certainty that no harm will result from aggregate exposure to esfenvalerate residues.

E. Aggregate Cancer Risk for U.S. Population

Esfenvalerate is classified as a Group E carcinogen - no evidence of carcinogenicity in rats or mice. Therefore, a carcinogenicity risk analysis is not required. EPA believes that this pesticide does not pose a significant cancer risk.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of esfenvalerate, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

b. *Developmental toxicity studies.* In both prenatal developmental toxicity studies in rats and rabbits, there is no evidence of developmental toxicity at a dose up to 20 mg/kg/day. Maternal clinical neurotoxicity (based on behavioral and CNS clinical signs) was observed at a dose as low as 2.5 or 3.0 mg/kg/day for rats and rabbits respectively. The maternal NOEL was 2.0 mg/kg/day.

c. *Reproductive toxicity study.* In the two-generation reproduction study in rats, offspring toxicity was observed only at dietary levels which were also found to be toxic to parental animals. The LOEL was 5.1 mg/kg/day based on decrease in mean body weights of females and increased incidence of dermal lesions. The NOEL for parental systemic toxicity was not determined. Effects on the offspring, including decreased pup weights in both generations during early and/or late lactation, decreased litter size, and increased incidence of subcutaneous hemorrhage, were observed at dietary levels of 6.70 mg/kg/day and above, with a NOEL of 5.1 mg/kg/day.

d. *Pre- and post-natal sensitivity.* There is no evidence of additional sensitivity to young rats or rabbits following pre- or postnatal exposure to esfenvalerate.

e. *Conclusion.* Based on the above, EPA concludes that reliable data support use of the standard hundredfold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants.

2. *Acute risk.* The potential acute exposure from food and drinking water to the most sensitive population subgroup, children 1–6 years old is 0.019477 mg/kg/day with an MOE of 103. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to esfenvalerate from food and drinking water will utilize 4.6% of the RfD for children 1–6 years old, the most sensitive population subgroup based on a dietary exposure of 0.000912 mg/kg/day. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

4. *Short- or intermediate-term risk.* EPA has concluded that potential short- or immediate-term aggregate exposure of esfenvalerate from chronic dietary food and water (considered to be a

background exposure level) plus indoor and outdoor residential exposure to children (1–6 years old) is 0.0113 mg/kg/day with an MOE of 177. For infants (less than 1 year old) the exposure is 0.0098 mg/kg/day with an MOE of 204.

EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to esfenvalerate residues.

5. *Special docket.* The complete acute and chronic exposure analyses (including dietary, non-dietary, drinking water, and residential exposure, and analysis of exposure to infants and children) used for risk assessment purposes can be found in the Special Docket for the FQPA under the title ''Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids.'' Further explanation regarding EPA's decision regarding the additional safety factor can also be found in the Special Docket.

G. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect....'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

III. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants and animals is adequately defined. EPA has concluded that the qualitative nature of the residue is the same for both fenvalerate and esfenvalerate. The residue to be regulated is fenvalerate: the S,S; R,S; S,R; and R,R isomers.

B. Analytical Enforcement Methodology

There is a practical analytical method utilizing gas chromatography with electron capture detection available for enforcement with a limit of detection that allows monitoring food with residues at or above tolerance levels. The limit of detection for updated method is the same as that of the current PAM II, which is 0.01 ppm.

C. Magnitude of Residues

Fenvalerate is a racemic mixture of four isomers (S,S; R,S; S,R; and R,R). Technical Asana (esfenvalerate) is enriched in the insecticidally active S,S-isomer (84%). Tolerance expressions for esfenvalerate are based on the sum of all isomers. Tolerances of 5 ppm for head lettuce, 5.0 ppm for sorghum grain, 10.0 ppm for sorghum forage, 10.0 ppm for sorghum fodder, 0.03 ppm for whole eggs, 0.03 ppm for poultry meat, 0.3 ppm for poultry fat, 0.3 ppm for poultry meat by-products (except liver), and 0.03 ppm for poultry liver, 5 ppm for sugarbeet tops, 0.5 ppm for sugarbeet roots and 2.5 ppm sugarbeet pulp are supported by magnitude of residue studies. There is no tolerance for aspirated grain fractions at this time. Additional residue data will be required to determine an appropriate tolerance level for the commodity.

D. International Residue Limits

There are no Codex maximum residue limits (MRL's) for esfenvalerate. Codex MRL's have been established for residues of fenvalerate on a number of crops that also have U.S. tolerances. There is a Codex MRL of 2 ppm fenvalerate on head lettuce. Thus any imported head lettuce is expected to have lower residue values than the proposed section 408 tolerance of 5 ppm esfenvalerate on head lettuce. There are also some minimal differences between the section 408 tolerances and certain Codex MRL values for other commodities. These differences could be caused by differences in methods to establish tolerances, calculate animal feed, dietary exposure, and as a result of different agricultural practices. Therefore, some harmonization of these maximum residue levels will be required.

IV. Conclusion

Therefore, tolerances are established for residues of esfenvalerate in head lettuce at 5 ppm, 5.0 ppm for sorghum grain, 10.0 ppm for sorghum forage, 10.0 ppm for sorghum fodder, 0.03 ppm for whole eggs, 0.03 ppm for poultry meat, 0.3 ppm for poultry fat, 0.3 for poultry meat by-products (except liver), 0.03 ppm for poultry liver, 5 ppm for sugar beet tops, 0.5 ppm for sugarbeet roots and 2.5 ppm for sugar beet pulp.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 29, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300634] (including any comments and data submitted

electronically). 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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. 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 Fairness Act of 1996, the Agency has 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 publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: April 21, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority : 21 U.S.C. 346a and 371.

2. Section 180.533 is added to subpart C to read as follows:

§ 180.533 Esfenvalerate; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide esfenvalerate, ((*S*)-cyano-(3-phenoxyphenyl) methyl (*S*)-4-chloro-α-(1-methylethyl) benzeneacetate in or on the following raw agricultural commodities:

Commodity	Parts per million
Eggs, whole	0.03
Lettuce, head	5.0
Poultry, fat	0.3
Poultry, meat	0.03
Poultry, mbyp (except liver)	0.3
Poultry, liver	0.03
Sorghum, fodder ...	10.0
Sorghum, forage ...	10.0
Sorghum, grain	5.0
Sugarbeet, pulp	2.5
Sugarbeet, root	0.5
Sugarbeet, top	5.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 98–11372 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 63, No. 82
Wednesday, April 29, 1998

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 98–ANE–119; Notice No. 33–98–01–SC]

Special Conditions: Turbomeca S.A., Model Arriel 2S1 Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Turbomeca S.A., of Bordes, France, Model Arriel 2S1 turboshaft engine. This engine was validated on June 10, 1996, by the FAA and Type Certificate No. E00054EN was issued. The engine will have an additional new novel or unusual engine rating. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. This document contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by existing airworthiness standards.

DATES: Comments must be submitted on or before May 29, 1998.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules, Docket No. 98–ANE–119, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments must be marked: Docket No. 98–ANE–119. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Mr. Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (781) 238–7115; Fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this proposed special condition must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ANE–119''. The postcard will be date stamped and returned to the commenter.

Background

On March 19, 1998, Turbomeca S.A., applied for an amendment to Type Certificate No. E00054EN to include a new 30-minute engine rating to Model Arriel 2S1 turboshaft engine. The rating is intended for use up to 30 minutes at any time after takeoff in a flight for performing search and rescue missions. The Model Arriel 2S1 turboshaft engine will be rated at 30-Second one engine inoperative (OEI), 2-Minute OEI, Continuous OEI, 30-Minute, Takeoff, and Maximum Continuous ratings.

The applicable airworthiness requirements do not contain a definition for a ''30-minute'' power rating, and do not contain adequate or appropriate safety standards of this new and unusual engine rating.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Turbomeca S.A., must show that the Model Arriel 2S1 turboshaft engine meets the requirements of the applicable regulations in effect on the date of the application, or the applicable provisions of the regulations incorporated by reference in Type Certificate No. E00054EN. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis''. The regulations incorporated by reference in Type Certificate No. E00054EN are §§ 21.29 and part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–14, and Special Conditions SC–33–ANE–05, Docket No. 95–ANE–46, published on April 15, 1996 (61 FR 16375).

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the additional new engine rating for the Model Arriel 2S1 turboshaft engine because it is a novel or unusual engine rating feature, special conditions are prescribed under the provision of 14 CFR 21.16.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Novel or Unusual Design Features

The Turbomeca S.A., Model Arriel 2S1 turboshaft engine will incorporate the following novel or unusual design features: Rated 30-minute power. The power available for rotorcraft hovering to perform maritime search and rescue missions is currently limited to the maximum continuous rating power under current part 33. The proposed ''30-minute power'' rating would provide higher power level than currently available for use up to 30 minutes at any time between takeoff and landing in one flight. This new rating will enhance rotorcraft safety through the availability of increased power for hovering operations calling for greater than maximum continuous power.

Applicability

As discussed above, these special conditions are applicable to the Turbomeca S.A., Model Arriel 2S1

turboshaft engine. Should Turbomeca S.A., of Bordes, France, apply at a later date for a change to the type certificate to include another model incorporating the same or novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of engines. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air Transportation, Aircraft, Aviation safety, Safety.

The authority citations for these special conditions is as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Turbomeca S.A., Model Arriel 2S1 turboshaft engine:

Section 33.4, Instructions for Continued Airworthiness

(a) In addition to the requirements of § 33.4, the procedures must:

(1) Ensure that the engine deterioration in service will not exceed the level shown in certification using the rated 30-minute rating.

(2) Be included in the airworthiness limitations section of the Instructions for Continued Airworthiness.

Section 33.7, Engine Ratings and Operating Limitations

(a) In addition to the ratings provided in § 33.7, a ''Rated 30-minute power'' rating is available, which shall be defined as the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established under part 33 of this chapter, and limited in use to periods of not over 30 minutes each.

Section 33.87, Endurance Test.

(a) Unless already accomplished under § 33.87(d), in addition to the requirements of § 33.87, the following test must be conducted:

Rated 30-minute power. Thirty minutes at rated 30-minute power during the twenty -five 6-hour endurance test cycles.

Issued in Burlington, Massachusetts on April 21, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–11337 Filed 4–28–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–065–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Alabama regulatory program (hereinafter the ''Alabama program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and additions of statutes pertaining to the small operator assistance program (SOAP), the repair of homes and other structures materially damaged by underground coal mining, and the replacement of affected water supplies. The amendment is intended to revise the Alabama program to be consistent with SMCRA.

This document sets forth the times and locations that the Alabama program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.d.t., May 29, 1998. If requested, a public hearing on the proposed amendment will be held on May 26, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. on May 14, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Arthur Abbs, Director, Birmingham Field Office, at the address listed below.

Copies of the Alabama program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Birmingham Field Office.

Arthur Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282.

Alabama Surface Mining Commission, 1811 Second Avenue, P.O. Box 2390, Jasper, Alabama 35502–2390, Telephone (205) 221–4130.

FOR FURTHER INFORMATION CONTACT: Arthur Abbs, Director, Birmingham Field Office, Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 901.15 and 901.16.

II. Description of the Proposed Amendment

By letter dated April 14, 1998 (Administrative Record No. AL–5079), Alabama submitted a proposed amendment to its program pursuant to SMCRA. Alabama submitted the proposed amendment in response to a May 20, 1996, letter (Administrative Record No. AL–0555) and a June 17, 1997, letter (Administrative Record No. AL–0568) that OSM sent to Alabama in accordance with 30 CFR 732.17(c). Alabama proposes to amend the Alabama Surface Mining Control and Reclamation Act. The full text of the proposed program amendment submitted by Alabama is available for public inspection at the locations listed above under **ADDRESSES.** A brief discussion of the proposed amendment is presented below.

A. Section 9–16–82. Permits; Fee

1. Alabama proposes to revise paragraph (c) to read as follows:

(C)(1) If the regulatory authority finds that the probable total annual production at all locations of any surface coal mining operator will not exceed 300,000 tons, the cost of the

following activities, which shall be performed by a qualified public or private laboratory or such other public or private qualified entity designated by the regulatory authority, shall be assumed by the regulatory authority upon the written request of the operator in connection with a permit application, provided that funds are made available to the regulatory authority for such purposes by the Secretary of the U.S. Department of Interior.

(A) The determination of probable hydrologic consequences required by subsection (b)(10), including the engineering analyses and designs necessary for the determination.

(B) The development of cross-section maps and plans required by subsection (b)(13).

(C) The geologic drilling and statement of results of test borings and core samplings required by subsection (b)(14).

(D) The collection of archaeological information required by subsection (b)(12) and any other archaeological and historical information required by the regulatory authority, and the preparation of plans necessitated thereby.

(E) Pre-blast surveys required by subsection 9–16–90(b)(15)e.

(F) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the regulatory authority under this Act.

(2) The regulatory authority shall provide or assume the cost of training coal operators that meet the qualifications stated in paragraph (1) concerning the preparation of permit applications and compliance with the regulatory program, and shall ensure that qualified coal operators are aware of the assistance available under this subsection; provided that funds for such purposes are made available to the regulatory authority by the Secretary of the U.S. Department of Interior.

2. Alabama proposes to add new paragraph (h) to read as follows:

(h) A coal operator that has received assistance pursuant to subsection (c)(1) or (2) shall reimburse the regulatory authority for the cost of the services rendered if the program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

B. Section 9–16–91. Underground Coal Mining; Effects on Surface

Alabama proposes to add new paragraph (e) to read as follows:

(e) Underground coal mining operations conducted after the date enactment of this section shall comply with each of the following requirements:

(1) Promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and structures related thereto, or non-commercial building due to underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and structures related thereto, or non-commercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and structures related thereto or non-commercial building and shall be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

(2) Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alabama program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on May 14, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of

section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 21, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–11342 Filed 4–28–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–218–FOR; Amendment Number 61R]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Ohio regulatory program (hereinafter referred to as the ''Ohio program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This amendment provides that areas reclaimed following the removal of temporary structures that are part of the sediment control system, such as sedimentation ponds, roads, and small diversions, are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities. The amendment also authorizes as a husbandry practice that not restart the revegetation responsibility period, the repair of damage to land and/or established permanent vegetation that has been unavoidably disturbed. The amendment is intended to improve operational efficiency of the Ohio program.

DATES: Written comments must be received on or before 4:00 p.m. on May 29, 1998. If requested, a public hearing on the proposed amendments will be held on May 26, 1998. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on May 14, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or delivered to George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, at the address listed below.

Copies of the Ohio program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting the OSM Field Branch, Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220 Telephone: (412) 937–2153.

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43224, Telephone: (614) 265–1076.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated February 11, 1993 (Administrative Record No. OH–1831), Ohio submitted proposed Program Amendment Number 61 concerning augmentative practices. OSM announced receipt of this amendment in the April 1, 1993, **Federal Register** (58 FR 17173) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 3, 1993. Since no one requested an opportunity to provide testimony at a public hearing, the scheduled hearing was canceled.

By letter dated June 11, 1993 (administrative Record No. OH–1888), Ohio submitted additional revisions to this proposed amendment. OSM announced receipt of the revised amendment in the July 6, 1993, **Federal Register** (58 FR 36177), and, in the same notice, reopened the public comment period and again provided an opportunity for a public hearing. The public comment period closed on July 21, 1993. On August 16, 1993 (58 FR 43261), OSM approved most of the proposed amendment, but deferred decision on Ohio Administrative Code (OAC) 1501:13–9–15(F) (5), (6), and (7) concerning nonaugmentative practices.

OSM reopened a public comment period on September 15, 1993 (58 FR 48333) for the provisions OAC 1501:13–9–15(F) (6) and (7) as originally submitted on February 11, 1993, and revised on June 11, 1993, with regard to removal of sedimentation ponds and associated areas. The comment period closed on October 15, 1993. This notice also included similar proposed revisions to the Kentucky and Illinois regulations as well as a discussion of OSM's proposed policy concerning restart of the revegetation responsibility

period upon the removal of required sedimentary control structures.

By letter dated April 14, 1998 (Administrative Record Number OH–2175–00), Ohio submitted revised language of the Program Amendment #61R. Subsection (f)(4) provides for practices that will not be considered augmentative when the practice and the rate of applecation is an accepted local practice for comparable unmined lands that can be expected to continue as a postmining practice. Subsection (F)(5) provides for the nonaugmentative repair of areas that held required sediment control structures. Subsection (F)(6) provides the minimum time that vegetation established or reestablished under subsections (F)(4)(c) and (F)(5) must have been seeded prior to a request for Phase III bond release. The proposed language is as follows.

OAC 1501:13–9–15(F)(4)

(c) Reseeding and adding soil amendments when necessary to repair damage to land and/or established permanent vegetation, that is unavoidably disturbed in order to meet the reclamation standards of this chapter, provided that:

(I) The damage is not caused by a lack of planning, design, or implemention of the mining and reclamation plan, inappropriate reclamation practices on the part of the permittee, or the lack of established permanent vegetation; and

(II) The total acreage of repaired areas under paragraphs (F)(4) (b) & (c) of this rule does not exceed ten percent of the total land affected, with no individual area exceeding three acres.

OAC 1501:13–9–15(F)(5)

Reseeding of areas that have been unavoidably disturbed in the course of gaining access for removal of structures that are part of the sediment control system or initial seeding of areas upon which the sediment control system was located and subsequently removed will not restart the period of extended responsibility for revegetation success.

OAC 1501:13–9–15(F)(6)

For the purposes of paragraphs (F)(4)(c) and (F)(5) of this rule, permanent vegetation that is established or reestablished on these areas must have been seeded a minimum of twelve months prior to the request for Phase III bond release.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendments. Comments should address whether the amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this notice and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on May 14, 1998. If no one requests an opportunity to testify at the public hearing by that date, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate remarks and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person or group requests to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the amendments may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 21, 1998.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–11281 Filed 4–28–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–035–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Texas regulatory program (hereinafter referred to as the ''Texas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Texas' proposed regulations pertain to terms and conditions of the bond, release of performance bond, backfilling and grading, and prime farmland.

The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t., May 14, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Discussion of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Texas Program

On February 16, 1980, The Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Discussion of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record No. TX–644), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. 640) that OSM sent to Texas in accordance with 30 CFR 732.17(c). Texas proposed to amend Chapter 12 of the Texas Administrative Code (TAC).

OSM announced receipt of the proposed amendment in the December 29, 1997, **Federal Register** (62 FR 67598) and invited public comment on its adequacy. The public comment period ended January 28, 1998.

During its review of the amendment, OSM identified concerns relating to release of performance bond and backfilling and grading. OSM notified Texas of the concerns by letter dated February 12, 1998 (Administrative Record No. TX–644.06). Texas responded in a letter dated March 6, 1998 (Administrative Record No. TX–644.07), by submitting the following revisions to its proposed amendment:

1. *§ 12.309, Terms and Conditions of the Bond.* Texas proposed the following new provision at §12.309(1):

> Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the Commission at the time collateral is offered.

2. *§ 12.312, Procedure for Seeking Release of Performance Bond.* at § 12.312(b)(2), Texas proposed to replace citation references to ''§ 12.313(c)'' with citation references to ''§ 12.313(d).''

3. *§ 12.387, Backfilling and Grading—This Overburden.* Texas revised its proposal at § 12.387(2) to require the permittee to meet the requirements of §§ 12.385 and 12.386 (relating to Backfilling and Grading: General Requirements, and to Backfilling and Grading: Covering Coal and Acid- and Toxic-Forming Materials). Texas previously proposed only to require the permittee to meet the requirements of § 12.385.

4. *§ 12.388, Backfilling and Grading—Thick Overburden.* Texas revised its proposal at § 12.388(2) to require the permittee to meet the requirements of §§ 12.385 and 12.386 (relating to Backfilling and Grading: General Requirements, and to Backfilling and Grading: Covering Coal and Acid-and Toxic-Forming Materials). Texas previously proposed only to require the permittee to meet the requirements of § 12.385.

5. *12.620, Prime Farmland—Applicability and Special Requirements.* Texas withdrew the previously proposed revisions to this section of its regulations.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Texas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732./15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 20, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–11282 Filed 4–28–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AH76

Claims and Effective Dates for the Award of Educational Assistance

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). It proposes a standard for determining what constitutes a formal claim, an informal claim, and an abandoned claim that can be applied uniformly to the educational assistance programs VA administers. In addition, it proposes less restrictive effective dates for awards of educational assistance; proposes uniform time limits for acting to complete claims; and proposes to state VA's responsibilities when a claim is filed. It appears that this rule will result in a more uniform adjudication of claims for educational assistance under each of the education programs VA administers.

DATES: Comments must be received on or before June 29, 1998.

ADDRESSES: Mail or hand deliver written comments to Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AH76.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

Comments on the collection of information contained in this proposal should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand delivered to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AH76.'' All written comments to VA will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Adviser, Education Service (225C), Veterans Benefits Administration, (202) 273–7187.

SUPPLEMENTARY INFORMATION: Regulations concerning VA-administered educational assistance and educational benefits are contained in 38 CFR Part 21. Rules governing time limits for filing claims or completing claims are contained in subparts B, C, G, H, K, and L. Each rule is applicable to one of the educational programs VA administers. Although there is no statutory reason why the rules could not be identical, they are not. This proposed rule would put one set of regulations concerning time limits in subpart B and apply them to all the educational programs VA administers. This would result in the following changes.

Regulations governing the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) do not permit extension of time limits to act to perfect a claim or to challenge an

adverse VA decision. An extension is permitted in the regulations governing the Survivors' and Dependents' Educational Assistance program (DEA), the Montgomery GI Bill—Active Duty (MGIB), and the Montgomery GI Bill—Selected Reserve (MGIB–SR). There appears to be no reason why VEAP should be treated differently from the other education programs VA administers since 38 U.S.C. chapter 51 is the basis for having time limits in each of these programs. This proposed rule would permit the same extension of the time limits to perfect a claim or to challenge an adverse decision in VEAP as exists in other programs.

The regulations governing the Educational Assistance Test Program (EATP) and those governing MGIB–SR do not provide that VA's failure to notify a claimant of the time limit to complete a claim or to act to challenge an adverse VA decision will extend the time limits for taking those actions. The regulations governing VEAP, DEA, and MGIB provide such an automatic extension. It does not appear that there is a valid reason to retain the different rule for EATP and MGIB–SR, since VA's failure to notify a claimant under these programs would have an adverse effect equal to a similar failure in the other three programs. This proposed rule would provide EATP and MGIB–SR with an automatic extension of the time limit on the same basis as has been provided in VEAP.

Current regulations use terms related to the filing of claims, such as ''informal claim'' that are not fully defined. This lack of definition would be corrected in this rule through the adding of definitions to subpart B. These definitions are as follows.

Proposed § 21.1029(a) defines an abandoned claim either as one where VA has asked for evidence, and the claimant does not furnish the evidence within one-year or does not show good cause why the one year time limit could not be met; or one based on an informal claim where VA has requested a formal claim but has not either received one within one year of the request or the claimant has not shown good cause why the claim could not be submitted within a year of the request. This definition is based upon 38 U.S.C. 5103(a) which provides that if VA asks a claimant to complete a claim, and the claimant does not do so within a year, no benefits are payable based on that claim. While the statute does not label the claim an abandoned claim, in fact, it has been abandoned. It would appear that this definition is appropriate.

Further, the regulations regarding a claim for educational assistance under MGIB state at § 21.7032(c) that a reactivated claim after abandonment constitutes a new claim. However, at § 21.7131(d) the regulations describe such a reactivated claim as a reopened claim. Since the effective date of benefits would relate to the new claim, it seems more appropriate to describe a reactivated claim after abandonment as a new claim. Accordingly, the regulations would be amended to consistently describe a reactivated claim after abandonment as a new claim.

Proposed § 21.1029(c) defines a formal claim as one that has been made in the form prescribed by the Secretary of Veterans Affairs (or designee) including one that is a claim for an increase in educational assistance as the result of an increase in the number of dependents, or one that is a claim for an extension of the eligibility period to receive educational assistance. 38 U.S.C. 5101(a) states that claimants are required to file claims on the form prescribed by the Secretary. Again, the statute does not label this as a formal claim, but it would appear that this is a reasonable definition. Such a definition would eliminate the need to repeat the statutory language whenever the regulations need to refer to the action required by 38 U.S.C. 5101.

The proposed rule defines an informal claim as one where the claimant, a representative, or a Member of Congress indicates a desire on the part of the claimant to receive educational assistance, but also states that the mere act of enrolling in an approved school is not an informal claim. This definition is based upon the discussion of informal claims contained in §§ 21.1031, 21.3031, and 21.7030(b). By permitting informal claims, VA is able to base effective dates upon them. It appears that the definition is consistent with past practice and will provide an equitable way to determine a claimant's date of claim.

Finally, the term ''VA'' in this proposed rule is defined as the United States Department of Veterans Affairs. This abbreviation is used with this meaning throughout this subpart, without being defined. It appears that to do so would eliminate any confusion caused by the use of this term.

Receipt of a formal claim for benefits from an individual and receipt of an enrollment certification from his or her school verifying the individual's actual pursuit of a program of education are necessary prerequisites to the award of educational assistance to the individual. The regulations governing the effective dates for awards of educational assistance generally provide that the commencing date of an award will be the later of one year before the date of receipt of the claim or one year before the date of receipt of the enrollment certification from the school. These regulations were adopted when the normal method of receiving the enrollment certification was through the mails. Today, VA receives many enrollment certifications electronically. Delays in receipt of the certification are not the fault of the Postal Service, but rather the educational institution. Since it appears that certification of enrollment is not under the veteran's control, this proposed rule would revise the regulations governing effective dates to eliminate this provision. The proposal would base effective dates on the date of claim, without regard to receipt of the enrollment certification.

This document also would amend § 21.7631 to reflect statutory requirements for effective dates for awards of educational assistance for MGIB–SR.

The Department of Defense (DOD) is issuing this proposal jointly with VA insofar as it relates to VEAP and EATP. These programs are funded by DOD and administered by VA. DOD, the Department of Transportation (Coast Guard), and VA are jointly issuing this proposal insofar as it relates to the MGIB–SR. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this proposal is issued solely by VA.

Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has determined that the proposed 38 CFR 21.1030 would constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act VA has submitted a copy of this rulemaking action to OMB for its review. OMB assigns control numbers to collections of information it approves. VA 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.

Title: Claim for Educational Assistance.

Summary of collection of information: The provisions of the proposed § 21.1030 would restate a statutory requirement (38 U.S.C. 5101(a)) that provides that no benefits may be paid or furnished to an individual until VA receives from the individual a claim for the benefit sought in the form prescribed by the Secretary. The proposed regulation adds language as to what information needs to be included in a claim.

Description of need for information and proposed use of information: The claim required in the proposed 38 CFR 21.1030 helps VA determine who is eligible for DEA, EATP, VEAP, MGIB, and MGIB–SR.

Description of likely respondents: The respondents will be individuals who wish to receive educational assistance from VA for pursuit of a program of education.

Estimated number of respondents: 345,048.

Estimated frequency of responses: Occasionally, when an individual wants to pursue a new program of education.

Estimated total annual reporting and recordkeeping burden: 178,484 hours of reporting burden. VA estimates that there would be no additional recordkeeping burden imposed.

Estimated average burden per respondent: 31 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collection(s) of information are necessary for the proposed performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its 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.

The signers of this document hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 602 and 604.

The Catalog of Federal Domestic Assistance number for the programs affected by this proposed rule are 64.117, 64.120, and 64.124. This proposed rule will affect the Montgomery GI Bill—Selected Reserve which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 22, 1998.

Togo D. West, Jr.,

Acting Secretary.

Approved: March 18, 1998.

Normand G. Lezy,

Lieutenant General, USAF, Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

Approved: February 26, 1998.

G. F. Woolever,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set out above, 38 CFR part 21 (subparts B, C, D, G, H, K, and L) is proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart B—Claims and Applications for Educational Assistance

1. The authority citation for part 21, subpart B continues to read as follows:

Authority: 38 U.S.C. 501(a), 38 U.S.C. chapter 51, unless otherwise noted.

2. Section 21.1029 is added, to read as follows:

§ 21.1029 Definitions.

These definitions apply to this subpart, and to subparts C, D, G, H, K, and L of this part.

(a) *Abandoned claim.* A claim is an *abandoned claim* if:

(1) In connection with a formal claim VA requests that the claimant furnish additional evidence, and the claimant—

(i) Does not furnish that evidence within one year of the date of the request; and

(ii) Does not show good cause why the evidence could not have been submitted within one year of the date of the request; or

(2) In connection with an informal claim, VA requests a formal claim, and—

(i) VA does not receive the formal claim within one year of the date of request; and

(ii) The claimant does not show good cause why he or she could not have filed the formal claim in sufficient time for VA to have received it within one year of the date of the request.

(Authority: 38 U.S.C. 5103(a))

(b) *Date of claim.* The *date of claim* is the date on which a valid claim or application for educational assistance is considered to have been filed with VA, for purposes of determining the commencing date of an award of that educational assistance.

(1) If an informal claim is filed and VA receives a formal claim within one year of the date VA requested it, or within such other period of time as provided by § 21.1032, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the informal claim.

(2) If a formal claim is filed other than as described in paragraph (b)(1) of this section, the date of claim, subject to the provisions of paragraph (b)(3) of this section, will be the date VA received the formal claim.

(3) If a formal claim itself is abandoned and a new formal or informal claim is filed, the date of claim will be as provided in paragraph (b)(1) or (b)(2) of this section, as appropriate.

(Authority: 38 U.S.C. 5103)

(c) *Formal claim.* A claim is a *formal claim* when the claimant (or his or her authorized representative) files the claim with VA, and—

(1) The claim is a claim for—

(i) Educational assistance;

(ii) An increase in educational assistance; or

(iii) An extension of the eligibility period for receiving educational assistance; and

(2) If there is a form (either paper or electronic) prescribed by the Secretary of Veterans Affairs or his or her designee, the claim is filed on that form.

(Authority: 38 U.S.C. 5101(a))

(d) *Informal claim.* (1) If the Secretary of Veterans Affairs has prescribed a form (either paper or electronic) to use in claiming the benefit sought, the term *informal claim* means—

(i) Any communication from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of the individual to claim or to apply for VA-administered educational assistance; or

(ii) A claim from an individual or from an authorized representative on that individual's behalf for a benefit described in paragraph (c)(1) of this section that is filed in a document other than in the prescribed form.

(2) If the Secretary of Veterans Affairs has not prescribed a form (either paper or electronic) to use in claiming the benefit sought, the term *informal claim* means any communication, other than a formal claim, from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of the individual to claim or to apply for VA-administered educational assistance.

(3) When VA requests evidence in connection with a claim, and the claimant submits that evidence to VA after having abandoned the claim, the claimant's submission of the evidence is an informal claim.

(4) The act of enrolling in an approved school is not an informal claim.

(5) VA will not consider a communication received from a service organization, an attorney, or agent to be an informal claim if a valid power of attorney, executed by the claimant, is not in effect at the time the communication is written.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3034(a), 3241(a), 3471, 3513, 5101(a), 5102, 5901)

(e) *VA.* The term *VA* means the United States Department of Veterans Affairs.

(Authority: 38 U.S.C. 301)

3. Section 21.1030 is revised to read as follows:

§ 21.1030 Claims.

An individual must file a formal claim for educational assistance for pursuit of a program of education, indicating the proposed place of training, the school or training establishment, the objective of the program of education, and such other information as the Secretary may require. A servicemember also must consult with his or her service education officer before filing a formal claim for educational assistance.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3034(a), 3241(a), 3471, 3513, 5101(a))

4. Section 21.1031 is revised to read as follows.

§ 21.1031 VA responsibilities when a claim is filed.

(a) *VA will furnish forms.* VA will furnish all necessary claim forms, instructions, and, if appropriate, a description of any supporting evidence required upon receipt of an informal claim.

(Authority: 38 U.S.C. 5102)

(b) *Request for additional evidence.* If a formal claim for educational assistance is incomplete, or if VA requires additional evidence or information to adjudicate the claim, VA will notify the claimant of the evidence and/or information necessary to complete or adjudicate the claim and of the time limit provisions of § 21.1032(a).

(Authority: 38 U.S.C. 5103)

5. § 21.1032 is revised to read as follows:

§ 21.1032 Time limits.

The provisions of this section are applicable to informal claims and formal claims.

(a) *Failure to furnish form, information, or notice of time limit.* VA's failure to give a claimant or potential claimant any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the time periods allowed for these actions.

(Authority: 38 U.S.C. 5101, 5113)

(b) *Notice of time limit for filing evidence.* If a claimant's claim is incomplete, VA will notify the claimant of the evidence necessary to complete the claim. Unless payment of educational assistance is permitted by paragraph (e) of this section, if the evidence is not received within one year from the date of such notification, VA will not pay educational assistance by reason of that claim.

(Authority: 38 U.S.C. 5103)

(c) *Time limit for filing a claim for an extended period of eligibility under 38 U.S.C. chapter 30, 32, or 35.* VA must receive a claim for an extended period of eligibility provided by §§ 21.3047, 21.5042, or 21.7051 by the later of the following dates.

(1) One year from the date on which the spouse's, surviving spouse's, or veteran's original period of eligibility ended; or

(2) One year from the date on which the spouse's, surviving spouse's, or veteran's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education.

(Authority: 38 U.S.C. 3031(d), 3232(a), 3512)

(d) *Time limit for filing for an extension of eligibility due to suspension of program (38 U.S.C. chapter 35).* VA must receive a claim for an extended period of eligibility due to a suspension of an eligible child's program of education as provided in § 21.3043 by the later of the following dates.

(1) One year from the date on which the child's original period of eligibility ended; or

(2) One year from the date on which the condition that caused the suspension of the program of education ceased to exist.

(Authority: 38 U.S.C. 3512(c))

(e) *Extension for good cause.* (1) VA may extend for good cause a time limit within which a claimant or beneficiary is required to act to perfect a claim or challenge an adverse VA decision. VA may grant such an extension only when the following conditions are met:

(i) When a claimant or beneficiary requests an extension after expiration of a time limit, he or she must take the required action concurrently with or before the filing of that request; and

(ii) The claimant or beneficiary must show good cause as to why he or she could not take the required action during the original time period and could not have taken the required action sooner.

(2) Denials of time limit extensions are separately appealable issues.

(Authority: 38 U.S.C. 5101, 5113)

(f) *Computation of time limit.* (1) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, VA will exclude the first day of the specified period, and will include the last day. This rule is applicable in cases in which the time limit expires on a workday. When the time limit would expire on a Saturday, Sunday, or holiday, the VA will include the next succeeding day in the computation.

(2) The first day of the specified period referred to in paragraph (f)(1) of this section will be the date of the letter of notification to the claimant or beneficiary for purposes of computing time limits. As to appeals, see §§ 20.302 and 20.305 of this chapter.

(Authority: 38 U.S.C. 501(a))

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

6. The authority citation for subpart C continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

§ 21.3021 [Amended]

7. In § 21.3021, paragraph (m) is amended by removing ''§ 21.4200'', and adding, in its place, ''§§ 21.1029 and 21.4200''.

8. Section 21.3030 is revised to read as follows:

§ 21.3030 Claims.

The provisions of subpart B of this part apply with respect to submission of a claim for educational assistance under 38 U.S.C. chapter 35, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3513, 5101, 5102, 5103)

9. Sections 21.3031 and 21.3032 are removed.

Subpart D—Administration of Educational Assistance Programs

10. The authority citation for subpart D continues to read as follows:

Authority: 10 U.S.C. ch. 1606, 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

11. In § 21.4131, the introductory text and paragraphs (a) and (d) are revised, to read as follows:

§ 21.4131 Commencing dates.

VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) *Entrance or reentrance including change of program or educational institution: individual eligible under 38 U.S.C. chapter 32.* When an eligible veteran or servicemember enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the veteran or servicemember is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The date the educational institution certifies under paragraph (b) or (c) of this section;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for the program of education the veteran or servicemember is pursuing, the effective date of the award of educational assistance is the later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 38 U.S.C. 3672, 5103, 5110(b), 5113)

* * * * *

(d) *Entrance or reentrance including change of program or educational institution: individual eligible under 38 U.S.C. chapter 35.* When a person eligible to receive educational assistance under 38 U.S.C. chapter 35 enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the eligible person is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The beginning date of eligibility as determined by § 21.3041(a) or (b) or by § 21.3046(a) or (b), whichever is applicable;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The date the educational institution certifies under paragraph (b) or (c) of this section;

(iv) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for that program, the effective date of the award of educational assistance is later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672, 5103)

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

12. The authority citation for subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), ch. 32, unless otherwise noted.

13. In § 21.5030, the heading for the section and paragraph (c) introductory text, are revised; paragraphs (c)(1), (c)(2), and (c)(3) are redesignated as paragraphs (c)(2), (c)(3), and (c)(4), respectively; a new paragraph (c)(1) is added; and a newly redesignated paragraph (c)(3) is revised, to read as follows:

§ 21.5030 Applications, claims, and time limits.

* * * * *

(c) The provisions of the following sections shall apply to claims for educational assistance under 38 U.S.C. chapter 32:

(1) Section 21.1029—Definitions.

* * * * *

(3) Section 21.1031—VA responsibilities when a claim is filed.

* * * * *

14. In § 21.5130, paragraph (a) is amended by removing ''dates'', and adding, in its place, ''dates (except paragraph (d))''.

Subpart H—Educational Assistance Test Program

15. The authority citation for subpart H continues to read as follows:

Authority: 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A, 42 U.S.C 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

16. Section 21.5730 is revised to read as follows:

§ 21.5730 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under the educational program described in § 21.5701, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 10 U.S.C. 2141, 2149, 38 U.S.C. 5101, 5102, 5103)

§ 21.5732 [Removed]

17. Section 21.5732 is removed.

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

18. The authority citation for subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30 and 36, unless otherwise noted.

19. In § 21.7020, the introductory text is revised, to read as follows:

§ 21.7020 Definitions.

For the purposes of regulations from § 21.7000 through § 21.7499 and the payment of basic educational assistance

and supplemental educational assistance under 38 U.S.C. chapter 30, the following definitions apply. (See also additional definitions in § 21.1029).

* * * * *

20. Section 21.7030 is revised to read as follows:

§ 21.7030 Applications, claims, and time limits.

The provisions of subpart B, of this part apply with respect to claims for educational assistance under 38 U.S.C. chapter 30, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3018B, 3034(a), 3471, 5101, 5102, 5103)

21. In § 21.7032, paragraphs (b), (c), (d), and (e) are removed; paragraph (f) is redesignated as paragraph (b); and the section heading and paragraph (a) are revised to read as follows:

§ 21.7032 Time limits for making elections.

(a) *Scope of this section.* The provisions of this section are applicable to certain elections to receive educational assistance under 38 U.S.C. ch. 30. For time limits governing formal and informal claims for educational assistance under 38 U.S.C. ch. 30, see § 21.1032.

(Authority: 38 U.S.C. 3018B)

* * * * *

§ 21.7051 [Amended]

22. In § 21.7051, paragraph (a)(1) is amended by removing ''§ 21.7032(e) of this part'' and adding, in its place, ''§ 21.1032(c)''.

23. In § 21.7131, the introductory text is revised; paragraph (e)(1)(iii) is amended by removing ''subdivision (ii)(B) of this subparagraph'' and adding, in its place, ''paragraph (e)(1)(ii)(B) of this section''; paragraph (d) is removed and reserved; paragraph (e)(2)(i) introductory text is removed; paragraphs (e)(2)(i)(A), (e)(2)(i)(B), and (e)(2)(i)(C) are redesignated as a new (e)(2)(i), (e)(2)(ii), and (e)(2)(iii), respectively; and paragraph (a) is revised to read as follows:

§ 21.7131 Commencing dates.

VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) *Entrance or reentrance including change of program or educational institution.* When an eligible veteran or servicemember enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the veteran or servicemember is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The date the educational institution certifies under paragraph (b) or (c) of this section;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The effective date of the approval of the course, or one year before the date VA receives the approval notice whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for the program of education the veteran or servicemember is pursuing, the effective date of the award of educational assistance is later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672, 5103, 5110(b), 5113)

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

24. The authority citation for subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501, unless otherwise noted.

25. In § 21.7520, the introductory text is revised, to read as follows:

§ 21.7520 Definitions.

For the purposes of regulations from § 21.7500 through § 21.7999, governing the administration and payment of educational assistance under 10 U.S.C. chapter 1606, the Selected Reserve Educational Assistance Program, the following definitions apply. (See also additional definitions in § 21.1029).

* * * * *

26. Section 21.7530 is revised to read as follows:

§ 21.7530 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under 10 U.S.C. chapter 1606, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3472)

§ 21.7532 [Removed]

27. Section 21.7532 is removed.

28. In § 21.7631, paragraph (d) is removed; paragraphs (e), (f), (g) and (h) are redesignated as paragraphs (d), (e), (f), and (g) respectively; and the introductory text and paragraph (a) are revised, to read as follows:

§ 21.7631 Commencing dates.

VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) *Entrance or reentrance including change of program or educational institution.* When an eligible reservist enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the reservist is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The date the educational institution certifies under paragraph (b) or (c) of this section;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The effective date of the approval of the course, or one year before the date VA receives the approval notice whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for the program of education the reservist is pursuing, the effective date of the award of educational assistance is the later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3672, 5103)

* * * * *

[FR Doc. 98–11295 Filed 4–28–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–035–9807a; FRL–6004–9]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions for Transportation Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Georgia State Implementation Plan (SIP) submitted by the Department of Natural Resources on August 29, 1997, requesting the incorporating several transportation control measures (TCMs).

In the final rules section of this **Federal Register**, the EPA is approving the State's State Implementation Plan (SIP) revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comment, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based upon this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by May 29, 1998.

ADDRESSES: Written comments on this action should be addressed to Kelly Sheckler at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file GA35–9807. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Attn: Kelly Sheckler, 404/562–9042.

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Division, 4244 International Parkway, suite 136, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler at 404/562–9042.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 6, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–11384 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1836 and 1852

Partnering for Construction Contracts

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This is a proposed rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to set forth a clause to be used to promote partnering under construction contracts when it has been determined that the benefits to be derived exceed the costs.

DATES: Comments must be received on or before June 29, 1998.

ADDRESSES: Submit comments to Mr. Joseph Le Cren, NASA Headquarters, Code HK, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, Telephone: (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

Several NASA field installations have used clauses promoting the use of partnering for construction contracts. Although those clauses have been similar, it was considered to be beneficial to have a standard Agency-wide clause. The proposed rule would provide a standard clause which would establish an Agency policy to endorse the use of partnering where it is determined to be cost effective. The use of partnering only would be used if voluntarily agreed to by the parties.

The use of partnering clauses in construction contracts by NASA and other agencies has been demonstrated to reduce the average contract cost and schedule growth, as well as reduce the amount of contract claims and litigation. These results have been achieved because the use of partnering has promoted a relationship of open communication and close cooperation between the contractor and the Government, creating a mutually beneficial environment within which to achieve contract objectives and resolve issues.

Impact

NASA certifies that this proposed regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1836 and 1852

Government procurement.

Deidre Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1836 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1836 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1836.70 [Added]

2. Subpart 1836.70 is added to read as follows:

Subpart 1836.70—Partnering

1836.7001 Definition.

Partnering means a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

1836.7002 General.

(a) The establishment of a partnering environment usually leads to higher quality products completed more quickly at lower overall costs and with fewer accidents and litigation.

(b) The use of partnering is encouraged as it has been shown to reduce the average contract cost and schedule growth and to reduce contract claims and litigation.

(c) Partnering is a voluntary contract relationship within the management process that is not to be used to unofficially alter terms of the contract.

1836.7003 Policy.

(a) Partnering should be used on a contract when the contracting officer, in coordination with the project manager, determines that the benefits to be achieved from its use are expected to be greater than the costs.

(b) In determining whether the benefits of partnering are greater than the costs, the following factors should be considered:

(1) The estimated dollar value of the contract;

(2) The complexity of the work to be performed;

(3) The contemplated length of the contract; and

(4) The estimated costs to be incurred in conducting the partnership development and team building initial and follow-up workshops

1836.7004 NASA solicitation provision and contract clause.

The contracting officer may insert a clause substantially the same as stated at 1852.236–75, Partnering for Construction Contracts, in solicitations and contracts for construction, when it has been determined in accordance with 1836.7003 that the benefits to be derived from partnering exceed the costs.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.236–75 [Added]

3. Section 1852.236–75 is added to read as follows:

1852.236–75 Partnering for Construction Contracts.

As prescribed in 1836.7004, insert the following clause:

Partnering for Construction Contracts April 1998

(a) The terms ''partnering'' and ''partnership'' used herein shall mean a relationship of open communication and close cooperation that involves both Government and Contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

(b) Partnering will be a voluntary commitment mutually agreed upon by at least NASA and the prime contractor, and preferably the subcontractors and the A&E design contractor, if applicable. Sustained commitment to the process is essential to assure success of the relationship.

(c) NASA intends to facilitate contract management by encouraging the foundation of a cohesive partnership with the Contractor, its subcontractors, the A&E design contractor, and NASA's contract management staff. This partnership will be structured to draw on the strengths of each organization to identify and achieve mutual objectives. The objectives are intended to complete the contract requirements within budget, on schedule, and in accordance with the plans and specifications.

(d) To implement the partnership, it is anticipated that within 30 days of the Notice to Proceed the prime Contractor's key personnel, its subcontractors, the A&E design contractor, and NASA personnel will attend a partnership development and team building workshop. Follow-up team building workshops will be held periodically throughout the duration of the contract as agreed to by the Government and the Contractor.

(e) Any cost with effectuating the partnership will be agreed to in advance by both parties and will be shared with no change in the contract price. The contractor's share of the costs are not recoverable under any other Government award.

(End of clause)

[FR Doc. 98–11387 Filed 4–28–98; 8:45 am]

BILLING CODE 7510–01–P

Notices

Federal Register
Vol. 63, No. 82
Wednesday, April 29, 1998

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

April 24, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 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 Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental 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) 720–6746.

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.

Food and Nutrition Service

Title: Food Stamp Accountability Report.

OMB Control Number: 0584–0009.

Summary of Collection: The Food Stamp Act of 1977 authorizes the Food and Nutrition Service (FNS), on behalf of the Secretary of Agriculture, to develop procedures for the delivery of food stamp coupons to issuance agents and bulk storage points, and for monitoring the level of coupon inventories. Regulations for the Food Stamp Program require that each issuance and bulk inventory point report monthly issuance and food stamp inventory activity on Form FNS–250, Food Coupon Accountability Report to FNS through the State agency.

Need and Use of the Information: The information collected on the FNS–250, Food Coupon Accountability Report, includes beginning and end-of-month coupon inventories, receipt and transfers of coupon shipments, coupons returned to inventory, and credits. The reported data is used by the FNS regional officer to validate the State agency liability billing for food stamp losses.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 1,587.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 57,132.

Rural Housing Service

Title: 7 CFR 1942–C, Fire and Rescue Loans.

OMB Control Number: 0575–0120.

Summary of Collection: The Rural Housing Service (RHS) is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of essential community facilities primarily serving rural residents. The primary regulation for administering this Community Facility program is 7 CFR 1942–A (0575–0015). Information must be collected to determine eligibility, analyze financial feasibility, take security, monitor the use of loan funds, and monitor the financial condition of borrowers, and otherwise assisting borrowers.

Need and Use of the Information: The information will be collected by Rural Development field offices from applicant/borrowers and consultants through a variety of standardized forms and other existing documents. This information will be used to determine applicant/borrower eligibility, project feasibility, and ensure borrowers operate on a sound basis and use loan funds for authorized purposes.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 1,130.

Frequency of Responses: Reporting: On occasion; Quarterly; Annually.

Total Burden Hours: 6,595.

Rural Housing Service

Title: 7 CFR 1924–C, Planning and Performing Site Development Work.

OMB Control Number: 0575–0164.

Summary of Collection: Section 502 of Title V of the Housing Act of 1949, as amended, authorizes the Rural Housing Service (RHS) to provide financial assistance to farm owners and other persons living in rural areas for the purpose of obtaining decent, safe, and sanitary dwellings and related facilities. The purpose of the financial assistance is to give families, who do not have sufficient resources to provide such dwellings and related facilities on their own account and cannot obtain the necessary credit from other sources on terms and conditions they can reasonably expect to meet, an opportunity to have adequate homes. RHS makes direct loans to applicants of up to 100 percent of the appraised value of the property, therefore, the site and its development are an integral part of the dwellings and related facilities being financed. Accordingly, information about the site proposal such as location, topography, soils, energy, and environmental considerations must be collected.

Need and Use of the Information: The information required for site approval is collected from the appraiser by the completion of Form HUD–54891, ''Appraiser/Review Appraiser Checksheet''. All the material and information requested on Form HUD–54891 is readily available to the appraiser and the builder. The form requests general information about the site proposal, such as: location, topography, soils, energy, and environmental considerations. The

information collected is necessary to assure orderly development of rural areas which will lead to economically stable communities while considering the impacts on the environment and protecting the borrower's and Government's Security interests.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 20,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 3,340.

Agricultural Marketing Service

Title: Reporting and Recordkeeping Requirements for 7 CFR Part 29.

OMB Control Number: 0581–0056.

Summary of Collection: The Dairy and Tobacco Adjustment Act of 1983 (Pub. L. 98–198) authorizes the Agricultural Marketing Service (AMS), on behalf of the Secretary, to inspect all tobacco offered for importation into the United States for grades and quality except cigar and oriental tobacco which must be certified by the importer as to kind and type, and in the case of cigar tobacco, that such tobacco will be used solely in the manufacture or production of cigars. The Act also authorizes the Secretary to fix and collect fees from the importers to cover the cost of inspection. Information must be collected from the public whenever USDA inspection or certification services are requested.

Need and Use of the Information: Information is collected by AMS through a variety of forms and other documents regularly used in the importation and sale of tobacco. AMS uses the information to identify applications for inspection and/or certification of tobacco, identify applications for new auction markets or the extension of services to designated tobacco markets, and solicit nominations/recommendations for individuals to serve on the National Advisory Committee for Tobacco Inspection Services.

Description of Respondents: Business or other for-profit.

Number of Respondents: 645.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 5,569.

Rural Housing Service

Title: Rural Housing Demonstration Programs—Section 502.

OMB Control Number: 0575–0114.

Summary of Collection: Section 506 of the Housing Act of 1949, as amended by Title V—Rural Housing of Housing and Urban-Rural Recovery Act of 1983, directs the Secretary to conduct research, technical studies and demonstrations in order to improve the architectural designs, cost effectiveness and utility of housing units. The amendment allows the Secretary to permit housing demonstrations which do not meet existed published standards, rules, regulations or policies, if the Secretary finds that in doing so, the health and safety of the population is not adversely affected. The Rural Housing Service (RHS) will collect information from applicants seeking an innovation housing unit award.

Need and Use of the Information: RHS will collect information from the proposer to evaluate the strengths and weaknesses to which the proposal concept possesses or lacks the attributes set forth in the proposed content and evaluation criteria. RHS will use the collected information to select the most feasible proposals that will enhance the Agency's chances in accomplishing the demonstration objective. The information will be utilized to sustain and modify RHS's current policies pertaining to the construction of modest housing.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 15.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,200.

Rural Development and Farm Service Agency

Title: 7 CFR 1980–A, Guaranteed Loans—General.

OMB Control Number: 0575–0024.

Summary of Collection: The Consolidated Farm and Rural Development Act (CONACT), as amended, authorizes the Secretary of Agriculture to make and service loans guaranteed by the Farm Service Agency (FSA) and the Rural Housing Service (RHS) to eligible applicants. The loan programs to which this subpart is applicable include farm operating, farm ownership, and soil and water loans. The collection of information requested is necessary to assure that the program is being carried out in accordance with the applicable laws and authorities. Additionally, information must be collected because the law requires that certain policies be verified by FSA to assure that loan applicants and borrowers comply with such policies in order to obtain the requested assistance.

Need and Use of the Information: FSA and RHS require some information to be reported on standard forms in order to facilitate an effective and efficient decision-making process. The information collection required by this rule will be used by the Agencies to approve and determine the need for loans and subordinations in accordance with this rule. The Agencies consider the information collected to be essential to prudent loan making decisions. Failure to make sound loans would joepardize the Government's loan portfolio, would result in large losses to both the borrower and the Government, and would weaken the overall agricultural economy.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 3,750.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 117,066.

Rural Housing Service

Title: 7 CFR 1951–N, Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing.

OMB Control Number: 0575–0104.

Summary of Collection: Cases of unauthorized assistance are identified from time to time by the Office of Inspector General or through regular serving visits by Rural Development personnel. Rural Housing Service (RHS) has published its own regulation, consistent with the Federal Claims Act, through which it can better assist the recipients of RHS assistance and still adequately protect the Government's interest. The information collected under the provisions of this regulation is provided on a voluntary basis by the recipient of the assistance in question, although failure to cooperate in effecting requiring corrections to loan accounts may result in loss or reduction of benefits or liquidation of the loan. The information to be collected will primarily be financial data relating to income and expenses.

Also, tenants who refuse to cooperate or provide information may lose their subsidy or tenancy.

Need and Use of the Information: The information required by this regulation is collected from Multi-Family Housing borrowers (who may be individuals, partnerships, private or nonprofit corporations or public bodies) and from tenants who reside in the borrowers' rental projects. The collections are made from RHS borrowers on an individual case basis by RHS personnel. Collection from tenants is made by RHS borrowers or their manager employed by the borrower to manage the project. If this regulation is not continued, the cases involving unauthorized financial

assistance would remain unresolved and many borrowers would keep financial benefits for which they did not qualify under RHS loan regulations.

Description of Respondents: Individuals or households; Business or other for-profit; Farms; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 450.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 800.

Nancy Sternberg,

Departmental Information Clearance Officer.

[FR Doc. 98–11360 Filed 4–28–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after May 1, 1998. The list of newspapers will remain in effect until October 1998 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Donald W. Murphy, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, Phone (801) 625–5274.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR 215 and 36 CFR 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

This legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows.

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho: *The Idaho Statesman,* Boise, Idaho.

For decisions made by the Regional Forester affecting National Forests in Nevada: *The Reno Gazette-Journal,* Reno, Nevada.

For decisions made by the Regional Forester affecting National Forests in Wyoming: *Casper Star-Tribune,* Casper, Wyoming.

For decisions made by the Regional Forester affecting National Forests in Utah: *Standard-Examiner,* Ogden, Utah.

If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in: *Standard-Examiner,* Ogden, Utah.

Ashley National Forest

Ashley Forest Supervisors decisions: *Vernal Express,* Vernal, Utah.

Vernal District Ranger decisions: *Vernal Express,* Vernal, Utah.

Flaming Gorge District Ranger for decisions affecting Wyoming: *Casper Star-Tribune,* Casper, Wyoming.

Flaming Gorge District Ranger for decisions affecting Utah: *Vernal Express,* Vernal, Utah.

Roosevelt and Duchesne District Ranger decisions: *Uintah Basin Standard,* Roosevelt, Utah.

Boise National Forest

Boise Forest Supervisor decisions: *The Idaho Statesman,* Boise, Idaho.

Mountain Home District Ranger decisions: *The Idaho Statesman,* Boise, Idaho.

Boise District Ranger decisions: The Idaho Statesman, Boise, Idaho.

Idaho City District Ranger decisions: *The Idaho Statesman,* Boise, Idaho.

Casade District Ranger decisions: *The Advocate,* Cascade, Idaho.

Lowman District Ranger decisions: *The Idaho City World,* Idaho City, Idaho.

Emmett District Ranger decisions: *The Messenger-Index,* Emmett, Idaho.

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions: *Casper Star-Tribune, Casper, Wyoming.*

Jackson District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming.

Buffalo District Ranger decisions: *Casper Star-Tribune,* Jackson, Wyoming.

Big Piney District Ranger decisions: *Casper Star-Tribune,* Jackson, Wyoming.

Pinedale District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming.

Greys River District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming.

Kemmerer District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming.

Caribou National Forest

Caribou Forest Supervisor decisions: *Idaho State Journal,* Pocatello, Idaho.

Soda Springs District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho.

Montipelier District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho.

Malad District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho.

Pocatello District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho.

Dixie National Forest

Dixie Forest Supervisor decisions: *The Daily Spectrum,* St. George, Utah.

Pine Valley District Ranger decisions: *The Daily Spectrum,* St. George, Utah.

Cedar City District Ranger decisions: *The Daily Spectrum,* St. George, Utah.

Powell District Ranger decisions: *The Daily Spectrum,* St. George, Utah.

Escalante District Ranger decisions: *The Daily Spectrum,* St. George, Utah.

Teasdale District Ranger decisions: *The Daily Spectrum,* St. George, Utah.

Fishlake National Forest

Fishlake Forest Supervisor decisions: *Richfield Reaper,* Richfield, Utah.

Loa District Ranger decisions: *Richfield Reaper,* Richfield, Utah.

Richfield District Ranger decisions: *Richfield Reaper,* Richfield, Utah.

Beaver District Ranger decisions: *Richfield Reaper,* Beaver, Utah.

Fillmore District Ranger decisions: *Richfield Reaper,* Fillmore, Utah.

Hemboldt-Toiyabe National Forests

Humboldt Forest Supervisor decisions: *Elko Daily Free Press,* Elko, Nevada.

Toiyabe Forest Supervisor decisions: *Reno Gazette-Journal,* Reno, Nevada.

Sierra Ecosystem Coordination Center (SECO): Carson District Ranger

decisions: *Reno Gazette-Journal,* Reno, Nevada.

Bridgeport District Ranger decisions: *The Review-Herald,* Mammoth Lakes, California.

Spring Mountains National Recreation Area Ecosystem (SMNRAE): Spring Mountain National Recreation Area District Ranger decisions: *Las Vegas Review Journal,* Las Vegas, Nevada.

Central Nevada Ecosystem (CNECO):

Austin District Ranger decisions: *Reno Gazette-Journal,* Reno, Nevada.

Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News,* Tonopah, Nevada.

Ely District Ranger decisions: *Ely Daily Times,* Ely, Nevada.

Northeast Nevada Ecosystem (NNECO):

Mountain City District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada.

Ruby Mountains District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada.

Jarbridge District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada.

Santa Rosa District Ranger decisions: *Humboldt Sun,* Winnemucca, Nevada.

Manti-Lasal National Forest

Manti-LaSal Forest Supervisor decisions: *Sun Advocate,* Price, Utah.

Sanpete District Ranger decisions: *The Pyramid,* Mt. Pleasant, Utah.

Ferron District Ranger decisions: *Emery County Progress,* Castle Dale, Utah.

Price District Ranger decisions: *Sun Advocate,* Price Utah.

Moab District Ranger decisions: *The Times Independent,* Moab, Utah.

Monticello District Ranger decisions: *The San Juan Record,* Monticello, Utah.

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman,* Boise, Idaho.

Weiser District Ranger decisions: *Signal American,* Weiser, Idaho.

Council District Ranger decisions: *Council Record,* Council, Idaho.

New Meadows, McCall, and Krassel District Ranger decisions: *Star News,* McCall, Idaho.

Salmon and Challis National Forests

Salmon Forest Supervisor decisions: *The Recorder-Herald,* Salmon, Idaho.

Cobalt District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho.

North Fork District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho.

Leadore District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho.

Salmon District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho.

Challis Forest Supervisor decisions: *The Challis Messenger,* Challis, Idaho.

Middle Fork District Ranger decisions: *The Challis Messenger,* Challis, Idaho.

Challis District Ranger decisions: *The Challis Messenger,* Challis, Idaho.

Yankee Fork District Ranger decisions: *The Challis Messenger,* Challis, Idaho.

Lost River District Range decisions: *The Challis Messenger,* Challis, Idaho.

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times News,* Twin Falls, Idaho.

Burley District Ranger decisions: *Ogden Standard Examiner,* Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit.

South Idaho Press, Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.

Twin Falls District Ranger decisions: *The Times News,* Twin Falls, Idaho.

Ketchum District Ranger decisions: *Wood River Journal,* Hailey, Idaho.

Sawtooth National Recreation Area: *Challis Messenger,* Challis Idaho.

Fairfield District Ranger decisions: *The Times News,* Twin Falls, Idaho.

Targhee National Forest

Targhee Forest Supervisor decisions: *The Post Register,* Idaho Falls, Idaho.

Dubois District Ranger decisions: *The Post Register,* Idaho Falls, Idaho.

Island Park District Ranger decisions: *The Post Register,* Idaho Falls, Idaho.

Ashton District Ranger decisions: *The Post Register,* Idaho Falls, Idaho.

Palisaded District Ranger decisions: *The Post Register,* Idaho Falls, Idaho.

Teton Basin District Ranger decisions: *The Post Register,* Idaho Falls, Idaho.

Uinta National Forest

Uinta Forest Supervisor decisions: *The Daily Herald,* Provo, Utah.

Pleasant Grove District Ranger decisions: *The Daily Herald,* Provo, Utah.

Heber District Ranger decisions: *The Daily Herald,* Provo, Utah, and *Wasatch Wave,* Heber City, Utah.

Spanish Fork District Ranger decisions: *The Daily Herald,* Provo, Utah.

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions: *Salt Lake Tribune,* Salt Lake City, Utah.

Salt Lake District Ranger decisions: *Salt Lake Tribune,* Salt Lake City, Utah.

Kamas District Ranger decisions: *Salt Lake Tribune,* Salt Lake City, Utah.

Evanston District Ranger decisions: *Unitah County Herald,* Evanston, Wyoming.

Mountain View District Ranger decisions: *Uintah County Herald,* Evanston, Wyoming.

Ogden District Ranger decisions: *Ogden Standard Examiner,* Ogden, Utah.

Logan District Ranger decisions: *Logan Herald Journal,* Logan, Utah.

Dated: April 10, 1998.

Robert M. Swinford,

Director, Strategic Communications.

[FR Doc. 98–11146 Filed 4–28–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service's (RUS) invites comments on these information collections for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by June 29, 1998.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collection that RUS is submitting to OMB for an extension.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

- *Title:* Financial and Statistical Report for Telephone Borrowers.

OMB Control Number: 0572–0031.

Type of Request: Extension of a previously approved information collection, without change.

Abstract: Each telephone borrower signs a mortgage agreement that specifically requires the submission of annual, audited financial statements. The completed Form 479 is due back from the borrowers to RUS in order to comply with the Rural Electrification Act.

Respondents: Business or other for non-profit.

Annual Reporting Burden:

Estimated Number of Respondents: 900.

Estimated Number of Responses per Respondent: 1.

Estimated Hours per Response: 14 hours.

Combined Estimated Total Annual Burden on Respondents: 7,740 hours.

- *Title:* RUS Policy on Audits for Electric and Telephone Borrowers.

OMB Control Number: 0572–0095.

Type of Request: Extension of a previously approved information collection, without change.

Abstract: The requested financial statements are needed to evaluate borrowers' financial, performance, determine whether current loans are at financial risk, and determine the credit worthiness of future loans.

Under the authority of the Rural Electrification Act of 1936 (Act), as amended 7 U.S.C. 901 et seq., the Administrator is authorized and empowered to make loans under certain specified circumstances. As a requirement for these loans, the RUS mortgage in Article 2, Section 12, requires the Mortgagor to prepare and furnish financial statements to RUS at least annually.

Respondents: Business or other for-profit.

Annual Reporting Burden:

Estimated Number of Responses: 3,872.

Combined Estimated Total Annual Burden on Respondents: 20,330 hours.

- *Title:* Borrower Investments, Telecommunications Loan Program.

OMB Control Number: 0572–0098.

Type of Request: Extension of a previously approved information collection, without change.

Abstract: The information collected will be used by RUS in considering whether or not to approve a borrower's request to make an investment in a rural development project when such an investment would cause the borrower to exceed its allowable investment level.

Respondents: Not for profit institutions.

Estimate of Burden:

Estimated Number of Respondents: 40.

Estimated Total Annual Burden on Respondents: 380 hours.

Requests for copies of an information collection can be obtained from Gail Salgado-Duff, Program Development and Regulatory Analysis, at (202) 205–3660. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 23, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 98–11289 Filed 4–28–98; 8:45 am]

BILLING CODE 3410–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Access Board Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Tuesday and Wednesday, May 12–13, 1998 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, May 12, 1998

9:00 a.m.–Noon and 1:30–3:30 p.m. Committee of the Whole—Accessibility Guidelines (Closed Meeting).

3:30 p.m.–5:30 p.m. Technical Programs Committee

Wednesday, May 13, 1998

9:00 a.m.–11:00 a.m. Planning and Budget Committee Meeting on Agency Goals

11:00–Noon Planning and Budget Committee

1:30 p.m.–3:30 p.m. Board Meeting.

ADDRESSES: The meetings will be held at: Marriott at Metro Center, 775 12th Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items. Specific voting items are noted next to each committee report.

Open Meeting

- Executive Director's Report
- Approval of the Minutes of the March 11, 1998 Board Meeting
- Planning and Budget Committee Report—Status Report on Fiscal Year 1998 and 1999 Budgets
- Technical Programs Committee Report—Status Report on Fiscal Year 1997 and 1998 Research Projects, and Fiscal Year 1999 Research Agenda.

Closed Meeting

- Committee of the Whole Report—Accessibility Guidelines.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 98–11347 Filed 4–28–98; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S.-South African Business Development Committee; Membership

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of membership opportunity.

SUMMARY: The Department of Commerce is currently seeking nominations of outstanding individuals to serve on the U.S. section of the U.S.-S.A. Business Development Committee (BDC). The U.S. Department of Commerce and the South African Department of Trade and Industry created the BDC in June 1994 to provide a forum through which U.S. and South African private sector representatives could advise their governments on commercial issues relevant to bilateral trade issues.

The U.S. section is chaired by Secretary of Commerce William Daley and consists of 21 members representing the diversity of American business, with emphasis on: finance and investment; infrastructure; technical assistance; and market access. The BDC has held regular meetings since September 1994.

Term

Members selected through this recruitment process will serve a term from July 1998 to June 2000.

Obligations

Private sector members will serve at the discretion of the Secretary and shall serve as representatives of the business community and industry that they represent. They are expected to participate fully in defining the agenda for the Committee and in implementing its work program. It is expected that private sector individuals chosen for BDC membership will attend not less than 75% of the BDC meetings which will be held in the United States and South Africa.

Private sector members are fully responsible for travel, living, and personal expenses associated with their participation in the BDC and may be responsible for a pro rata share of administrative and communications costs of the BDC.

The BDC will continue to work on issues of common interest to encourage trade and investment. Such issues include:

—Resolving obstacles to trade and investment between the two countries;
—Developing sectoral or project-oriented approaches to expand business opportunities;
—Expanding commercial activity between both countries and identifying commercial opportunities;
—Implementing trade and business development programs, including trade missions, seminars, exhibits, and other events; and
—Identifying further steps to facilitate and encourage commercial relations between the U.S. and South Africa.

Criteria

In order to be eligible for membership in the U.S. section, potential candidates must be:

(1) U.S. citizens or permanent residents;

(2) CEOs or other senior management level employees of a U.S. company or organization with demonstrated involvement in trade with and/or investment in South Africa. (Candidate must actively participate in not less than 75% of the BDC meetings, which will be held in the United States and South Africa);

(3) Not a registered Foreign Agent, under the Foreign Agents Registration Act; and

(4) A representative of a company that is actively doing business in South Africa or actively developing entry plans for doing business in South Africa.

To the extent possible, the Department of Commerce will strive to achieve membership composition that reflects U.S. entrepreneurial diversity. When reviewing eligible candidates, the Department of Commerce will consider such selection factors as:

(1) Depth of experience in the South African market;

(2) Export/investment experience;

(3) Representation of industry or service sectors of importance to the United States' commercial relationship with South Africa;

(4) Contribution to diversity, based on industry sector, company size, location, and demographics;

Candidates for the two year term beginning in July 1998 must provide the following:

(1) Name and title of the individual proposed for consideration;

(2) Name and address of the company or organization of which the individual is a representative;

(3) Company's or organization's product or service line;

(4) The particular segment of the business community the candidate would represent;

(5) Size of the company or, if an organization, size and number of member companies;

(6) Brief summary of the company's or organization's depth and scope of current or planned involvement in the South African market;

(7) Export/foreign investment experience in other major markets;

(8) Optional brief statement (not more than 1 page) of any additional reasons why each candidate should be considered for membership on the Committee; and

(9) A personal résumé.

DEADLINE: In order to receive full consideration, requests must be received no later than May 30, 1998.

ADDRESSES: Please send your requests for consideration to Mrs. S. K. Miller, Director, Office of Africa, either by fax on 202–482–5198, or by mail to Room 2037, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mrs. S. K. Miller of the Office of Africa, Room 2037, U.S. Department of Commerce, Washington, D.C. 20230; Telephone: 202–482–4227.

Authority: Act of February 14, 1903, c.552, as amended, 15 U.S.C. 1512, 32 Stat. 825.

Sally Miller,

Director, Office of Africa.

[FR Doc. 98–11316 Filed 4–28–98; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However,

nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 97–A0003.''

The Association for the Administration of Rice Quotas, Inc. (''AARQ'') original Certificate was issued on January 21, 1998 (63 FR 4220, January 28, 1998). A summary of the application for an amendment follows.

Summary of the Application:

Applicant: The Association for the Administration of Rice Quotas, Inc. (''AARQ''), 3200 Trammell Crow Center, 2001 Ross Avenue, Dallas, Texas 75201–2997.

Contact: M. Jean Anderson, Esquire, Telephone: (202) 682–7000, Robert M. Bor, Esquire, Telephone: (202) 371–5700.

Application No.: 97–A0003.

Date Deemed Submitted: April 14, 1998 .

Proposed Amendment: AARQ seeks to amend its Certificate to:

1. Delete Brinkley Rice Milling Company and El Campo Rice Milling Company as Members of the Certificate.

2. Add the following companies as new ''Members'' of the Certificate within the meaning of § 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): AC HUMKO, Corp. for the activities of AC HUMKO Rice Specialties, Brinkley Rice Milling Company, and El Campo Rice Milling Company, Dallas, Texas; Cargill Americas, Inc., Wayzata, MN; Cargill Rice, Inc., Wayzata, MN; ConAgra, Inc. for the activities of KBC Trading and Processing Company, Stockton, CA; Kennedy Rice Dryers, Inc., Mer Rouge, LA; and Pacific International Rice Mills, Inc., Woodland, CA; and

3. Change the current Member listing of ''Connell Rice & Sugar Co.'' to read ''The Connell Company for the activities of Connell Rice & Sugar Co. and Connell International Co.''

Dated: April 23, 1998.

Morton Schnabel,

Acting Director Office of Export Trading Company Affairs.

[FR Doc. 98–11318 Filed 4–28–98; 8:45 am]

BILLING CODE 3510–DR–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection: Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3508(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning its proposed AmeriCorps Leader Application. This form is used to collect information for use by AmeriCorps Leaders Program staff in the evaluation and selection of program participants.

Copies of the information collection requests can be obtained by contacting the office listed below in the address section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by June 29, 1998.

ADDRESSES: Send comments to Corporation for National and Community Service, AmeriCorps Leaders Program, Attn: Julie Catlett, Deputy Director, 1201 New York Avenue, N.W., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Julie Catlett, (202) 606–5000, ext. 164.

SUPPLEMENTARY INFORMATION:

I. Background

The AmeriCorps Leader Application form is to be used by applicants who wish to serve as Leaders in the AmeriCorps Leaders Program.

II. Current Action

The Corporation seeks approval for the AmeriCorps Leaders Program Leader Application which will be used to recruit the next class of Leaders beginning in January 1999.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Leader Application Form.

OMB Number: None.

Agency Number: None.

Affected Public: Citizens of all ages and backgrounds who are committed to national service.

Total Respondents: 50.

Frequency: Annually.

Average Time Per Response: Two hours.

Estimated Total Burden Hours: 1,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 23, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–11334 Filed 4–28–98; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps*National Civilian Community Corps (NCCC)

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability for collaboration.

SUMMARY: The NCCC seeks community partners in the performance of service projects in the areas of the environment, education, public safety, other unmet human needs, and disaster relief.

DATES: Proposals are accepted and reviewed on an on-going basis.

FOR FURTHER INFORMATION CONTACT: See AmeriCorps*National Civilian Community Corps' projects brochure on the World-wide Web at http://www.nationalservice.org.

SUPPLEMENTARY INFORMATION: The National Civilian Community Corps is an AmeriCorps program of the Corporation for National and Community Service. NCCC manages teams of young adults to conduct service projects across the nation. Teams include approximately twelve 18–24 year old men and women of diverse social, economic, and educational backgrounds, and a trained team leader. Projects are typically 6 to 8 weeks in duration; the period of service for larger, more complex projects can be extended.

Eligibility

Private nonprofit organizations, governmental entities at the federal, state, and local levels, educational institutions, community-based organizations, and Native American Tribal Councils are eligible to submit proposals. Proposals are accepted, reviewed, and approved with consideration for compelling need, geographical distribution, availability of teams, and NCCC costs related to team deployment.

Cost

There is no charge for the services of an NCCC team or its transportation; however, collaborating organizations are expected to provide the necessary materials, equipment, and technical supervision for projects, as well as assist with food and lodging if the project is beyond a reasonable commuting distance from the NCCC campus. NCCC does not provide financial grants of any kind in association with this program.

Addresses

For interested organizations in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont, contact: AmeriCorps*NCCC Northeast Region Campus, *Attn:* Ms. LaQuine Roberson, Director of Projects and Training, P.O. Box 27, Perry Point, MD 21902–0027, (410) 642–2411, ext. 6264.

For interested organizations in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and the Virgin Islands, contact: AmeriCorps*NCCC Southeast Region Campus, *Attn:* Ms. Ruth Rambo, Director of Projects and Training, 2231 South Hobson Avenue, Charleston, SC 29405–2438, (843) 743–8600, ext. 3007.

For interested organizations in Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin, and Wyoming, contact: AmeriCorps*NCCC Central Region Campus, *Attn:* Ms. Karen LaBat, Director of Projects and Training, 1059 Yosemite Street, Building 758, Room 213, Aurora, CO 80010–6062, (303) 340–7305.

For interested organizations in Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, Washington, and the Pacific U.S. territories, contact: AmeriCorps*NCCC Western Region Campus, *Attn:* Mr. Charles Davenport, Director of Projects and Training, 2650 Truxton Road, San Diego, CA 92106–6001, (619) 524–0749.

For interested organizations in the District of Columbia, Ohio, Pennsylvania, Virginia, and West Virginia, contact: AmeriCorps*NCCC Capital Area Campus, *Attn:* Ms. Cynthia Martin, Director of Projects and Training, Two D.C. Village Lane, S.W., Washington, D.C. 20032, (202) 561–1382.

Dated: April 23, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–11354 Filed 4–28–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: May 11, 1998.

Time of Meeting: 0830–1630.

Place: Fort Meade, MD.

Agenda: The Army Science Board's (ASB) Issue Group Panel on ''Review of Risk Assessment Methodology for Proposed DoD Range Rule'' will meet to review the U.S. Army Corps of Engineers OECerts Model for assessing risk. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist Army Science Board.

[FR Doc. 98–11319 Filed 4–28–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: May 19–20, 1998.

Time of Meeting: 0830–1700 (both days).

Place: Association of the U.S. Army, Arlington, VA.

Agenda: The Army Science Board's (ASB) 1998 Summer Study panel on ''Concepts and Technology for the Army Beyond 2010'' will meet to review Summer Study subpanels—Sea Lift, Air Lift, Communications, Digitization, Situation Awareness, Lethality, Armored Vehicles, Alternatives to Big Guns, and Modern Sustainment Systems and Their Manning—and begin preparing the structure of their final report. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–11320 Filed 4–28–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: May 5–6, 1998.

Time of Meeting: 0800–1700, 5 May 98. 0800–1400, 6 May 98.

Place: Virginia Modeling Analysis and Simulation Center, Suffolk, VA.

Agenda: The Army Science Board's (ASB) Issue Group on ''Human Behavior in Combat'' will meet for briefings and discussions on the study topic. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–11321 Filed 4–28–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 29, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., 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 Acting Deputy Chief Information Officer, Office of the Chief Information Officer, 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.

Dated: April 23, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Title I State Plan for Vocational Rehabilitation Services and Title VI—Part C Supplemental for Supported Employment Services.

Frequency: Annually.

Affected Public: Individuals or households; not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 82.

Burden Hours: 1,002,050.

Abstract: The Rehabilitation Act of 1973, as amended, and its implementing regulations at 34 CFR 361 and 363 require each of the 82 State vocational rehabilitation agencies to submit a three-year State plan for vocational rehabilitation services and a supplement to the plan for supported employment services. Program funding is contingent on Departmental approval of the plan and its supplement.

[FR Doc. 98–11333 Filed 4–28–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1992–000]

Advanced Energy Systems, Inc.; Notice of Issuance of Order

April 24, 1998.

Advanced Energy Systems, Inc. (Advanced Energy), a wholly-owned subsidiary of Commonwealth Energy System, has entered into a stock and asset purchase agreement to acquire Medical Area Total Energy Plant, Inc. (MATEP) [1] Advanced Energy filed an application seeking authority, upon closing, for MATEP to sell its power at market-based rates pursuant to a wholesale power sales contract with a single customer, MATEP LLC.[2], and for certain waivers and authorizations. In particular, Advanced Energy seeks for MATEP the same waivers and authorizations under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by MATEP as those granted by the Commission to other power sellers with market-based rate authorization. On April 20, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's April 20, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by MATEP 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 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, MATEP is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of MATEP, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of MATEP's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 20, 1998.

Copies of the full text of the Order are available from the Commission's Public

[1] According to Advanced Energy, MATEP presently is owned by Harvard University.

[2] MATEP LLC is a Delaware Limited Liability Company of which Advanced Energy is the sole member. MATEP LLC, in turn, will sell power to specific retail customers, including five Boston area hospitals.

Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11364 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–023 and ER96–1663–024]

The California Independent System Operator Corporation; Notice of Filing

April 20, 1998.

Take notice that on March 31, 1998, the California Independent System Operator Corporation (ISO), filed for Commission acceptance in this docket, pursuant to Section 205 of the Federal Power Act, an application to amend the ISO Tariff, including the ISO Protocols, and a motion for waiver of the 60-day notice requirement. The ISO requests that the proposed amendments be made effective as of the ISO Operations Date.

The ISO states that Amendment No. 7 would provide (1) certain changes relating to the transmission priority of Reliability Must-Run Generation and Existing Contracts; (2) temporary rule limiting Adjustment Bids applicable to Dispatchable Loads and exports; (3) a temporary rule disqualifying certain Energy bids; and (4) a clarification relating to the Reliability Must-Run Charge.

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 May 1, 1998. 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 petition to intervene. Copies of this application are on file with the Commission and available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11299 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–025 and ER96–1663–026]

California Power Exchange Corporation; Notice of Filing

April 20, 1998.

Take notice that on April 10, 1998, the California Power Exchange Corporation (PX), filed for Commission acceptance in this docket, pursuant to Section 205 of the Federal Power Act, an application to amend the PX Operating Agreement and Tariff (including Protocols) (PX Tariff) and a motion for waiver of the 60-day notice requirement. The PX requests that the proposed PX Tariff amendments be made effective as of the PX operations date because the amendments contain minor adjustments to the PX Tariff that will reflect actual PX operating practices.

In these amendments, the PX proposes minor amendments to the PX Tariff and Protocols involving Tied Bids, the correction of typographical errors in the PX Settlements and Billing Protocol from the PX Tariff Amendment filed on March 3, 1998, a PX Security Amount clarification in the PX Registration and Certification Protocol, a clarification of the PX Administrative Charge and the Grid Management Charge, a payment timing modification, a clarification of how default Interest will be credited, and a new Tariff amendment referring to PX Emergency Recovery Protocol and PX Communications Protocol, with minor amendments to each of those protocols.

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 and protests should be filed on or before May 1, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11300 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–026 and ER96–1663–027]

California Power Exchange; Notice of Filing

April 20, 1998.

Take notice that on April 10, 1998, the California Power Exchange Corporation (PX), filed for Commission acceptance in this docket, pursuant to Section 205 of the Federal Power Act, an application to amend the PX Operating Agreement and Tariff (including Protocols) (PX Tariff) for the Hour-Ahead Market implementation. The PX requests that the proposed PX Tariff amendments be made effective as of June 8, 1998, or sooner if the PX is able to complete testing.

In this submittal, the PX proposed PX Tariff and Protocol amendments that would be placed into effect to operate the PX Hour-Ahead Market. To implement a start-up date sooner than June 8, 1998, the PX requested that it be allowed to provide notice, at least fifteen (15) days in advance of start-up, to the Commission and to post such notice on the PX Home Page. This procedure is similar to the one that the Commission required the PX to follow in the start-up of the Day-Ahead Market.

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 and protests should be filed on or before May 1, 1998. 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 application are on file with the Commission and available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11301 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–360–000]

Columbia Gas Transmission Corporation; Notice of Application

April 23, 1998.

Take notice that on April 16, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fairlakes Parkway, Fairfax, Virginia 22030, filed in Docket No. CP98–360–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for authorization to abandon certain pipeline facilities and to construct and operate other pipeline facilities to replace those being abandoned in Hocking County, Ohio, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to abandon by removal approximately 2.3 miles of 12-, 10-, 8- and 6-inch storage pipeline and appurtenances, which comprise Columbia's Line SR–553. Columbia proposes to construct and operate approximately 2.3 miles of 10- and 4-inch pipeline and appurtenances to replace the facilities being abandoned. It is stated that Line SR–553 is a major line in Columbia's Laurel Storage Field and that the existing facilities were installed in 1951 and have deteriorated to the point where replacement facilities are required to ensure the integrity of the system.

Columbia asserts that it does not propose any new or additional service as a result of the pipeline replacement. Columbia further asserts that the proposal would not result in any abandonment of service to existing customers. The construction cost is estimated at $1,094,200, which would be generated from internal sources.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 14, 1998, 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.

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 a grant of the certificate is 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 Columbia to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11305 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–56–002]

Duquesne Light Company; Notice of Filing

April 20, 1998.

Take notice that on March 30, 1998, Duquesne Light Company tendered for filing its compliance filing 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, 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 and protests should be filed on or before May 1, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11298 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–359–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

April 23, 1998.

Take notice that on April 16, 1998, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP98–359–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point located in Cochise County, Arizona, to permit the interruptible transportation and delivery of natural gas to Mexicana de Cobre, S.A. de C.V. (Mexcobre), near the International Boundary between the United States and Mexico near the town of Douglas, Arizona, under El Paso's blanket certificate issued in Docket Nos. CP82–435–000 and CP88–433–000, pursuant to Section 7 of the Natural Gas Act (NGA), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that Mexcobre currently operates a copper mine in Nacozari, Sonora, Mexico, located approximately 65 miles south of the town of Douglas, Cochise County, Arizona, and the International Boundary between the United States and Mexico. El Paso further states that Mexcobre has been using high sulfur residual oil as fuel for its mining of copper, but that it now desires to use clean burning natural gas as a fuel for its mining process.

Further, El Paso states that in support of Mexcobre's decision to use natural gas as fuel for its mining operations, Mexcobre has requested that El Paso provide transportation service for Mexcobre and, therefor, El Paso and Mexcobre have entered into an interruptible Transportation Service Agreement dated March 17, 1998. The proposed quantity of natural gas to be transported on an interruptible basis to the proposed delivery point is estimated to be an average of 24 MMcf per day.

El Paso also states that in order to facilitate Mexcobre's request for natural gas service, El Paso and Mexcobre agreed, by Letter Agreement dated March 17, 1998, that El Paso would: (i) install a 12-inch tap and valve assembly on Line No. 1004; and (ii) cause the construction of, on El Paso's behalf, a dual 8-inch meter station (Mexcobre-Douglas Delivery Point) and approximately 1.15 miles of 16-inch-diameter pipeline (Mexicana de Cobre Lateral Line) extending from the proposed delivery point to the International Boundary between the United States and Mexico in Cochise County, Arizona.

El Paso states that by this application, it is seeking authorization for the construction and operation of the proposed Mexcobre-Douglas Delivery Point; and that as for the Mexicana de Cobre Lateral Line, El Paso states that it will construct and operate this line under Section 157.208(a) of the Commission's Regulations.

El Paso states that concurrently, it is filing an application, pursuant to Section 3 of the NGA and Subparts B and C of Part 153 of the Commission's Regulations Under the NGA, for Section 3 authorization and a Presidential Permit regarding the proposed pipeline facilities at the International Boundary between the United States and Mexico.

El Paso also states that construction and operation of the proposed Mexcobre-Douglas Delivery Point is not prohibited by El Paso's existing Volume No. 1–A Tariff, and that it has sufficient capacity to accomplish the deliveries of the requested gas volumes without detriment or disadvantage to El Paso's other customers.

El Paso states the total estimated cost of the proposed Mexcobre-Douglas Delivery Point is $266,300, and that the estimated cost of the Mexicana de Cobre Lateral Line is $338,300. El Paso indicates that Mexcobre has agreed, pursuant to the March 17, 1998 Letter Agreement, to reimburse El Paso for all actual costs related to construction of the proposed Mexcobre-Douglas Delivery Point and the Mexicana de Cobre Lateral Line.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11304 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–35–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 23, 1998.

Take notice that on April 17, 1998, El Paso Natural Gas Company (El Paso) tendered for filing a Master Replacement Agreement (MRA) between El Paso and Pemex Gas y Petroquimica Basica (Pemex) and Seventh Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the MRA for Commission approval since the MRA contains payment provisions which differ from El Paso's Volume No. 1–A General Terms and Conditions. The MRA and the tariff sheet, which references the MRA, are proposed to become effective on May 18, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11306 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–358–000]

Gas Transport, Inc.; Notice of Request Under Blanket Authorization

April 23, 1998.

Take notice that on April 16, 1998, Gas Transport, Inc. (GTI), P.O. Box 430, Lancaster, OH, 43130–0430, filed in Docket No. CP98–358–000 a request pursuant to Sections 157.205, and 157.212, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate 7,348 feet of 12-inch pipe and one new delivery point under GTI's blanket certificate issued in Docket No. CP86–291–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

GTI proposes to construct and operate the facilities for the delivery of gas to Hope Gas, Inc. (Hope). This connection is designated on Line No. T–36 in Tygart District, Wood County, West Virginia. The quantity of gas to be delivered through the proposed facilities is estimated to be 5–8 MMBtu per day.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Daivd P. Boergers,

Acting Secretary.

[FR Doc. 98–11303 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–80–000]

Hummon Corporation; Notice of Petition for Adjustment

April 23, 1998.

Take notice that on April 3, 1998, Hummon Corporation (Hummon) filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) [15 U.S.C. § 3412(c)] and Subpart K of the Commission's Rules of Practice and Procedure, on behalf of certain working interest owners for whom Hummon operated. Therein, Hummon seeks an adjustment relieving those working interest owners of their obligation to make Kansas ad valorem tax refunds to Northern Natural Gas Company (Northern) and/or Panhandle Eastern Pipe Line Company (Panhandle), on the basis that the working interest owners' financial status cannot absorb the payment of the refunds claimed, over the next five years. Hummon bases its financial status claim on a statement reflecting the projected net profit for Hummon and its working interest owners over the next five years (Statement 1), and on a statement of the net income from the subject wells over the past two years (Statement 2). Hummon's petition is on file with the Commission and open to public inspection.

Hummon indicates that Panhandle is claiming a $11,440.19 total refund with respect to the Perry Lease. Hummon's Statement 1 and Statement 2 data for the Perry Lease are shown below. Hummon bases its 5-year projections on a $14 oil price and $1.85 gas price.

		Perry lease
Actual	1996	$2,793
	1997	(3,619)
Projected	1998	310
	1999	(1.090)
	2000	(2,280)
	2001	(3,288)
	2002	(5,156)
	.....	[1] (11,504)

[1] Hummon's petition erroneously calculates the net loss to be $10,504.

Hummon indicates that Northern is claiming a total refund of $80,923.52 with respect to multiple leases. Hummon identifies the following leases, and provides the lease status and the refunds generated by each lease:

Combrink Lease	Plugged in 1994	$1,272.24
Hazen Lease	Plugged June 20, 1983	1.321.78
Hibbert Lease	Plugged December 1985	2,250.54
Harper Ranch #1 GU	Second well drilled in 1995	16,317.79
Harper Ranch #2 GU	Evaluating well for plugging	2,423.67
McMinimy Lease	Producing	57,223.80
		80,809.82

Hummon provides its Statement 1 and Statement 2 data for the three active leases (Harper Ranch #1 GU, Harper Ranch #2 GU, and the McMinimy Lease). Hummon's 5-year projected net profit/loss for each of these three leases is based on a $14 oil price and a $1.85 gas price.

		Harper ranch #1 GU	Harper ranch #2 GU	McMinimy lease
Actual	1996	[1] $60,889	($6,407)	[2] $26,019
	1997	14,372	(1,802)	31,831
Projected	1998	14,104	(1,610)	32,479
	1999	5,749	(3,532)	23,293
	2000	(1,353)	(5,167)	15,485
	2001	(7,384)	(6,556)	8,849
	2002	(12,517)	(7,739)	3,206
	.....	(1,401)	(24,604)	83,312

[2] Hummon asserts that this figure is caused by flush production from a second well drilled on the lease.

Overall, Hummon states that seven (7) wells are involved in its petition, and that each has different working interest owners. Hummon's petition does not identify the working interest owners by name that are involved in the petition, and does not provide any information regarding the financial status of any of those working interest owners.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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, 385.211, 385.1105, and 385.1106). 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11311 Filed 4–29–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–79–000]

Ruth Lawhorn; Notice of Petition For Adjustment

April 23, 1998.

Take notice that on March 30, 1998, Ruth Lawhorn (Lawhorn) filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) [15 U.S.C. § 3142(c) (1982)],[1] for

[1] The Commission's regulations governing adjustment petitions are set forth in Subpart K of the Commission's Rules of Practice and Procedure [18 CFR 385.1101–385.1117].

adjustment relief from refunding the Kansas ad valorem tax reimbursements attributable to Lawhorn's royalty interest in a well (or wells) located in the East Mansur Field and operated by Olympic Petroleum Company (Olympic). Lawhorn's petition indicates that Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company Williams) served Olympic with the Statement of Refunds Due, and that Olympic is now seeking to recover Lawhorn's royalty interest share of that refund, for flow-through to Williams. Lawhorn asserts that paying the refund will cause she and her husband to endure a special hardship. Lawhorn's petition is on file with the Commission and open to public inspection.

On September 10, 1997, in Docket No. RP97–369–000 *et al*, the Commission issued an order,[2] on remand from the D.C. Circuit Court of Appeals,[3] that directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission subsequently stated, in its January 28, 1998 Order Clarifying Procedures [82 FERC ¶ 61,059 (1998)] that producers could file NGPA section 502(c) adjustment petitions for relief from the refund requirement if, among other things, the payment of the Kansas ad valorem tax refund would cause the producer to endure a special hardship, within the meaning of section 502(c) of the NGPA.

Lawhorn states: 1) That she and her husband have been retired for 10 years; 2) that no restrictions were placed on the cashing of their royalty checks and, therefore, that they did not place any royalty check money into escrow; 3) that both she and her husband are in poor health and have serious medical problems, with correspondingly exorbitant medical bills; and 4) that they cannot repay the amount sought by Olympic[4] and still buy the medicine they need to continue to live.

In view of the above, Lawhorn requests that the Commission grant an adjustment, relieving Lawhorn from paying the Kansas ad valorem tax refund sought by Olympic, on the basis that paying the refund will cause Lawhorn to endure a special hardship.

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3rd 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

[4] Lawhorn's petition includes a March 18, 1998 letter from Olympic to Lawhorn, in which Olympic indicates that a Schedule attached to the letter shows the refund amount Lawhorn owes. The petition, however, does not include that Schedule.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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, 385.211, 385.1105, and 385.1106). 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11310 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–81–000]

Shannon Energy Corporation; Notice of Petition for Adjustment

April 23, 1998.

Take notice that on April 7, 1998, Shannon Energy Corporation (Shannon) filed a petition, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 [15 U.S.C. § 3412(c)] and Subpart K of the Commission's Rules of Practice and Procedure, for an adjustment relieving Shannon of its obligation to make:

(1) $17,501.17 in Kansas ad valorem tax refunds to Williams Gas Pipelines Central, Inc., formerly: Williams Natural Gas Company (Williams);

(2) $1,180.59 in Kansas ad valorem tax refunds to Colorado Interstate Gas Company (CIG); and

(2) 43,245.89 in Kansas ad valorem tax refunds to Amoco Production Company (Amoco), for subsequent flow-through to the purchaser.

Shannon contends that its financial condition cannot withstand having to refund these amounts, because it is a scaled-down company that no longer operates the wells that generated the refund obligations, and because it will not be able to collect amounts owed by the other working interest owners and the royalty interest owners, since it has no way to bill them. Shannon's petition is on file with the Commission and open to public inspection.

Shannon states that, although it was the operator of several Hugoton wells during the period from December 1, 1986 through January 1, 1993, it no longer operates those wells, and has no way to obtain reimbursement of amounts attributable to many of the working and royalty interest owners, because Shannon is no longer billing out through a Joint Interest Billing or paying revenue checks. Shannon indicates that, collectively, Williams, CIG, and Amoco have served Shannon with $61,927.65 in refund claims. Shannon contends that, if it tries to make a ''special'' billing of the appropriate working and royalty interest owners with respect to these refund claims, it will not be reimbursed by those owners and, therefore, will receive the hardship of the uncollectible debts. Shannon further states that it does not have the funds to risk so large a write-off.

In view of the above, Shannon requests that it be relieved of its obligation to refund the above-referenced amounts to Williams, CIG, and Amoco, i.e., to be relieved of its obligation to refund the amounts attributable to its own working interest, and to be relieved of the obligation to make refunds on behalf of the other working interest owners and the royalty interest owners.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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, 385.211, 385.1105, and 385.1106). 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11312 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1943–000]

Sithe New England Holdings LLC; Notice of Issuance of Order

April 24, 1998.

Sithe New England Holdings LLC (Sithe New England) filed an application on behalf of Project LLCs (Project LLCs) [1] for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Sithe New England requested that the Commission grant blanket approval to Project LLCs under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Project LLCs. On April 20, 1998, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's April 20, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (J):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Project LLCs 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 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Project LLCs are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Project LLCs, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(J) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Project LLCs' issuances of securities or assumptions of liabilities. . . .

[1] The Project LLCs are six wholly owned special purpose subsidiaries for the purpose of holding the acquired generating assets. Project LLCs consist of Sithe Mystic LLC, Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC and Sithe Wyman LLC.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 20, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11365 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Docket No. ER97–2517–002]

Xenergy, Inc.; Notice of Filing

April 20, 1998.

Take notice that Xenergy, Inc., filed on April 3, 1998, the Summary of Quarterly Activity for the calendar year quarter ending December 31, 1997 pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's June 9, 1997 order (the Order) in Docket No. ER97–2517–000.

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 1, 1998. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11363 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–38–000, et al.]

Electric Rate and Corporate Regulation Filings; Logan Generating Company, L. P., et al.

April 20, 1998.

Take notice that the following filings have been made with the Commission:

1. Logan Generating Company, L.P.

[Docket No. EC98–38–000]

Take notice that on April 9, 1998, Logan Generating Company, L.P., tendered for filing an application for approval pursuant to Section 203 of the Federal Power Act for approval of a change in ownership. Logan also filed a notification of change in status pursuant to Section 205 of the Federal Power Act.

Comment date: May 15, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc.

[Docket No. ER98–1776–000]

Take notice that on April 15, 1998, Western Resources, Inc., tendered for filing an amendment to its February 9, 1998, filing in this docket. Western Resources states that the amendment is to notify the Commission that Western Resources finds the conditions attached to the Commission's March 13, 1998, SPP order acceptable and no longer finds it necessary to condition its submittal in this docket upon the outcome of the Southwest Power Pool Regional Transmission Tariff (Docket No. ER98–1163–000). In addition, Western Resources has proposed that the effective date of its tariff change submitted in this docket be revised from April 1, 1998 to June 1, 1998 to match the effective date of the SPP Regional Tariff.

Copies of the filing were served upon all parties shown on the official service list in this docket.

Comment date: May 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Company

[Docket No. ER98–2350–000]

Take notice that on March 27, 1998, Delmarva Power & Light Company (Delmarva) submitted for filing a letter stating that it has submitted a revised network service agreement to the PJM Office of Interconnection (PJM), which includes service for the Dover loads and resources. Delmarva states in its letter that it requests PJM to promptly file the service agreement with the Commission.

Comment date: May 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. PJM Interconnection, L.L.C.

[Docket No. ER98–2459–000]

Take notice that on April 6, 1998, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of Florida Power & Light Company.

Comment date: May 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Lowell Cogeneration Company Limited Partnership

[Docket No. ER98–2518–000]

Take notice that on April 10, 1998, Lowell Cogeneration Company Limited Partnership tendered for filing a summary of activity for the quarter ending March 31, 1998.

Comment date: May 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Company

[Docket No. ER98–2527–000]

Take notice that on April 10, 1998, Maine Public Service Company submitted a Quarterly Report of Transactions for the period January 1 through March 31, 1998. This filing was made in compliance with the Commission's orders dated May 31, 1995 in Docket No. ER95–851–000 and April 30, 1996 in Docket No. ER96-780–000.

Comment date: May 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Central Hudson Gas & Electric Corporation

[Docket No. ER98–2529–000]

Take notice that on April 10, 1998, Central Hudson Gas & Electric Corporation tendered for filing a summary of activity conducted by Central Hudson Gas & Electric Corporation under the FERC-approved Market-Based Rate Tariff.

Comment date: May 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Indiana Gas and Electric Company

[Docket No. ER98–2539–000]

Take notice that on April 15, 1998, Southern Indiana Gas and Electric Company submitted for filing an amendment to its rate filing in the above-referenced proceeding.

Comment date: May 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Carolina Power & Light Company

[Docket No. ER98–2545–000]

Take notice that on April 15, 1998, Carolina Power & Light Company (Carolina), tendered for filing an executed Service Agreement between Carolina and the following Eligible Entity: OGE Energy Resources, Inc. Service to the Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: May 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Boston Edison Company

[Docket No. ER98–2547–000]

Take notice that on April 15, 1998, Boston Edison Company (Boston Edison) tendered for filing for information purposes the 1996 true-up to actual for the Substation 402 Agreement (FPC Rate Schedule No. 149) between Boston Edison and Cambridge Electric Light Company (Cambridge). This filing is made pursuant to the terms of the 1987 Settlement Agreement between Boston Edison, Cambridge and the Town of Belmont, Massachusetts in Docket No. ER86–517–000.

Boston Edison states that it has served the filing on Cambridge, Belmont and the Massachusetts Department of Telecommunications and Energy.

Comment date: May 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of Oklahoma

[Docket No. ER98–2549–000]

Take notice that on April 15, 1998, Public Service Company of Oklahoma (PSO), tendered for filing Amendment 4 to the Contract for Electric Service, dated April 20, 1995, between PSO and Northeast Oklahoma Electric Cooperative, Inc., (NEO). Amendment 4, provides for an additional point of delivery.

PSO seeks an effective date of May 1, 1998, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on NEO and the Oklahoma Corporation Commission. Copies are also available for public inspection at PSO's offices in Tulsa, Oklahoma.

Comment date: May 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. El Segundo Power, LLC

[Docket No. ER98–2550–000]

Take notice that on April 15, 1998, El Segundo Power, LLC tendered for filing pursuant to Section 205 of the Federal Power Act an initial rate schedule pursuant to which El Segundo Power, LLC would sell ancillary services at cost-based rates. El Segundo Power, LLC has requested an effective date of April 15, 1998.

Comment date: May 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. NGE Generation, Inc.

[Docket No. ER98–2562–000]

Take notice that NGE Generation, Inc. (NGE Gen), on April 15, 1998, tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, service agreements (collectively, the Service Agreements) under which NGE Gen may provide capacity and/or energy to Agway Energy Services, Inc. (Agway), and Northeast Utilities Service Company (Northeast Utilities) (collectively, the Purchasers) in accordance with NGE Gen's FERC Electric Tariff, Original Volume No. 1.

NGE Gen has requested waiver of the notice requirements so that the service agreement with Agway becomes effective as of April 16, 1998 and the service agreement with Northeast Utilities becomes effective as of April 1, 1998.

NGE Gen has served copies of the filing upon the New York State Public Service Commission, Agway, and Northeast Utilities.

Comment date: May 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Paul T. Phillips

[Docket No. ER98–2567–000]

Take notice that on April 15, 1998, Paul T. Phillips made a conditional tariff filing in compliance with the Commission order of February 11, 1998, in *Connecticut Valley Electric Co.* v *Wheelabrator Clairmont Co., L.P. et al.* Docket No. EL94–10, *et al.*

Comment date: May 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. ES98–26–000]

Take notice that on April 17, 1997, Kansas City Power & Light (KCPL), filed an application under Section 204 of the Federal Power Act, to issue, from time to time, up to $750 million aggregate

amount of short-term debt instruments, with maturity dates of not later than September 30, 2001.

Comment date: May 18, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11350 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2609–013]

Curtis/Palmer Hydroelectric Company and International Paper Company; Notice of Application and Applicant Prepared Environmental Assessment Accepted for Filing; Requesting Interventions and Protests; Establishing Procedural Schedule and Final Amendment Deadline; and Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions

April 23, 1998.

Curtis/Palmer Hydroelectric Company and International Paper Company (International Paper) have filed with the Commission an Applicant Prepared Environmental Assessment and License Application for the Curtis-Palmer Project No. 2609, located on the Hudson River, New York.

The Curtis/Palmer Project consists of two separate developments with a total installed capacity of 58.8 MW. The existing facilities at the Curtis Development include: (1) a 25 foot-high by 743 foot-long dam constructed of concrete; (2) a 714 foot long spillway section topped by 46 inch-high wooden flash boards; (3) a 29 foot-long sluice gate structure housing a gate measuring 11 feet wide by 13 feet high; (4) a 5.9 mile-long impoundment with a surface area of 390 acres at the normal high water elevation of 548.8 feet NGVD, and a storage capacity of 585 acre-feet at a drawdown of 1.5 feet; (5) a powerhouse intake structure containing ten gate openings, each equipped with a sliding headgate, plus three additional hydraulically operated gates located 35 feet downstream; (6) a powerhouse containing five turbine generators, three with installed capacities of 2.8 MW each, and two with installed capacities of 1.2 MW each, with a total hydraulic capacity of 6,500 cfs; and (7) a substation connected to a three-mile long, 13.8 kV transmission line.

International Paper proposes to install an inflatable rubber flashboard system at Curtis. Impoundment elevation and total hydraulic capacity would remain unchanged.

The existing facilities at the Palmer Development (located 2,700 feet downstream of Curtis) include: (1) a 486 foot-long dam with maximum height of 37 feet, comprised of a 346 foot-long spillway section of two Ambursen type spillways topped with a 6 foot-high inflatable rubber dam; (2) a 7 foot by 7 foot steel sluice gate located within a concrete abutment forming the transition between the dam spillway section and the forebay spillway section; (3) an impoundment extending 2,700 feet upstream to the dam and powerhouse of the Curtis development, with a surface area of 28 acres at a normal pond elevation of 522.9 feet NGVD; (4) an intake structure constructed of reinforced concrete containing 22 foot by 22.5 foot headgates located adjacent and perpendicular to the forebay spillway; (5) two 20 foot diameter by 220 and 260 feet long, concrete encased steel penstocks extending from the intake structure to the powerhouse; (6) a powerhouse containing two generating units of equal size with installed capacities of 24 MW each, with a total hydraulic capacity of 7,500 cfs; and (7) a substation which transfers power to a Niagara Mohawk Power Company bus maintained within.

Purpose of Notice

The purpose of this notice is to: (1) Inform all interested parties that an applicant-prepared environmental assessment (APEA) and final license application for the Curtis/Palmer Project has been filed with the Commission on April 13, 1998, and are available for public inspection; (2) inform all parties that the applications and APEA are hereby accepted; (3) invite interventions and protests; (4) solicit comments, final recommendations, terms and conditions, or prescriptions on the final license application and APEA; and (5) identify an approximate schedule and procedures that will be followed in processing the application and APEA.

International Paper has used a Cooperative Team (Team) approach to prepare the APEA for the Curtis/Palmer Project. The Team consists of federal, state, and local agencies, non-governmental organizations, and the public. The Team has been meeting since September 1995 to guide the study process and prepare the APEA.

The Team has reached substantive agreement on most resource issues, and a comprehensive settlement agreement has been drafted and signed by most parties of the Team. Two Team members remain non-signatories to the Settlement Agreement. Due to a disagreement on measures to assess and protect downstream passage of resident fish, the U.S. Fish and Wildlife Service and New York Rivers United do not concur with the encompassing settlement Agreement, and its presentation by the Applicant and Team as the preferred alternative. The Settlement Agreement is reflected in the APEA as the preferred alternative.

Applicant Prepared Environmental Assessment Process and Processing Schedule

The Energy Policy Act of 1992 (EP Act) gives the Commission the authority to allow the filing of an APEA with a license application. The EP Act also directs the Commission to institute procedures, including pre-application consultations, to advise applicants of studies or other information foreseeably required by the Commission.

On April 23, 1996, the Director, Office of Hydropower Licensing, waived or amended certain of the Commission's regulations to allow for coordinated processing of the license application and preparation of an APEA. Since then, the Commission has been working cooperatively in advising the Team on studies or other information foreseeably required by the Commission.

National Environmental Policy Act (NEPA) scoping was conducted on the project through scoping documents issued December 7, 1995 and April 19, 1996, and in public scoping meetings on January 12, 1996 and February 8, 1996. A draft license application and preliminary APEA were issued by the applicant for comment on October 3, 1997. The final license application and APEA were filed with the Commission on April 13, 1998. The APEA includes

responses to all comments received on the preliminary APEA.

Commission staff have reviewed the APEA and license application and have determined that the application is acceptable and no additional information or studies are needed to prepare the Commission's environmental assessment (EA). The deadline for the applicant to file any final amendments to the application is June 8, 1998. Comments, as indicated below, are now being requested from interested parties. Any comments received will be addressed in a draft EA issued by Commission by late summer, 1998. There will be a 30-day comment period on the draft EA. A final EA is scheduled for the fall of 1998, or earlier.

Interventions and Protests

All intervention and protest filings must: (1) bear in all capital letters the title ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responses; (3) furnish the name, address, and telephone number of the person intervening or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All motions to intervene or protest must be received June 22, 1998. A copy of any motion to intervene or protest must be served on the applicant.

Comments, Final Terms and Conditions, Recommendations and Prescriptions

Interested parties have until June 22, 1998, to file with the Commission, any comments, final terms and conditions, recommendations and prescriptions for the Curtis/Palmer Hydroelectric Project. The applicant will have 45 days following the notice period to respond. In view of the high level of early involvement of the Cooperative Team, we expect the majority of comments to reflect the agreement and preferred alternative in the preliminary APEA.

Copies of the Application and APEA

A copy of the APEA and final license application is available for review by contacting Stuart Field, International Paper, Hudson River Mill, Pine Street, Corinth, New York 12822, or phone 518–654–3445. Copies of these documents are also available for review in the Commission's Public Reference Room.

Filing Requirements

Any comments, final terms and conditions, recommendations and prescriptions should be filed by providing an original and 8 copies as required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

In addition to the above copies, comments, interventions, final terms and conditions, recommendations may also be submitted on a 3½-inch diskette formatted for Windows-95 based computers to: Tom Dean, Office of Hydropower Licensing, Federal Energy Regulatory Commission, 888 First St., NE, Room 61–47, Washington, D.C. 20426. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS or Windows-95 machines.

Questions regarding this notice may be directed to Commission staff Tom Dean at 202–219–2778.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11314 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Extension of Comment Period for Proceeding Pursuant to Reserved Authority To Determine Whether Modification to License Are Appropriate

April 23, 1998.

Take notice that the following hydroelectric applications has been filed with the Commission and is available for public inspection:

a. *Type of Action:* Notice of extension of comment period for proceeding pursuant to reserved authority to determine whether modifications to license are appropriate.

b. *Project No:* 4718–010.

c. *Licensee Issued:* December 8, 1982.

d. *Licensee:* Southern New Hampshire Hydroelectric Development Corporation.

e. *Name of Project:* Cocheco Falls.

f. *Location:* Cocheco River, Dover, New Hampshire.

g. *Authorization:* Article 11 of the project.

h. *Licensee Contact:* Mr. John Webster, Southern New Hampshire Hydroelectric Development Corporation, P.O. Box 178, South Berwick, ME 03908.

i. *FERC Contact:* Robert Grieve (202) 219–2655.

j. *Comment Date:* June 11, 1998.

k. *Description of Proceeding:* The comment period for the March 9, 1998 notice of the proceeding initiated by the Commission to determine if reserved authority under article 11 of the project license should be used to require modifications to the project is extended to June 11, 1998.

1. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular applications.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to the which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comment within the time specified or filing comments, it will be presumed to have no comments. One copy of any agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11307 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–155–000 and TM98–3–4–000]

Granite State Gas Transmission, Inc.; Notice of Technical Conference

April 23, 1998.

In the Commission's order issued on April 1, 1998, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Tuesday, May 19, 1998, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11308 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–002]

Natural Gas Pipeline Company of America; Notice of Change of Date of Technical Conference and Related Matters

April 23, 1998.

Take notice that the technical conference scheduled in this docket to be held on May 5, 1998 through May 7, 1998, is rescheduled for May 19, 1998 through, if necessary, May 21, 1998. The first day of the conference will commence at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Any party that will need audio visual equipment at the conference should contact Kenneth Niehaus at (202) 208–0398 on or before May 12, 1998.

All interested parties and Staff are permitted to attend.

Staff will distribute a detailed conference agenda at the commencement of the conference. Staff's general agenda is as follows. First, the Company will be allowed the opportunity to provide a brief presentation, which should include a summary of the important tariff changes proposed (including those set forth in its April 9, 1998 filing in Docket No. RP97–431–004) and its position on the major issues raised to date by its filings. There will then be discussion on the issues raised in Staff's April 3, 1998 data request to the Company followed by discussion on any other issues parties wish to raise. The parties will then discuss additional procedures, e.g., the filing of post-conference comments.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11309 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. UL94–1—Maine]

Union Water Power Company; Notice of Proposed Restricted Service List for the Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

April 23, 1998.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a Restricted Service List for a particular phase or issue in a proceeding.[1] The Restricted Service List should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the List, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the Maine State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. UL 94–1.

The Programmatic Agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13 [e]). The Commission's responsibilities pursuant to Section 106 for the above project would be fulfilled through the Programmatic Agreement. The executed Programmatic Agreement would be incorporated into any Order issuing license.

Union Water Power Company, as prospective licensee for Project No. UL 94–1, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement.

For purpose of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. UL 94–1 as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 809, 1100 Pennsylvania Ave., N.W., Washington, DC 20004

Earle G. Shettleworth, Jr., State Historic Preservation Officer, Maine Historic Preservation Commission, 55 Capitol Street, State House Station 65, Augusta, ME 04333

Dr. Art Spiess, Archaeologist, Maine Historic Preservation Commission, 55 Capitol Street, State House Station 65, Augusta, ME 04333

Jeffrey P. Musich, PE, Union Water Power Company, 150 Main Street, Lewiston, ME 04243–1225

Sarah Verville, Esq., Central Maine Power Company, Edison Drive, Augusta, ME 04336

David Dominie, Central Maine Power Company, North Augusta Office Annex, 41 Anthony Avenue, Augusta, ME 04330

R. Alec Giffen, Land & Water Associates, 9 Union Street, Hallowell, ME 04347

Tom Sullivan, Gomez and Sullivan Engineers, 150 Concord State Road, Dunbarton, NH 03045

Mona M. Janopaul, Trout Unlimited, 1500 Wilson Blvd., Arlington, VA 22209

Any person on the official service list for the above-captioned proceeding may request inclusion on the Restricted Service List, or may request that a Restricted Service List not be established, by filing a motion to that effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with the Secretary of Commission, 888 First Street, N.E., Washington, D.C. 20426, and must be served on each person whose name appears on the official service list. If no such motions are filed, the Restricted Service List will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–11313 Filed 4–28–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6005–5]

Common Sense Initiative Council, (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory CSI Iron and Steel, and printing sector subcommittee meetings: Open meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is given that the Iron and Steel and the Printing Sector Subcommittees of the Common Sense Initiative Council will meet on the dates and times described below. Both meetings are open to the public. Seating at both meetings will be a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the three announcements below.

(1) Iron and Steel Sector Subcommittee—May 14, 1998

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the CSI Iron and Steel Sector Subcommittee on Thursday, May 14, 1998 from 10:00 a.m. CT to 4:00 p.m. CT. The meeting will be held at the Wyndham Garden Hotel, 5615 N. Cumberland Avenue, Chicago, IL 60631 (773–693–5800 or 1–800–996–3426) which is near the Chicago O'Hare airport.

The purpose of this meeting is to review the Subcommittee's past activities and discuss its next steps. In particular, the Subcommittee will consider what its goals and objectives might be, what process options it might follow to meet these goals and objectives, what information exchange and/or feedback mechanisms would be useful for disseminating information about environmental management in the iron and steel sector, and the disposition of its ongoing projects.

For more information concerning meeting times or any other information about this or other Iron and Steel meetings, please call Ms. Judith Hecht at 202–260–5682 in Washington, DC, by fax on (202) 401–3372, or by E-mail at hecht.judy@epamail.epa.gov or Mr. Robert Tolpa at 312–886–6706, or by E-mail at tolpa.robert@epamail.epa.gov.

(2) Printing Sector Subcommittee—May 28–29, 1998

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the CSI Printing Sector Subcommittee on May 28–29, 1998. The Subcommittee meeting will be from 1:00 p.m. EST until 5:30 p.m. EST. The meeting will be held at Resolve, located at 1255 23rd Street, NW, Suite 275 in Washington, DC.

The purpose of the meeting will be to review the progress in implementing the New York City Education Project and to discuss the plans to implement pilot projects of the PrintSTEP program. A formal agenda will be available at the meeting.

For further information concerning meeting times and agenda of this Printing Sector Subcommittee meeting, please contact Gina Bushong, Designated Federal Officer (DFO), at EPA by telephone on (202) 564–5081 in Washington, DC, by fax on (202) 564–0009, or by e-mail at bushong.gina@epamail.epa.gov.

Inspection of Subcommittee Documents

Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 3802M of EPA Headquarters, 401 M Street, SW, Washington, D.C. 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http.//www.epa.gov/commonsense.

Dated: April 23, 1998.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 98–11379 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6005–7]

Announcement of National Drinking Water Advisory Council Benefits Working Group Open Meeting

Under Section 10(a)(2) of Pub. L. 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Benefits Working Group of the National Drinking Water Advisory Council (NDWAC) established under the Safe Drinking Water Act, as amended (42 U.S. C. S300f *et seq.*), will be held on May 19, 1998 from 9:00 AM until 4:30 PM (approximate), and May 20, 1998 from 8:30 AM until 1:00 PM (approximate), in the Washington Room of the Ramada Plaza Hotel—Old Town, 901 North Fairfax Street, Alexandria, VA 22314. The meeting is open to the public, but seating will be limited.

The purpose of this meeting is to review those quantifiable and non-quantifiable benefits that could be considered when developing drinking water regulations and provide recommendations to the Agency on which benefits should be evaluated in developing its regulations. The working group members are meeting to analyze relevant issues and facts, and contribute input to ''white papers'' which EPA staff will write after the meeting. The Working Group will be asked to review and comment upon these papers, which will ultimately be presented to NDWAC. The meeting is open to the public to observe and statements will be taken from the public as time allows.

For more information, please contact, John Bennett, Designated Federal Officer, Benefits Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4607), 401 M Street SW, Washington, D.C. 20460. The telephone number is 202–260–0446, fax 202–260–3762, and e-mail address bennett.johnb@epamail.epa.gov.

Dated: April 22, 1998.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 98–11380 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6005–8]

Announcement of Stakeholder Forum on Perchlorate in Water

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of stakeholder forum.

SUMMARY: The Interagency Perchlorate Steering Committee (IPSC) will be holding a two and a half day stakeholder forum on May 19–21, 1998 in Henderson, Nevada. The IPSC, a working partnership of government agencies chartered to facilitate identification of the issues and coordinate the exchange of scientific information related to potential perchlorate contamination in the environment, includes representatives from the U.S. Environmental Protection Agency (EPA), Department of Defense (DoD), Agency for Toxic Substances and Disease Registry (ATSDR), National Institute for Environmental Health Sciences (NIEHS), Native American Tribes, Utah Department of Environmental Quality, Nevada

Division of Environmental Protection, and California Department of Health Services. The purpose of this stakeholder forum is to disseminate information on the key scientific issues, to identify additional issues, and to hear stakeholder concerns. The IPSC is seeking input from State and Tribal drinking water programs, the regulated community (public water systems), public health organizations, academia, environmental and public interest groups, engineering firms, and the public on a number of issues related to perchlorate contamination in the environment. The IPSC encourages the full participation of stakeholders at the forum.

DATES: The forum will be held on Tuesday, May 19, 1998 from 8:30 a.m. to 5:30 p.m. PDT, Wednesday, May 20, 1998 from 8:30 a.m. to 5:00 p.m. PDT, with an additional public outreach evening session from 7:00 p.m. to 9:00 p.m. PDT, and Thursday, May 21, 1998 from 8:30 a.m. to 12:00 p.m. PDT.

LOCATION: The Henderson Convention Center in Henderson, Nevada. To register, please contact the EPA Safe Drinking Water Hotline at 1–800–426–4791 or 703–285–1093 between 9:00 a.m. and 5:30 p.m. EDT. Those registered by May 13, 1998, will receive a draft agenda, logistics information, and discussion papers prior to the forum. Members of the public who cannot attend in person may participate via conference call and should also register with the EPA Safe Drinking Water Hotline by May 13, 1998. When registering, please indicate it is for the ''Perchlorate Forum'' and provide your name, organization, title, mailing address, telephone number, facsimile number, and e-mail address. Conference lines will be allocated on the basis of first-reserved, first served.

FOR FURTHER INFORMATION CONTACT: For additional information on forum logistics, please contact the EPA Safe Drinking Water Hotline at 1–800–426–4791.

SUPPLEMENTARY INFORMATION:

A. Background

Perchlorate is used as an oxidizer component in solid propellant (fuel) for rockets, missiles, and fireworks. It is very soluble in water, mobile in aqueous systems and can persist for many decades under typical ground water and surface water conditions. Recent (April 1997) advances in the analytical detection capability for low concentrations of perchlorate, from 400 to 4 parts per billion (ppb), have led to the discovery of the chemical at various manufacturing sites and some drinking water supply wells of communities in California, Nevada, and Utah. Perchlorate has been found in ground water at six Superfund hazardous waste sites in California, at six other California non-Superfund waste sites, two sites in the Henderson, Nevada area, one site in Utah, and in the discharge to a creek in Texas. Water suppliers in both northern and southern California, and the Las Vegas Water Authority have found perchlorate in their water supplies generally at levels less than 18 ppb but ranging as high as 280 ppb, with several in the 100–200 ppb range. Perchlorate has also been detected at low levels (5 to 9 ppb) in the Colorado River.

Concerns have been raised about perchlorate because of the lack of adequate scientific information about the contaminant, including: where the contamination occurs, what reliable methods exist to detect it in various media, what the potential health effects are, and what treatment technologies exist. Historically, potassium perchlorate was used therapeutically to treat hyperthyroidism in Graves' Disease patients because it inhibits iodine uptake and thereby reduces thyroid hormone production. Thyroid hormone deficiencies can affect normal metabolism, growth, and development.

Currently, perchlorate does not have a National Primary Drinking Water Regulation (NPDWR) or Health Advisory (HA) established. Under the Safe Drinking Water Act (SDWA), as amended in 1996, EPA is required to develop a list of contaminants, known as the Contaminant Candidate List (CCL), that are known or anticipated to occur in public water systems and may require regulation under SDWA [section 1412(b)(1)]. As a result of public comment on a draft of the CCL published on October 6, 1998 (62 FR 52193), perchlorate was added to the final CCL that was published on March 2, 1998 (63 FR 10274). At this time, additional research on health effects, effective treatment technologies, analytical methods, and occurrence is necessary before a determination can be made of whether to regulate perchlorate with an NPDWR or to develop guidance.

B. Request for Public Involvement

The IPSC is encouraging development of a sound research and management strategy by the involved government agencies through facilitating identification of the issues concerning perchlorate contamination and by coordinating information exchange to ensure the incorporation of the best available science and stakeholder input on technical and policy issues.

The stakeholder forum will cover a broad range of topics including: (1) Key exposure characterization issues (occurrence and sites of known contamination, transport and transformation, analytical methods); (2) perchlorate health risk assessment (health effects and toxicology studies, the peer review process); (3) key technical assessments (treatment technologies, waste stream handling); (4) ecological impacts; (5) regulatory and policy issues and; (6) future stakeholder involvement. Background materials on perchlorate issues will be sent in advance of the forum to those who register with the EPA Safe Drinking Water Hotline by May 13, 1998.

The IPSC has announced this forum to hear the views of stakeholders on actions that the agencies represented by the IPSC are taking or are planning to take to address perchlorate contamination. The public is invited to participate fully during the May 19–21, 1998 forum and during future opportunities for stakeholder participation.

Dated: April 24, 1998.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.

[FR Doc. 98–11383 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34121; FRL–5778–7]

Certain Chemicals; Availability of Reregistration Eligibility Decision Documents for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60 day public comment period of the Reregistration Eligibility Decision (RED) documents for the active ingredients listed below. The REDs for the chemicals listed above are the Agency's formal regulatory assessments of the health and environmental data base of the subject chemicals and present the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on these decisions must be submitted by June 29, 1998.

ADDRESSES: Three copies of comments identified with the docket control number ''OPP–34121'' and the case number (noted below), should be

submitted to: By mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION'' of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED documents listed below should be directed to the appropriate Chemical Review Managers:

Chemical Name	Case No	Chemical Review Manager	Telephone No.	e-mail Address
Bis Sulfon	2055	Meryle Sykes	703–308–8179	Sykes.Meryle@epa.gov
Bromacil	0041	Margaret Rice	703–308–8039	Rice.Marg@epa.gov
Diflubenzuron	0144	Susan Jennings	703–308–7130	Jennings.susan@epa.gov
MBT	2415	Margaret Rice	703–308–8039	Rice.marg.@epa.gov
Mepiquat Chloride	2375	Patrick Dobak	703–308–8180	Dobak.pat@epa.gov
Metribuzin	0181	Jean Holmes	703–308–8008	Holmes.jean@epa.gov
Paranitrophenol	2465	Veronica Dutch	703–308–8585	Dutch.veronica@epa.gov
Paraquat Dichloride	0262	Venus Eagle	703–308–8045	Eagle.venus@epa.gov
Propoxur	2555	Anne Mitchell	703–308–8068	Mitchell.Anne@epa.gov
Terbacil	0039	Emily Mitchell	703–308–8583	Mitchell.emily@epa.gov
IPBC	2725	Margaret Rice	703–308–8039	Rice.marg.@epa.gov
Vanicide	3147	Margaret Rice	703–308–8039	Rice.marg.@epa.gov

To request a copy of any of the above listed RED documents, or a RED Fact Sheet, contact the OPP Pesticide Docket, Public Information and Records Integrity Branch, in Rm. 119 at the address given above or call (703) 305–5805.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticidal active ingredients listed above. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed above is substantially complete.

Please note that these REDs were finalized and signed after August 3, 1996. On that date, the Food Quality Protection Act of 1996 (''FQPA'') became effective, amending portions of both the pesticide law (FIFRA) and the food and drug law (FFDCA). All of these REDs address the requirements of FQPA as appropriate.

All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60 day comment period. Although the 60 day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at (703) 308–7224, and also can be reached on the Internet via EPA's website at: http//www.epa.gov/oppsrrd1/REDs/.

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''OPP–34121'' (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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPP–34121). Electronic comments on this

notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: April 13, 1998.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98–10850 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30452; FRL–5783–2]

Zeneca Ag Products; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by May 29, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30452] and the file symbols to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 257, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 305–7391, e-mail: tompkins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 10182–UEA. Applicant: Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850–5458. Product Name: Achieve 40DG Herbicide. Herbicide. Active ingredient: Tralkoxydim 2-cyclohexen-1-one, 2-[1-(ethoxyimino)propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9Cl) at 40 percent. Proposed classification/Use: General. For selective control of wild oats, green and yellow foxtail, annual ryegrass, and Persian Darnel on wheat and barley.

2. File Symbol: 10182–UET. Applicant: Zeneca Ag Products. Product Name: Achieve 80DG Herbicide. Herbicide. Active ingredient: Tralkoxydim 2-cyclohexen-1-one, 2-[1-(ethoxyimino)propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9Cl) at 80 percent. Proposed classification/Use: General. For selective control of wild oats, green and yellow foxtail, annual ryegrass, and Persian Darnel on wheat and barley.

3. File Symbol: 10182–UEL. Applicant: Zeneca Ag Products. Product Name: Tralkoxydim Technical Wet Paste. Herbicide. Active ingredient: Tralkoxydim, 2-[1-(ethoxyimino)proply-3-hydroxy-5-mesitylcyclohex-2-enone at 81 percent. Proposed classification/Use: General. For Manufacturing uses only.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30452] (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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30452]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: April 10, 1998.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–10841 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–803; FRL–5783–4]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of

regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–803, must be received on or before May 29, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Bipin Gandhi (PM-5)	Rm. 4W53, CS #1, 703–308–8380, e-mail:gandhi.bipin@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Indira Gairola	Rm. 4W57, CS #1, 703–308–8371, e-mail: gairola.indira@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–803] (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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (PF–803) and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 13, 1998

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. BFGoodrich Specialty Chemicals

PP 8E4958, 8E4961, 8E4962

EPA has received a pesticide petition (PP 8E4958,8E4961,8E4962) from BFGoodrich Specialty Chemicals, 9911 Brecksville Road, Cleveland, OH 44141, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for acrylic acid terpolymer, partial sodium salt in or on raw agricultural commodities when used as inert ingredients in the pesticide formulations applied to growing crops, raw agricultural commodities after harvest or to animals, under 40 CFR 180.1001(c) and (e). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

The Acrylate Terpolymers Good-RiteK-781,K-797, and K-798 conform to the definition of polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers:

1. The Acrylate Terpolymers are not cationic polymers, nor are they reasonably anticipated to become cationic polymers in a natural aquatic environment.

2. The Acrylate Terpolymers contain as an integral part of their composition the atomic elements carbon, hydrogen, oxygen, sulfur and nitrogen. It also contains the monatomic counterion Na+.

3. The Acrylate Terpolymers do not contain as an integral part of their composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The Acrylate Terpolymers are not designed, nor are they reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The Acrylate Terpolymers are not manufactured or imported from monomers and/or other reactants that are not already included on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory or manufactured under an applicable TSCA Section 5 exemption.

6. The Acrylate Terpolymers are not water absorbing polymers.

7. The only reactive functional groups the Acrylate Terpolymers contain is a carboxylic acid.

8. The Acrylate Terpolymers have a number average molecular weight greater than 1,000 and less than 10,000 Daltons (and oligomer content less than 10 percent below MW 500 and less than 25 percent below MW 1,000).

B. Aggregate Exposure

In the past decade Acrylate copolymers and terpolymers have been used in a variety of applications, most notably water treatment including boiler and retort waters, cooling waters, membrane separations systems and are now de rigor in these applications. In these and similar applications, reasonable levels of incidental exposure to the neat polymer is expected and accepted without regard. ANSI/NSF Standard 60 Drinking Water Treatment Chemical Additives listing has been extended to similar acrylate co-and ter-polymers. The chemical characteristics of these polymers and the published health and safety data indicates that aggregate exposure to Acrylate terpolymers, as listed in the current petitions, as inert ingredients in the preparation and application of pesticide formulations for use on growing crops, raw agricultural commodities after harvest or to animals poses no harm.

C. Cumulative Effects

At this time there is no information to indicate that any toxic effects produced by the Acrylate terpolymers would be cumulative with those of any other chemical. Given the terpolymers' categorization as ''low risk polymers'' (40 CFR 723.250) and their proposed use an inert ingredients in pesticide formulations, there is no reasonable expectations of increased risk due to cumulative exposure to the Acrylate terpolymers.

D. International Tolerances

BFGoodrich is petitioning that the Acrylate terpolymers be exempt from the requirement of a tolerance based upon their status as low risk polymers as per 40 CFR 723.250. Therefore, an analytical method to determine residues of the Acrylate terpolymers in raw agricultural commodities treated with pesticide forumlations containing the Acrylate terpolymers has not been proposed.

There are no Codex maximum residue levels(MRLs) established for the Acrylate terpolymers. (Bipin Gandhi)

2. Platte Chemical Company

PP 6E4742

EPA has received a pesticide petition (PP 6E4742) from Platte Chemical Company, 419 18th Street, P.O. Box 667, Greeley, CO 80632, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 80 to establish an exemption from the requirement of a tolerance for residues of the inert ingredient Modal Alder Bark (MAB) alder bark flour (ABF) when used in pesticide formulations applied to growing crops, or in or on raw agricultural commodities after harvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. MAB is not absorbed or metabolized by plants. The ABF remains on the treated surface, where it decomposes to its natural constituents including, cellulose, hemicelluloses, lignin and various compounds such as suberins and phenolic acids. These decomposition products are further degraded by various bacteria and fungi to simple sugars, carbohydrates, gases and other molecular compounds. Eventually ABF will be completely decomposed by natural processes to nutrients which can be utilized by other plants.

2. *Analytical method*. No analytical method is available for determining MAB, *per se*. Although various methods are available to determine the various components of alder bark (e.g., content of cellulose, lignin, polysaccharides, etc.), these methods are not specific to MAB and can not distinguish whether the components are derived from ABF or from other plant or soil sources.

3. *Magnitude of residues*. Since ABF is not absorbed or metabolized by plants, no residues of MAB are expected to result in or on raw agricultural commodities. For example, potato commodities grown from seed potato pieces treated with formulations containing MAB do not have residues of the inert ingredient. Furthermore, any residues would be associated with the potato seed pieces, which shrivel as the daughter plants withdraw nutrients during ''seedling''growth. Consequently, the spent seed pieces are not harvested and will not be eaten. Finally, any MAB adhering to the harvested potatoes would be removed by brushing and washing.

B. Toxicological Profile

1. *Acute toxicity*. The use of MAB (ABF) as an inert ingredient in pesticide formulations is not expected to result in adverse effects due to its non-hazardous character, minimal potential for exposure, and projected absence of dietary exposure. There is a wealth of available information about the absence of, or minor health effects from, exposure to various wood flours, dusts, shavings, and other wood/bark components. Ingestion of wood flour, sawdust or wood shavings is neither lethal, nor toxic, and is even considered to be a source of non-nutritive dietary fiber. Dermal contact with wood or bark flour is not associated with death or toxicity, although dermal allergies (contact dermatitis) have been reported in certain sensitive individuals. Acute inhalation exposure to wood dusts for a limited time is not considered to be an occupational hazard if dust levels are below established Permissible Exposure Levels (PEL) for non-toxic particulate matter (i.e., unspecified dust particles). MAB is not expected to produce any more eye irritation than any chemically inert particulate, such as clay or wheat flour. In persons who may have a specific alder wood allergy, eye irritation or conjunctivitis is possible even though there are no known reports of such incidences. Alder wood dust is not a sensitizer nor is ABF expected to be a sensitizer.

2. *Genotoxicity*. Evidence from studies with wood-related compounds indicate that MAB is not genotoxic. ABF is composed mostly of cellulose, hemicelluloses and lignins, which are not mutagenic.

3. *Reproductive and developmental toxicity*. MAB is not expected to be a developmental or reproductive toxin, based on extensive testing of the three principle components (cellulose, hemicelluloses and lignins) of ABF. Additionally, wood flours have been used for numerous years to increase dietary fiber in animal feeds and human diets with no known adverse reproductive or developmental toxicity.

4. *Subchronic toxicity*. There is no subchronic exposure to MAB from its use as a pesticidally inert ingredient. However, chronic toxicity data adequately address possible

toxicological effects that may result from subchronic exposure to ABF.

5. *Chronic toxicity*. There is minimal-to-no chronic toxicological risk from the use of MAB as an inert ingredient in pesticide formulations. There are no known adverse reactions to chronic consumption or ingestion of wood flour. Ingestion of wood flour, sawdust or wood shavings for extended periods of time is not hazardous. Instead, it is considered to be a non-nutritive dietary supplement. In fact, the Food and Drug Administration (FDA) has allowed the use of wood flours in various prepared foods, such as bread, to increase dietary fiber levels and reduce caloric intake.

Adverse effects of exposure to wood dust are limited to allergic reactions, such as rhinitis and contact dermatitis, and from chronic (lifetime) occupational exposure (*via* inhalation) to high concentrations of wood dust. Based on the absence of chronic effects from ingestion, the limited irritant and allergic effects from dermal contact, limited exposure to ABF from seed potato treatment, and the absence of chronic exposure by any route, Platte Chemical Company concludes that there is minimal-to-no chronic toxicological risk from the use of MAB in pesticide products.

6. *Animal metabolism*. There is no known human metabolism or metabolic products from human ingestion of non-nutritive dietary fiber from wood products. In humans, the polymers of plants such as cellulose from plant cell walls (linkages), some pectins, hemicellulose, gums, mucilages and lignin, are not easily digested and are passed through the gastrointestinal tract as non-nutritive dietary fiber. Wood flour and sawdust are commonly used in animal feeds. In ruminants, such wood products are reduced to cellulose, hemicelluloses and lignins by endogenous bacterial/microbial populations in the gut. These wood product degradates are further reduced to simple sugars, carbohydrates, carbon dioxide and indigestible biomass. The indigestible biomass is readily excreted.

7. *Metabolite toxicology*. There is no known evidence of metabolite toxicity from the ingestion of wood or ABF by either livestock or humans. In humans, no metabolites are produced after ingestion of non-nutritive dietary fiber such as ABF.

8. *Endocrine disruption*. No endocrine or estrogenic effects are expected from the use of MAB for the following reasons:

i. The production of MAB includes oven drying the bark, which removes moisture and volatile organic compounds.

ii. ABF does not penetrate and will not be absorbed by skin.

iii. Alder bark is primarily composed of naturally-occurring, non-digestible cellulose, hemicelluloses and lignin; and most importantly.

iv. There is no non-occupational exposure to MAB when used as a pesticidally inert ingredient.

C. Aggregate Exposure

1. *Dietary exposure*. Ingestion of MAB or its residues would simply increase the level of non-nutritive fiber in the diet, which has been shown to have beneficial health effects by reducing the incidence of diverticulosis, cancer of the colon and coronary heart disease as well as facilitating weight loss. Also, health claims for fiber-containing foods have been made for more than a century and the effects of fiber in promoting bowel evacuation are widely recognized.

2. *Food*. The use of MAB in potato seed piece pesticides does not result in any significant dietary exposure to ABF. Residues, if any, surround the potato seed pieces, which shrivel as the daughter plants withdraw nutrients during ''seedling'' growth. Consequentially, the spent seed pieces are not harvested and will not be eaten. Brushing and washing potatoes to remove particulates, such as soil, would simultaneously remove any residues of MAB. However, should ABF residues adhere to harvested potatoes, the only effect would be to increase the level of non-nutritive dietary fiber. Were this to be the case, ingestion of MAB residues would be beneficial and of no toxicological concern since MAB can be considered to be a non-nutritive source of dietary fiber, which has been shown to improve health and lessen the incidence of diverticulosis, colon cancer and coronary heart disease.

3. *Drinking water* . The use of MAB as an inert ingredient in pesticide formulations does not lead to alder bark particles in the drinking water. Wood and bark particles do not leach into the groundwater. Any particles that may be transported into water bodies will absorb moisture and either sediment out of the water column or be removed with other particulate matter during drinking water treatment. Similarly, any natural water-extractable components (humic acids, fulvic acids, etc.) of MAB are natural products that will also be removed during drinking water treatment.

4. *Non-dietary exposure*. The only anticipated human exposure to MAB from non-dietary sources would be through occupational exposure during product use.

D. Cumulative Effects

The use of MAB as an inert ingredient in pesticide formulations does not result in any cumulative effects, since there is no non-occupational exposure to MAB.

E. Safety Determination

1. *U.S. population*. The use of MAB does not pose a safety concern for the US human population due to the non-toxic nature of ABF (oral, dermal and acute exposure) and the absence of non-occupational exposure.

2. *Infants and children*. Infants and children are not exposed to MAB from its use in pesticide formulations or the treatment of potato seed pieces.

F. International Tolerances

No international tolerances have been established for ABF, wood flour or wood cellulose.

3. Wheelabrator Water Technologies, Inc.

PP 6E4732

EPA has received a pesticide petition (PP 6E4732) from Wheelabrator Water Technologies, Inc., 8201 Eastern Boulevard, Baltimore, Maryland 21224. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for biosolids in or on the raw agricultural commodity Granulite. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Residues in the raw agricultural commodity and processed food/feed*. A tolerance for substances potentially present in biosolids for raw or processed foods is not anticipated to be needed, based on the very low risk posed by residues in raw food/feed, as discussed throughout this application for a tolerance exemption for Granulite heat-dried biosolids.

2. *Background information and use profile*. Granulite is a heat-dried biosolids (sewage sludge) product. Biosolids are the solid, semi-solid, or liquid residue generated from domestic wastewater treatment, and have been used for centuries as a soil conditioner and fertilizer. Regulations regarding the use and disposal of biosolids have been introduced over the years to protect

human health and the environment, culminating in the 40 CFR part 503 rule promulgated in 1992, which regulates biosolids based on a comprehensive risk assessment consucted by EPA. This rule has since undergone relatively minor revisions, including the deletion of chromium from the regulation; changes to the limits for molybdenum and selenium; and a narrowing of a focus of future biosolids rulemaking to dioxins/furans and polychlorinated biphenyls (PCBs). Land application of biosolids enhances soil conditions and plant growth on agricultural, forest, reclaimed, and public use (e.g., recreational, highway) lands. Over 5 million dry metric tons of biosolids are generated annually in the U.S. at publicly owned treatment works. A minimum of 33% of the biosolids generated annually are land applied (this percentage has probably increased significantly in recent years), while the remaining are incinerated or disposed of using surface disposal. Of the biosolids that are land applied, an estimated 67% are applies to agricultural lands, 3% to forests, 9% to reclamation sites, and 9% to public use sites. Biosolids are land applied by either incorporating or injecting the biosolids into the soil or spreading the biosolids on the soil surface.

B. Toxicological Profile

EPA has determined that the limits for inorganic pollutants (metals) calculated in the EPA biosolids risk assessment protect humans (including children), animals, and plants from reasonably anticipated adverse effects *via* the 14 different exposure pathways evaluated. The 40 CFR part 503 rule regulates metals based on these risk assessment limits, and regulates pathogens based on an operational standard requiring certain pathogen and vector controls that reduce pathogens to low levels (as described in ''Safety Determination: U.S. General Population'' below). For biosolids that meet the most stringent pollutant limits and pathogen controls of part 503, as Granulite does, only minimal additional part 503 requirements need to be met because of the low risk associated with these biosolids, which therefore are allowed to be used as freely as any other soil conditioner. Research indicates that risks associated with the bioavailability of metals in biosolids are low when biosolids are land applied at rates commonly used in agriculture and when good management practices commonly implemented (e.g., soil pH above 5.0) are followed.

1. *Acute toxicity*. EPA initially submitted a list of 200 pollutants potentially found in biosolids for review by a panel of experts; this panel recommended that 50 of these pollutants be studies further, based on avaliable toxicity and exposure data. EPA then developed hazard for each of these 50 pollutants, derived by dividing a pollutant's estimated concentration in soil, plant or animal tissue, or air by the lowest concertration of the pollutants found in the scientific literature to be toxic to the organism being evaluated *via* the most sensetive route of exposure and dassuming maximum toxic effect. A hazard index of less than 1 indicated that the pollutant was not toxic to the organism (*via* that particular exposure pathway), and thus was not analyzed further. EPA further evaluated pollutants with a hazard index value of 1 or greater in the biosolids risk assestment (except for pollutants deferred of deleted due to insufficient or limited data). EPA also evaluated several additional pollutants based in the addition of four exposure pathways. This process resulted in EPA evaluating 23 pollutants in its biosolids risk assestment for land application (see Table 1).

2. *Reproductive and developmental toxicity*. The ingestion of lead by children, which is associated with developmental effects (e.g., learning disabilities), was addressed by the EPA biosolids risk assessment in a conservative manner. EPA evaluated the risk to pica children (children who regularly eat soil) because it is possible that children might ingest soil to which biosolids has been land applied. However, only a small number of children are likely to ingest biosolids in gardens or lawns, especially on a regular basis, and thus this evaluation is more conservative than dietary or drinking water exposures. In addition to lead, limits for arsenic, cadmium, mercury, and selenium are also included in the part 503 rule, based on a child ingesting biosolids that potentially contain these pollutants. Granulite meets all of these limits. For more details, see ''Safety Determination: Infants and Children'' below.

3. *Chronic toxicity*. EPA's risk assessment for the land application of biosolids included the evaluation of chronic effects based on RfDs or RfCs for metals and organic substances potentially found in biosolids. RDAs were used when RfDs were unavailable, or analogous no adverse effect levels were used. Acceptable doses of a substance were estimated for animals, using the most sensitive or most exposed species. The RfDs, RfCs, or analogous levels were combined with other variables to calculate the concentrations of pollutants in biosolids that are reasonably protective against adverse impacts. For the ingestion (dietary) pathways, RfDs were combined with a relative effectiveness RE variable. The RE of exposure accounts for differences in bioavailability depending on the route of exposure (e.g., ingestion or inhalation); because of limited available data, the RE was conservatively set at 1, which assumes 100% bioavailability intake, and thus underestimates the allowable dose of biosolids pollutants and reflects conservative pollutant limits. The pollutant concentrations calculated in the risk assessment were used to develop the most stringent limits in the 40 CFR part 503 rule, which Granulite meets.

4. *Carcinogenicity*. EPA's risk assessment for the land application of biosolids included evaluation of carcinogenicity based on q1*s for metals and organic substances potentially found in biosolids. The q1*s were used with other variables to calculate the concentrations of pollutants in biosolids that are reasonably protective against adverse impacts; these calculated concentrations were used to develop the most stringent pollutant limits in 40 CFR part 503 rule, which Granulite meets. EPA also conducted a population-based risk assessment which indicated that prior to the part 503 rule, biosolids use and disposal practices (including land application, incineration, and surface disposal) could have contributed 0.9 to 5 cancer cases annually; the part 503 rule reduced cancer cases by 0.09 to 0.7 annually. This analysis included exposure to pollutants potentially found in biosolids from all sources, including food, drinking water, residential, and other non-occupational sources.

5. *Endocrine disruption*. The EPA biosolids risk assessment considered all adverse effects identified in the scientific literature, including endocrine effects, if any, and used these to identify no observed adverse effect levels (NOAEL) for the pollutants evaluated. Future research may include additional impacts on wildlife due to limited available field data. Although not specific to endocrine effects, interactive (synergistic) effects observed with biosolids reduce (rather than increase) adverse risks to potential receptors. Interactions between certain elements typically found in biosolids hinder the uptake of metals by plants and the bioavailability of metals to animals and humans. See ''Cumulative Risk'' below for more information on these interactive effects.

C. Aggregate Exposure

The 14 exposure pathways that EPA evaluated in its biosolids risk assessment included: children ingesting biosolids/soil directly (the pica child); adults ingesting plants grown in soils amended with biosolids or drinking ground-water or surface-water containing substances present in biosolids; adults ingesting fish from surface-water containing substances in biosolids; adults ingesting animal products derived from animals that ingested biosolids; animals ingesting biosolids or plants grown in biosolids-amended soils; and plants grown in biosolids-amended soils. Thus, the EPA risk assessment for the land application of biosolids addressed exposures from dietary, drinking water, and non-occupational sources. The most conservative estimate from the 14 exposure pathways was then selected as the limit for each of the pollutants potentially found in biosolids, thus representing protection based on aggregate exposure. Granulite meets these limits.

In addition, the EPA risk assessment calculations for all 14 pathways initially included pollutant exposure from sources other than biosolids (food, air, and water). Exposures from sources other than biosolids were then subtracted from the total allowable dose, yielding a result that represented the allowable dose of a pollutant from biosolids only. This value was then combined with other variables to derive a pollutant limit.

1. *Dietary exposure*. Parameters for human, animal, or plant health (e.g., based on RfDs, q1*s, etc., as described above in ''Chronic Effects'' and (''Carcinogenicity'') were combined with pollutant intake information (e.g., the amount of a particular food type consumed) to derive pollutant limits in the EPA biosolids risk assessment. Several pollutant limits were based on a dietary exposure pathway (for the inorganic chemical molybdenum and for several organic chemicals). However, the limits for molybdenum were re-evaluated and new limits are expected to be less stringent, and limits for organics were not included in the part 503 rule, as discussed in ''Other Considerations'' below. For other pollutants, exposure pathways other than dietary exposure posed more risks, and pollutant limits were based on these higher-risk pathways.

2. *Drinking water*. The part 503 rule requires that biosolids be land applied at the agronomic rate (the rate that provides the amount of nitrogen needed by a crop or vegetation to attain a desired yield while minimizing the amount of nitrogen that will pass below the root zone of the crop or vegetation to ground-water), thus protecting ground-water from biosolids with nitrogen levels in excess of estimated crop needs. In addition, for ground-water, the EPA risk assessment analyzed the pathway involving: the land application of biosolids; the leaching (mobility) of pollutants from soil into ground-water; and the subsequent drinking of well water containing these pollutants by humans. The ground-water pathway evaluation included: a mass balance (between erosion, leaching, volatilization, and degradation persistence); a reference water concentration (based on the q1* or MCL); and use of the VADOFT (from RUSTIC) and the AT123D models. For surface-water exposure, EPA analyzed the pathway involving: the land application of biosolids; the erosion (mobility) of soil containing pollutants in biosolids; the transfer of the pollutants contained in the eroded soil to surface-water; and the ingestion of the surface-water and fish living in the surface-water by humans. The surface-water pathway evaluation included: a mass balance (as described above for ground-water); a reference intake (based on the q1* or RfD); acute or chronic freshwater criteria for aquatic life; a bioconcentration factor; a food chain multiplier; and a dilution factor, among other parameters. No pollutant limit was based on the ground-water pathway because other exposure pathways resulted in more restrictive limits. Only one pollutant limit, for DDT/DDD/DDE, was based on the surface-water pathway; however, organics, including DDT, were deleted from part 503 regulation because they met at least one of three criteria set by EPA (see ''Other Considerations'' below).

While metals potentially present in biosolids may be persistent, they are bound in the biosolids-soil matrix for long periods of time, as discussed in ''Environmental Fate Data Summary'' below. Also, the dry characteristics of Granulite, which is heat-dried, minimize water content and leachability of metals.

3. *Non-dietary exposure*. EPA's biosolids risk assessment evaluated exposure to pollutants potentially found in biosolids that are land applied to gardens, lawns, and other residential and non-occupational settings in non-dietary pathways.

D. Cumulative Effects

Extensive field data used in EPA's risk assessment for biosolids show no adverse effects of low levels of metals in land-applied biosolids. Some metals are not transferred into edible plant parts (even when their concentrations are greatly increased in the biosolids/soil mixture) because these metals (e.g., chromium) are insoluble or strongly bound to the biosolids-soil matrix (by iron or certain other oxides, organic matter, or phosphates in biosolids) or to plant roots (e.g., lead). Or, if other substances commonly found in biosolids, such as zinc, calcium, and iron, are present, these substances will inhibit absorption of some metals (e.g., selenium, molybdenum, and cadmium) from the ingested food into the organism's intestines and blood stream. Also, the EPA biosolids risk assessment included bioavailability and bioaccumulation factors to account for uptake of pollutants by animals (e.g., fish) and subsequently by humans.

E. Safety Determination

1. *U.S. population*. The EPA biosolids risk assessment as well as field data show that certain biosolids that meet low pollutant limits for metals can be considered NOAEL biosolids that have no observed adverse effects on public health and the environment. Granulite meets these limits. Human and animal health protection from pathogens are addressed in the part 503 regulation through technology-based requirements that minimize pathogen densities and reduce vector attraction. Granulite meets the most stringent ''Class A'' part 503 requirements that pathogen densities be reduced to low levels.

2. *Infants and children*. For several of the metals evaluated in EPA's biosolids risk assessment, the pollutant limit identified was based on the exposure pathway for a pica child ingesting biosolids/soil. These limits are conservative because they go beyond expected dietary and drinking water exposures (i.e., a very small percentage of children are expected to consume biosolids in gardens or on lawns). Also, the limit for lead in biosolids in the part 503 regulation is 300 ppm, based on animal data. This number provides an additional margin of safety for growing children because it is lower than the 500 ppm limit for lead derived using EPA's Integrated Exposure Uptake Biokinetic (IEUBK) model. In addition, animal (rat) studies show that the bioavailability of lead in biosolids is 12-fold lower than that assumed in the IEUBK model calculations used; thus the 300 ppm lead limit provides even more of a margin of safety. The limits identified for the other metals (arsenic, cadmium, mercury, and selenium) based on a child ingesting biosolids/soil were calculated in algorithms developed

specifically for the EPA biosolids risk assessment. The most stringent part 503 pollutant limits for metals in biosolids that are land applied are based on these figures; Granulite meets these limits.

F. Other Considerations

Organic chemicals were evaluated in the EPA biosolids risk assessment. However, the part 503 rule did not set limits for organic chemicals because all the organic chemicals analyzed met one or more of the following criteria:

i. The pollutant has been banned or restricted for use in the U.S. or is no longer manufactured in the U.S.

ii. The pollutant is infrequently found in biosolids (e.g., detected less than 5% of the time).

iii. The limit for the pollutant identified in the EPA biosolids risk assessment is not expected to be exceeded in biosolids that are used or disposed.

iv. Nearly all of the organic chemicals evaluated met two or more of these criteria.

G. Practical Analytical Method

Numerous analytical methods were used in the hundreds of research studies on which the EPA risk assessment for the land application of biosolids was based. Examples of analytical methods used for analyzing metals concentrations in plant and animal tissue include atomic absorption, X-ray fluorescence spectroscopy, and autoradiography.

H. List of All Pending Tolerances and Exemptions

The only known exemption from tolerance being proposed for biosolids as an inert ingredient is this application, which is based on the health and environmental protection identified in EPA's part 503 risk assessment for the land application of biosolids, as discussed throughout this application.

I. Environmental Fate Data Summary

Studies have shown that metals are bound in the biosolids-soil matrix over the long-term and that the binding properties of biosolids are environmentally stable. The binding of metals by biosolids renders the metals less bioavailable to plants, animals, and humans, and studies have shown no adverse effects when biosolids containing metals meeting the part 503 pollutant limits, which includes Granulite, are land applied.

The EPA risk assessment for the land application of biosolids included analysis of ecological risks through ground-water, surface-water, plants, livestock, and wildlife (as well as to humans, including children). Low risks were found to be associated with the ground-water pathway and to wildlife, and thus pollutant limits for chemicals of concern for these pathways or endpoints were based on other, more restrictive risk assessment limits for other pathways/endpoints. Granulite meets all of these limits. The one organic pollutant of concern identified for the surface-water pathway was deleted from regulation, as discussed in ''Other Considerations'' above.

J. International Tolerances

None known. Compatibility with any existing MRLs should be possible, based on the low risk of adverse effects identified in EPA's risk assessment for the land application of biosolids. (Bipin Gandhi)

[FR Doc. 98–10840 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51894; FRL–5785–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from February 1, 1998 to February 6, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51894]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51894]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51894]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 48 Premanufacture Notices Received From: 02/01/98 to 02/06/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0412	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Intermediate salt for grind vehicle synthesis for use in electrodepositable primer
P–98–0413	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Intermediate salt for grind vehicle synthesis for use in electrodepositable primer
P–98–0414	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Intermediate salt for grind vehicle synthesis for use in electrodepositable primer
P–98–0415	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Intermediate salt for grind vehicle synthesis for use in electrodepositable primer
P–98–0416	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Intermediate salt for grind vehicle synthesis for use in electrodepositable primer
P–98–0417	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Intermediate salt for grind vehicle synthesis for use in electrodepositable primer
P–98–0418	02/02/98	05/03/98	CBI	(G) Coomponent of coating with open use	(G) Intermediate salt for grind vehicle synethesis for use in electrodepositable primer
P–98–0419	02/02/98	05/03/98	CBI	(G) Coomponent of coating with open use	(G) Intermediate salt for grind vehicle synethesis for use in electrodepositable primer
P–98–0420	02/02/98	05/03/98	CBI	(G) Coomponent of coating with open use	(G) Intermediate salt for grind vehicle synethesis for use in electrodepositable primer
P–98–0421	02/02/98	05/03/98	CBI	(G) Coomponent of coating with open use	(G) Intermediate salt for grind vehicle synethesis for use in electrodepositable primer
P–98–0422	02/02/98	05/03/98	CBI	(G) Coomponent of coating with open use	(G) Intermediate salt for grind vehicle synethesis for use in electrodepositable primer

I. 48 Premanufacture Notices Received From: 02/01/98 to 02/06/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0423	02/02/98	05/03/98	CBI	(G) Coomponent of coating with open use	(G) Intermediate salt for grind vehicle synethesis for use in electrodepositable primer
P–98–0424	02/02/98	05/03/98	CBI	(G) Coating with open use	(G) Grind vehicle for electrodepositable primer
P–98–0425	02/02/98	05/03/98	CBI	(G) Coating with open use	(G) Grind vehicle for electrodepositable primer
P–98–0426	02/02/98	05/03/98	CBI	(G) Coating with open use	(G) Grind vehicle for electrodepositable primer
P–98–0427	02/02/98	05/03/98	CBI	(G) Coating with open use	(G) Grind vehicle for electrodepositable primer
P–98–0428	02/02/98	05/03/98	CBI	(G) Coating with open use	(G) Grind vehicle for electrodepositable primer
P–98–0429	02/02/98	05/03/98	CBI	(G) Coating with open use	(G) Grind vehicle for electrodepositable primer
P–98–0430	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Grind vehicle for electrodepositable primer
P–98–0431	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Grind vehicle for electrodepositable primer
P–98–0432	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Grind vehicle for electrodepositable primer
P–98–0433	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Grind vehicle for electrodepositable primer
P–98–0434	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Grind vehicle for electrodepositable primer
P–98–0435	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Grind vehicle for electrodepositable primer
P–98–0436	02/02/98	05/03/98	CBI	(S) Component of an industrial coating for metal	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with (chloromethyl)oxirane polymer with 4,4′ -(1-methylethylidene)bis[cyclohexanol] 2-propenoate, hexahydro-1,3-isobenzofurandione polymer with 2,2′-[oxybis(methylene)bis[2-ethyl-1,3-propanediol] ester with alpha-methyl-omega-hydroxypoly (oxy-1,2-ethanediyl) and 1,1′-methylenebis [4-isocyanatocyclohexane], 4-hydroxybutyl acrylate-blocked, compounds with 2-(dimethylamino) ethanol
P–98–0437	02/02/98	05/03/98	DSM Fine Chemicals, Inc.	(S) Agrochemical intermediate; pharmaceutical intermediate; specialty chemical intermediate	(S) Propanoic acid, 2-oxo-, methyl ester
P–98–0438	02/03/98	05/04/98	CBI	(G) Component of manufactured consumer article - contained use	(G) Benzenebutanoic acid, y-oxo-, 2-[[(tetrahydrodioxo-4-heteromonocycle)methyl]thio]ethyl ester
P–98–0439	02/03/98	05/04/98	Polyurethane and Performance Chemicals Division Air Products and Chemicals Incorporated	(G) Simeconductor and microelectronic dielectrics	(G) Poly(arylene ether)
P–98–0440	02/02/98	05/03/98	CBI	(G) Colorant for plastics	(G) Polymeric colorants
P–98–0441	02/02/98	05/03/98	CBI	(G) Colorant for plastics	(G) Polymeric colorants
P–98–0442	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Quaternary ammonium functional acrylic polymer
P–98–0443	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Quaternary ammonium functional acrylic polymer
P–98–0444	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Quaternary ammonium functional acrylic polymer
P–98–0445	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Quaternary ammonium functional acrylic polymer
P–98–0446	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Quaternary ammonium functional acrylic polymer
P–98–0447	02/02/98	05/03/98	CBI	(G) Component of coating with open use	(G) Quaternary ammonium functional acrylic polymer

I. 48 Premanufacture Notices Received From: 02/01/98 to 02/06/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0448	02/04/98	05/05/98	Akzo nobel resins	(S) Resin used to manufacture; industrial coatings	(S) 2-propenoic acid, 2-methyl-, polymer with butyl 2-methyl-2-propenoate, butyl 2-propenoate, ethenylbenzene and 2-hydroxyethyl 2-propenoate, tert-bu peroxide-initiated
P–98–0449	02/03/98	05/04/98	CBI	(G) Open non dispersive (coating material)	(G) Blocked hydrophilic aliphatic polyisocyanate
P–98–0450	02/04/98	05/05/98	CBI	(G) Component of manufactured consumer article - contained use	(G) Methane derivative - [3,5-bis(1,1-dimethylethyl)-4-hydroxyphenyl]-
P–98–0451	02/05/98	05/06/98	CBI	(G) Ink component	(G) Thermosetting polyester
P–98–0452	02/05/98	05/06/98	CBI	(S) High solids baking enamel crosslinked with melamines	(G) Mixed glycol polyester resin
P–98–0453	02/04/98	05/05/98	CBI	(S) A thickener in specialty greases	(G) Mixed dicarboxylic acid, barium salt
P–98–0454	02/04/98	05/05/98	Ciba Specialty Chemicals Corporation USA	(G) Open, non-dispersive use	(G) Heterocyclic amine and others
P–98–0455	02/06/98	05/07/98	CBI	(S) Polymer for sealant manufacturing	(G) Silylated polyether prepolymer
P–98–0456	02/06/98	05/07/98	CBI	(S) Polymer for sealant manufacturing	(G) Silylated polyether prepolymer
P–98–0457	02/06/98	05/07/98	CBI	(S) Polymer for sealant manufacturing	(G) Silylated polyether prepolymer
P–98–0458	02/05/98	05/06/98	CBI	(S) Resin for printing ink	(G) Hydrocarbon modified rosin resin
P–98–0460	02/06/98	05/07/98	Twilight Color & Chemical Company, Inc	(S) An acid dye for leather	(G) 2,7-naphtalenedisulfonic acid, 4-amino-3-[[[[[[(2,4-disubstituted phenyl) azo] phenyl] amino] sulfonyl] phenyl] azo] -5-hydroxy-6-[(substituted phenyl) azo]-, alkaline salt

II. 12 Notices of Commencement Received From: 02/01/98 to 02/06/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–97–0090	02/02/98	01/05/98	(G) Substituted diphenyl triazine
P–97–0096	02/02/98	01/05/98	(G) Substituted phenyl triazine
P–97–0129	02/02/98	01/05/98	(S) 1,3-Benzenedicarboxylic acid, polymer with 1,6-hexanediamine and hexanedioic acid
P–97–0338	02/05/98	01/22/98	(G) Polycarbodiimide
P–97–0586	02/05/98	01/19/98	(G) Polyurethane adhesive
P–97–0626	02/05/98	01/17/98	(G) Polyurethane polymer
P–97–1019	02/02/98	12/31/97	(G) Acrylic acid copolymer
P–97–1084	02/02/98	01/20/98	(G) Alkoxylated acrylic acid polyester
P–97–1085	02/02/98	01/20/98	(G) Alkoxylate polyether
P–97–1090	02/06/98	01/23/98	(G) Acetylenic-oxy-substituted, saturated pyran
P–98–0001	02/02/98	01/07/98	(G) Alkarylsulfonic acids, alkylamine salt
P–98–0042	02/02/98	01/28/98	(G) Aromatic polyester polyol

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 20, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11409 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51895; FRL–5785–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from February 9, 1998 to February 13, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51895]'' and the specific PMN number, if appropriate, should be sent to: Document Control

Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51895]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51895]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 25 Premanufacture Notices Received From: 02/09/98 to 02/13/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0459	02/09/98	05/10/98	CBI	(S) Screen inks; flexo inks; plastic coatings; wood coatings	(G) Acrylic oligomer
P–98–0461	02/09/98	05/10/98	CBI	(G) Laminating adhesive	(G) Nco terminated polyurethane
P–98–0462	02/09/98	05/10/98	CBI	(G) Surfactants with utility in predominately waterborne resins, coatings, inks and adhesives	(G) Alkoxylated alkynol
P–98–0463	02/09/98	05/10/98	CBI	(G) Surfactants with utility in predominately waterborne resins, coatings, inks and adhesives	(G) Alkoxylated alkynol
P–98–0464	02/11/98	05/12/98	CBI	(S) Coatings	(G) Polyester resin
P–98–0465	02/09/98	05/10/98	CBI	(G) Intermediate of reactive dyes	(G) Substituted aniline compound
P–98–0466	02/11/98	05/10/98	AKZO Nobel Resins	(S) Resin to used to manufacture; industrial coatings	(S) Sunflower oil, polymer with p-tert-butylbenzoic acid, isophthalic acid, pentaerythritol, phthalic anhydride, polyethylene glycol and TDI
P–98–0467	02/10/98	05/11/98	CBI	(G) Adhesive component	(G) Polymer of methylenebis[isocyanatobenzene], benzenedicarboxylic acid-based polyester, and mixed polyether polyols
P–98–0468	02/10/98	05/11/98	CBI	(G) Lithographic printing ink resin	(G) Rosin, maleic modified, substituted phenol, formaldehyde, bisphenol a, pentaerythritol polymer, reaction products with aromatic diepoxide.
P–98–0469	02/11/98	05/12/98	Clariant Corporation	(S) Surfactant for non-selective herbicide formulation	(S) Poly[oxy(methyl-1,2-ethanediyl)],.alpha.-[2-(trimethylammonio)ethyl]-.omega.-hydroxy-, chloride
P–98–0470	02/12/98	05/13/98	CBI	(S) Intermediate	(G) Polybasic fatty alkyl carboxylic acid
P–98–0471	02/12/98	05/13/98	CBI	(S) Textile finish	(G) Perflluoroalkylethylacrylate copolymer
P–98–0472	02/11/98	05/12/98	NA Industries, Inc.	(S) A binder resin for coil coating	(G) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with alkyl 2-methyl-2-propenoate and alkyl 2-propenoate
P–98–0473	02/11/98	05/12/98	CBI	(S) Laminating adhesive	(G) Aromatic polyester polyurethane
P–98–0474	02/12/98	05/13/98	CBI	(G) Corrosion inhibitor	(G) Polybasic fatty alkyl carboxylic acid, polyamine condensate
P–98–0475	02/12/98	05/13/98	CBI	(S) Laundry detergent additive	(S) Benzenesulfonic acid, 2,2′-(1,2-ethenediyl)bis[5-[[4-(methylamino)-6-[[4-[(methylamino)carbonyl]phenyl]amino]-1,3,5-triazin-2-yl]amino]-, disodium salt, (e)-
P–98–0476	02/12/98	05/13/98	Arizona Chemical	(S) Resin component in production of heat-set, web off-set and sheetfed inks	(G) Phenolic modified ester of modified rosin and fatty acid
P–98–0477	02/12/98	05/13/98	CBI	(S) Resin for wood coatings	(G) Copolymer of acrylic and methacrylic esters
P–98–0478	02/12/98	05/13/98	CBI	(S) After treatment of carpet fibers (stain blocking agent)	(G) Phenolic resin
P–98–0479	02/12/98	05/13/98	CBI	(G) Open non dispersive (coatings material)	(G) Blocked polyisocyanate/polyester
P–98–0480	02/13/98	05/14/98	CBI	(G) Ink component	(G) Polymer of hydrocarbon distillates
P–98–0481	02/13/98	05/14/98	CBI	(G) Ink component	(G) Polymer of hydrocarbon distillates
P–98–0482	02/13/98	05/14/98	CBI	(G) Ink component	(G) Hydrocarbons distillate homopolymer
P–98–0483	02/13/98	05/14/98	The Dow Chemical Company	(G) Polymer intermediate	(G) Modified styrene-acrylate polymer
P–98–0484	02/13/98	05/14/98	The Dow Chemical Company	(S) Latex glossing agent for paper coating	(G) Modified styrene-acrylate polymer

II. 9 Notices of Commencement Received From: 02/09/98 to 02/13/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–95–1655	02/09/98	01/20/98	(G) Calcium alkylbenzene sulfonates
P–95–1832	02/11/98	02/02/98	(S) Benzoxazolesulfonic acid, 5-(aminosulfonyl)-2-[7-(diethylamino)-2-oxo-2*h*-1-benzopyran-3-yl]-, monosodium salt
P–96–1146	02/11/98	01/15/98	(G) Vinyl modified nonionic surfactant
P–97–0327	02/13/98	01/28/98	(G) Silylated polyamidoamine
P–97–0619	02/11/98	01/21/98	(S) Phenol, 4,4′- (1-methylethylidene)bis-, polymer with (chloromethyl) oxirane and 1,3-cyclohexanedimethanamine

II. 9 Notices of Commencement Received From: 02/09/98 to 02/13/98—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–97–0863	02/09/98	01/20/98	(G) Saturated copolyester resin
P–97–0928	02/11/98	02/06/98	(G) Napthalimide diesters
P–97–0967	02/09/98	01/30/98	(G) Polyester acrylate
P–98–0104	02/10/98	01/27/98	(G) Surface modified clay

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 20, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11410 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51896; FRL–5786–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from February 16, 1998 to February 20, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51896]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51896]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51896]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive

notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 23 Premanufacture Notices Received From: 02/16/98 to 02/20/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0485	02/17/98	05/18/98	CBI	(S) A polymeric retanning agent for leather	(G) Sodium salt of 2,5-furandione, polymer with alkenes
P–98–0486	02/17/98	05/18/98	CBI	(S) Coating for paperboard stock	(G) Aliphatic polyurethane with tertiary amine
P–98–0487	02/17/98	05/18/98	CBI	(S) Dispersing seguestering agent	(G) Polycycloamide
P–98–0488	02/17/98	05/18/98	CBI	(S) Personal care/ hair care products; personal care/ anti-perspirant products	(G) Organomodified silicone copolymer
P–98–0489	02/18/98	05/19/98	CBI	(G) Ink component	(G) Reaction product of aliphatic amine and polyacrylic ester
P–98–0490	02/18/98	05/19/98	Angus chemical company	(S) Biochemical process buffer	(S) 2,2′-(propane-1,3-diyldiimino)bis[2-(hydroxymethyl)propane-1,3-diol]
P–98–0491	02/18/98	05/19/98	CBI	(G) Additive for release agent formulations	(G) Paintable silicones wax
P–98–0492	02/17/98	05/18/98	Eastman chemical company	(G) Ink and paint vehicle	(G) Substituted styrene-acrylic-imine polymer
P–98–0493	02/17/98	05/18/98	CBI	(G) Adhesive for open non-dispersive use	(G) Polyurethane polymer
P–98–0494	02/17/98	05/18/98	CBI	(G) Adhesive for open non-dispersive use	(G) Polyurethane polymer
P–98–0495	02/17/98	05/18/98	Dystar L.P.	(S) Dyeing of cellulosic fiber	(G) Substituted naphthalenetrisulfonic acid, salt
P–98–0496	02/19/98		CBI	(G) Open non-dispersive (dyestuff)	(G) Bis azo dyestuff
P–98–0497	02/17/98	05/18/98	Ungerer Company	(S) Fragrance use	(S) Iso bornyl iso butyrate propionic acid, 2-methyl 1,7,7 trimethyl bicyclo-(2.2.1) hept-2-yl ester, exo
P–98–0498	02/17/98	05/18/98	Neste Corporate Holding Inc.	(S) Bulk fuel additive for gasoline	(S) C5–C6 branched alkyl methyl ethers
P–98–0499	02/17/98	05/18/98	Creanova Inc.	(S) Separating fluid for the rubber industry	(S) Coconut oil, polymer with polyethylene glycol and trimetylolpropane
P–98–0500	02/19/98	05/20/98	UOP	(G) Support for petrochemical and hydrocarbon processing catalysts.	(G) Silicoaluminophoshates
P–98–0501	02/19/98	05/20/98	Boron Department, Inc.	(S) Primary coolant for reaction control in pressure water reaction; precursor for other chemicals	(S) Boric acid (h3 10bo3)
P–98–0502	02/19/98	05/20/98	Boron Department, Inc	(S) Precursor for metal alloy production	(S) Borate (1-)-11b, tetrafluoro-, potassium
P–98–0503	02/19/98	05/20/98	Boron Department, Inc	(S) Used to manufacture metal alloys for nuclear applications	(S) Borate (1-)-10b, tetrafluoro-, potassium
P–98–0504	02/19/98	05/20/98	Pilot	(S) Moisturizer in cosmetics, shampoos and cleaners	(S) Chitosan, *N*-(3-carboxy-1-methylpropyl)
P–98–0505	02/19/98	05/20/98	CBI	(G) Adhesive additive, paper additive, printing plate additive	(G) Amine modified poly (vinyl alcohol)

I. 23 Premanufacture Notices Received From: 02/16/98 to 02/20/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0506	02/20/98	05/21/98	CBI	(G) Open, non-dispersive (dyestuff)	(G) Metallized azo dyestuff
P–98–0507	02/20/98	05/21/98	CBI	(G) Open, non-dispersive use	(G) Organo-modified polysiloxanes

II. 20 Notices of Commencement Received From: 02/16/98 to 02/20/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–97–1047	02/18/98	02/13/98	(G) Polyether urea polymer
P–98–0044	02/19/98	02/05/98	(S) 3,6-nonadien-1-ol, (*z,z*)-
P–98–0117	02/18/98	02/02/98	(G) Polysulfonyl, copper phthalocyanine salts
P–95–1736	02/18/98	01/17/98	(G) Substituted napthalene iron complex
P–96–0109	02/17/98	01/21/98	(G) Polyalphaolefins
P–96–0329	02/18/98	01/17/98	(G) Aryl substituted copper phthalocyanine
P–96–1241	02/17/98	01/21/98	(G) Branched alkenes
P–96–1242	02/17/98	01/21/98	(G) Branched alkenes
P–96–1243	02/17/98	01/21/98	(G) Branched alkenes
P–96–1244	02/17/98	01/21/98	(G) Branched alkenes
P–96–1245	02/17/98	01/21/98	(G) Branched alkenes
P–96–1320	02/17/98	02/06/98	(G) Isoalkyldimethylamine
P–96–1384	02/20/98	01/30/98	(G) Poly(alkylenes oxides), polyester with maleic anhydride, diol and epoxy resin modified
P–97–0129	02/17/98	01/20/98	(S) Polymer of: 1,6-hexanediamine; 1,3-benzene dicarboxylic acid hexanedioic acid
P–97–0384	02/18/98	01/17/98	(G) Aryl substituted sulfonated copper phthalocyanine
P–97–0507	02/18/98	01/24/98	(G) Haloarylalkyl ketone
P–97–0562	02/19/98	02/11/98	(G) Fatty acids, unsaturated, reaction products with unsaturated heterocycle and ethoxylated alkylamine
P–97–0854	02/18/98	01/30/98	(G) 3,6-bis(dialkylamino)-9-[2-alkoxyscarbonyl)phenyl]-xanthylium salt
P–97–0893	02/19/98	02/09/98	(S) 1*H*-imidazolium, 2,2′ -[[6-dimethylamino)-1,3,5-triazine-2,4-diyl]bis(imino-4, 1-phenyleneimino-4,1-phenyleneazo) bis[1,3-dimethyl-dichloride
P–97–0958	02/20/98	02/17/98	(S) 2,5-furandione, polymer with 1,2-ethanediol, 2-methyl-1,3-propanediol, 2,2′-oxybis(ethanol) and 3a, 4,7,7a-tetrahydro-4,7-methano-1*H*-indene

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 20, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11411 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51898; FRL–5786–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from March 1, 1998 to March 6, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51898]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51898]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51898]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 20 Premanufacture Notices Received From: 03/01/98 to 03/06/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0516	03/02/98	05/31/98	CBI	(G) Additive, open, non-dispersive use	(G) Fatty acid polyamine condensate, carboxylic acid salt
P–98–0517	03/02/98	05/31/98	CBI	(G) Additive, open, non-dispersive use	(G) Fatty acid polyamine condensate, carboxylic salts
P–98–0518	03/02/98	05/31/98	CBI	(G) Additive, open, non-dispersive use	(G) Fatty acid polyamine condensate, carboxylic salts
P–98–0519	03/02/98	05/31/98	CBI	(G) Additive, open, non-dispersive use	(G) Fatty acid polyamine condensate, carboxylic salts
P–98–0520	03/02/98	05/31/98	CBI	(G) Binder component	(G) Substituted phenol glycidyl ether
P–98–0521	03/02/98	05/31/98	Arco chemical company	(G)	(G) TDI/MDI polyalkyleneoxide prepolymer
P–98–0522	03/02/98	05/31/98	Arco Chemical Company	(G)	(G) TDI/MDI polymer polyol prepolymer

I. 20 Premanufacture Notices Received From: 03/01/98 to 03/06/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0523	03/02/98	05/31/98	Loctite corporation, corporate environmental health & safety affairs	(S) Component in sealant formulations	(S) Siloxanes ans silicones, di-me, [[(3-aminopropyl) diethoxysilyl]oxy]-terminated
P–98–0524	03/04/98	06/02/98	CBI	(G) Open, non-dispersive use	(G) Hydrocy functional oligomer
P–98–0525	03/03/98	06/01/98	CBI	(S) Intermediate product, used in the production of a separate and final product	(G) Substituted hydrocarbon of molecular weight of less than 200
P–98–0526	03/03/98	06/01/98	CBI	(G) Additive for screen printing inks	(G) Hexanedioic acid, bis alkyl ester
P–98–0527	03/03/98	06/01/98	CBI	(G) Additive for screen printing inks	(G) Hexanedioic acid, bis alkyl ester
P–98–0528	03/04/98	06/02/98	CBI	(S) Textile finish	(G) Perflluoroalkylethylacrylate copolymer
P–98–0529	03/03/98	06/01/98	Ashland Chemical Company - Environmental, Health & Safety	(G) Open, dispersive; spray-up applications	(G) Vinyl ester resin
P–98–0530	03/03/98	06/01/98	Ashland Chemical Company - Environmental, Health & Safety	(G) Open, dispersive; spray-up applications	(G) Vinyl ester resin
P–98–0531	03/03/98	06/01/98	U.S. Polymers Inc.	(S) This resin is used in two component isocyanate crosslinked urethane coatings	(G) Reaction product of methyl methacrylate, *N*-butyl methacrylate, hydroxy functional methacrylate, aliphatic methacrylates and methacrylic acid
P–98–0532	03/05/98	06/03/98	CBI	(G) Processing aid	(G) Polyamine chloride salt
P–98–0534	03/05/98	06/03/98	CBI	(G) Chemical intermediate	(G) Polyoxyalkylated alcohol
P–98–0535	03/05/98	06/03/98	CBI	(G) Chemical intermediate	(G) Polyoxyalkylated alcohol
P–98–0536	03/05/98	06/03/98	CBI	(G) Chemical intermediate	(G) Polyoxyalkylated alcohol

II. 16 Notices of Commencement Received From: 03/01/98 to 03/06/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–93–1147	03/02/98	02/06/98	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with ethylenediamine, diamines, a dibasic acid amd a monobasic acid
P–94–2053	03/02/98	02/20/98	(G) Acrylate copolymer
P–94–2190	03/06/98	02/05/98	(S) 2-Propenoic acid, 2-methyl-, 3-sulfopropyl ester; potassium salt
P–97–0094	03/05/98	02/08/98	(G) Di-substituted propanedione
P–97–0303	03/03/98	01/28/98	(G) Secondary fatty alcohols, ethoxylated
P–97–0615	03/02/98	02/16/98	(G) Polurethane prepolymer
P–97–0706	03/05/98	01/19/98	(G) Aromatic sulfur compound
P–97–0767	03/02/98	02/23/98	(G) 1-ethyl-tetrahydroheteropolycycle, salt with 4-methylbenzenesulfonic acid (1:1)
P–97–0884	03/03/98	02/02/98	(S) [μ-[ethanedioato (2–)-O,O′‘:O′,O′’]] tetrahydroxydialuminum
P–97–0913	03/02/98	02/16/98	(G) Substituted triazolo pyrimidine
P–97–0914	03/02/98	02/05/98	(G) Substituted triazolopyrimidine
P–97–0965	03/05/98	02/20/98	(G) Saturated co-polyester resin
P–97–1015	03/05/98	02/11/98	(G) Poly carboxylate, sodium salt
P–97–1016	03/05/98	02/12/98	(G) Poly carboxylate, sodium salt
P–97–1044	03/05/98	02/21/98	(G) Phosphate derivatives
P–98–0097	03/06/98	02/26/98	(G) Polymerized blocked aliphatic isocyanate

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 20, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11412 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51899; FRL–5786–4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this

document contains notices received from March 9, 1998 to March 13, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51899]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51899]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51899]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 50 Premanufacture Notices Received From: 03/09/98 to 03/13/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0533	03/09/98	06/07/98	Ciba Specialty Chemicals Corporation	(G) Destructive use and dispersive use	(G) Poly-perfluoroalkylated polyamino acid
P–98–0537	03/10/98	06/08/98	Dystar L.P.	(S) Raw material for dyestuff syntheses	(G) Substituted naphthalene disulfonic acid
P–98–0538	03/10/98	06/08/98	Dystar L.P.	(S) Reactive dye for cellulose powder formulation; reactive dye for cellulose liquid formulation	(G) Naphthalenedisulfonic acid, 2-[substituted]-5-hydroxy-6-[substituted]phenyl]azo]-salt
P–98–0539	03/10/98	06/08/98	Dystar L.P.	(S) Reactive dye for cellulose powder formulation; reaction dye for cellulose liquid formulation	(G) Naphthalenedisulfonic acid, 2-[substituted]-5-hydroxy-6-[substituted]phenyl]azo]-salt
P–98–0540	03/10/98	06/08/98	Reichhold Chemicals Inc	(G) Urethane polymer for coatings	(G) Triethylamine neutralized aliphatic urethane polymer
P–98–0541	03/09/98	06/07/98	CBI	(S) Lactic acid releasing material for bioremediation	(S) Glucitol, hexakis [2-[2-[2-(2-hydroxy-1-oxopropoxy) -1-oxopropoxy]-1-oxopropoxy]propanoate]
P–98–0542	03/09/98	06/07/98	Ciba-Geigy Corporation	(G) N/a	(G) Phenolic antioxidant
P–98–0543	03/10/98	06/08/98	CBI	(S) Binder for coating materials that are applied on wood, paper and plastics	(G) Polyurethane with carboxy functions
P–98–0544	03/10/98	06/08/98	CBI	(S) Binder for coating materials that are applied on wood, paper and plastics	(G) Polyurethane with carboxy functions
P–98–0545	03/10/98	06/08/98	CBI	(S) Binder for coating materials that are applied on wood, paper and plastics	(G) Polyurethane with carboxy functions
P–98–0546	03/10/98	06/08/98	CBI	(S) Binder for coating materials that are applied on wood, paper and plastics	(G) Polyurethane with carboxy functions
P–98–0547	03/10/98	06/08/98	CBI	(G) Open non-dispersive (micro cellular elastomic foams)	(G) Modified diphenylmethane diisocyanate
P–98–0548	03/11/98	06/09/98	CBI	(G) Thermoset resin component open, nondispersive use*	(G) Phenolic-extended epoxy resin
P–98–0549	03/11/98	06/09/98	3M Company	(S) Mist suppressants in copper electrowinning	(S) 2-propenoic acid, reaction products with *n*-[3(dimethylamino)propyl]-1,1,2,2,3,3,4,4,4-nonafluoro-1-butanesulfonamide
P–98–0550	03/10/98	06/08/98	CBI	(G) Antiscalant industrial water treatment	(G) 2-propenoic acid, polymer with vinyl monomer, sodium salt, disodium disulfite and peroxydisulfuric acid ([(ho)s(o)2]2o2) diammonium salt initiated
P–98–0551	03/11/98	06/09/98	Gateway Additive Company	(S) Metalworking fluid additives	(G) Substance (1) polyether succinate
P–98–0552	03/11/98	06/09/98	Gateway Additive Company	(S) Metalworking fluid additives	(G) Substance (2) polyether succinate, compound with triethanolamine
P–98–0553	03/11/98	06/09/98	Gateway Additive Company	(S) Metalworking fluid additives	(G) Substance (3) polyether succinate, compound with mixed amines
P–98–0554	03/10/98	06/08/98	CBI	(G) Component of coating	(G) Amino functional polyether
P–98–0555	03/10/98	06/08/98	CBI	(G) Component of coating	(G) Amino functional polyether
P–98–0556	03/10/98	06/08/98	CBI	(G) Component of coating	(G) Amino functional polyether
P–98–0557	03/10/98	06/08/98	CBI	(G) Component of coating	(G) Amino functional polyether
P–98–0558	03/10/98	06/08/98	CBI	(G) Component of coating	(G) Amino functional polyether
P–98–0559	03/12/98	06/10/98	Amerchol Corporation	(S) Electronic application	(S) Cellulose 3-(dodecyldimethylammonio)-2-hydroxypropyl 2-hydroxyethyl ether, chloride
P–98–0560	03/11/98	06/09/98	S C Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic polymer
P–98–0561	03/11/98	06/09/98	S C Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic polymer
P–98–0562	03/11/98	06/09/98	S C Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic polymer
P–98–0563	03/11/98	06/09/98	S C Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic polymer
P–98–0564	03/11/98	06/09/98	S C Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic polymer
P–98–0565	03/11/98	06/09/98	S C Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic polymer

I. 50 Premanufacture Notices Received From: 03/09/98 to 03/13/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0566	03/11/98	06/09/98	Mitsui & Company, (U.S.A.) Inc	(S) Color former for thermal paper; color former for carbonless paper	(S) Spiro[isobenzofuran-1(3h), 9′-[9 *H*]xanthen]-3-one, 6′-(diethylamino)-3′-methyl-2′-[(3-methylphenyl)amino]
P–98–0567	03/11/98	06/09/98	S C Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic polymer
P–98–0568	03/11/98	06/09/98	S C Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic polymer
P–98–0569	03/11/98	06/09/98	S C Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic polymer
P–98–0570	03/11/98	06/09/98	S C Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic polymer
P–98–0571	03/11/98	06/09/98	S C Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic polymer
P–98–0572	03/11/98	06/09/98	S C Johnson Polymer	(G) Open, non-dispersive use	(G) Styrene acrylic polymer
P–98–0573	03/12/98	06/10/98	CBI	(G) Lubricating agent	(G) Alkylarylbisurea
P–98–0574	03/13/98	06/11/98	Henkel Adhesives	(S) Laminating adhesive; primer coating	(S) Fatty acids, C^{-18}-unsaturated, dimers, polymers with azelaic acid, ethylenediamine and piperazine, sodium salt
P–98–0575	03/13/98	06/11/98	Henkel Adhesives	(S) Laminating adhesive; primer coating	(S) Fatty acids, C^{-18}-unsaturated, dimers, polymers with azelaic acid, ethylenediamine, piperazine, and polypropylene glycol diamine, sodium salt
P–98–0576	03/13/98	06/11/98	Henkel Adhesives	(S) Laminating adhesive; primer coating	(S) Fatty acids, C^{-18}-unsaturated, dimers, polymers with hexamethylenediamine, sodium salt
P–98–0577	03/13/98	06/11/98	Henkel Adhesives	(S) Laminating adhesive; primer coating	(S) Fatty acids, C^{-18}-unsaturated, dimers, polymers with azelaic acid, ethylenediamine, piperazine, and *N*-tallow alkyltrimethylenediamines, sodium salt
P–98–0578	03/13/98	06/11/98	Henkel Adhesives	(S) Laminating adhesive; primer coating	(S) Fatty acids, C^{-18}-unsaturated, dimers, polymers with ethylenediamine, sodium salt
P–98–0579	03/13/98	06/11/98	Henkel Adhesives	(S) Laminating adhesive; primer coating	(S) Fatty acids, C^{-18}-unsaturated, dimers, polymers with azelaic acid, ethylenediamine, hexamethylenediamine and tall-oil fatty acids, sodium salt
P–98–0580	03/13/98	06/11/98	Henkel Adhesives	(S) Laminating adhesive; primer coating	(S) Fatty acids, C^{-18}-unsaturated., dimers, polymers with azelaic acid, ethylenediamine piperazine, acetates
P–98–0581	03/13/98	06/11/98	Henkel Adhesives	(S) Laminating adhesive; primer coating	(S) Fatty acids, tall-oil., dimers, polymers with azelaic acid, ethylenediamine, piperazine, and polypropylene glycol diamine, acetates
P–98–0582	03/13/98	06/11/98	Henkel Adhesives	(S) Laminating adhesive; primer coating	(S) Fatty acids, C^{-18}-unsaturated, dimers, polymers with hexamethylenediamine, acetates
P–98–0583	03/13/98	06/11/98	Henkel Adhesives	(S) Laminating adhesive; primer coatingazelaic acid, ethylenediamine, piperazine and *N*-tallow alkyltrimethylenediamines, acetates	
P–98–0584	03/13/98	06/11/98	Henkel Adhesives	(S) Laminating adhesive; primer coating	(S) Fatty acids, C^{-18}-unsaturated, dimers, polymers with ethylenediamine, acetates
P–98–0585	03/13/98	06/11/98	Henkel Adhesives	(S) Laminating adhesive; primer coating	(S) Fatty acids, C^{-18}-unsaturated, dimers, polymers with azelaic acid, ethylenediamine, hexamethylenediamine, and tall-oil, acetates

II. 12 Notices of Commencement Received From: 03/09/98 to 03/13//98

Case No.	Received Date	Commencement/Import Date	Chemical
P–96–0661	03/12/98	03/05/98	(G) Hydroxy acrylic resin
P–97–0115	03/13/98	04/04/97	(G) B-Alanine, *N*-(2-carboxyethyl)-*N*-[3-(alkyloxy)propyl]; monopotassium salt
P–97–0650	03/12/98	03/02/98	(G) Polyether acrylate
P–97–0651	03/12/98	03/02/98	(G) Polyether acrylate

II. 12 Notices of Commencement Received From: 03/09/98 to 03/13//98—Continued

Case No.	Received Date	Commence-ment/Import Date	Chemical
P–97–0687	03/09/98	03/02/98	(G) Polyacrylates
P–97–0872	03/10/98	02/21/98	(G) Polyoxalkylene colorant salt
P–97–1075	03/12/98	02/28/98	(S) Amides, from acetic acid, C^{5-9} carboxylic acids and diethylene triamine - ethyleneimine polymer
P–97–1076	03/12/98	03/01/98	(S) Amides, from acetic acid, C^{5-9} carboxylic acids and diethylene triamine - ethyleneimine polymer, acetates
P–97–1096	03/09/98	02/24/98	(G) Vinylpyrrolidone - acrylate copolymer
P–98–0112	03/11/98	02/10/98	(G) Phenolic novolak resin
P–98–0129	03/11/98	02/13/98	(G) Styrene acrylate
P–98–0130	03/11/98	02/13/98	(G) Styrene acrylate

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 20, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11413 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51900; FRL–5786–5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from March 16, 1998 to March 20, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51900]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51900]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51900]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in

''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 16 Premanufacture Notices Received From: 03/16/98 to 03/20/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0586	03/17/98	06/15/98	CBI	(G) Additive, open, non-dispersive use.	(G) Siloxanes and silicones, methyl alkyl, polyester modified
P–98–0587	03/17/98	06/15/98	Clariant Corporation	(S) Fluid loss additive oilfield cementing	(G) Polyacrylamide
P–98–0588	03/16/98	06/14/98	CBI	(G) Polymeric component of water bases latex blend.	(G) Acrylic copolymer
P–98–0589	03/17/98	06/15/98	Clariant Corporation	(S) Fluid loss additive for oilfield cementing.	(G) Polyacrylamide
P–98–0590	03/16/98	06/14/98	Dover Chemical Corporation	(S) Extreme pressure lube additive; PVC plasticizer additive	(S) Fatty acids, C^{8-12}, chlorinated
P–98–0591	03/16/98	06/14/98	Von Roll Isola USA, Inc.	(S) Electrial insulating varnish for motors, generators, transformers, etc.	(S) 1,3-benzenedicarboxylic acid, polymer with 1,3-dihydro-1,3-dioxo-5-isobenzofurancarboxylic acid, 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hexanedioic acid, 4-hydrocybenzoic acid and 2,2′-oχυβισ[ετηανολ]
P–98–0592	03/17/98	03/15/98	Champion Technologies	(S) Corrosion inhibitor for oil and gas production and pipelines	(S) Amides, tall-oil fatty, *N*2-hydroxyethyl)amino]ethyl], reaction products with sulfur dioxide; amides, from ammonia-ethanolamine reaction by-products and tall-oil fatty acids, reaction products with sulfur dioxide; 1,2-ethanediamine, *N*-(8-heptadecenyl)-4,-dihydro-1*H* diol-1-yl]ethyl, (z)-, reaction products with sulfur dioxide
P–98–0593	03/17/98	06/15/98	CBI	(G) Quality control agent	(G) Disubstituted cyano-heteropolycyclecarboxylic acid ester
P–98–0594	03/18/98	06/16/98	CBI	(G) Open non dispersive use	(G) Polyester amide
P–98–0595	03/18/98	06/16/98	Advanced Aromatics, Inc.	(G) Solvent	(S) Ethene, hydroformylation products, distn. residues
P–98–0596	03/18/98	06/16/98	Advanced Aromatics, Inc.	(G) Solvent	(S) 1-Butene, hydroformylation products, distn. residues
P–98–0597	03/18/98	06/16/98	Advanced Aromatics, Inc.	(G) Solvent	(S) Butanal, condensation products, hydrogenated, distn. residues
P–98–0598	03/18/98	06/16/98	Advanced Aromatics, Inc.	(G) Solvent	(S) 4-nonanone, 2,6,8-trimethyl-, hydrogenated, distn. residues
P–98–0599	03/18/98	06/16/98	Advanced Aromatics, Inc.	(G) Solvent	(S) 3-heptanone, 2,6-dimethyl-, hydrogenated, distn. residues

I. 16 Premanufacture Notices Received From: 03/16/98 to 03/20/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0600	03/18/98	06/16/98	Ashland Chemical Company	(G) Impregnation, bonding, surfacing application. open, non-dispersive	(G) Vinyl ester resin
P–98–0601	03/18/98	06/16/98	Gateway Aditive Company	(S) Metalworking fluids, water expendable; cutting oils; industrial lubricants	(G) Polymer ester of mono and dibasic acids

II. 6 Notices of Commencement Received From: 03/16/98 to 03/20/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–97–0692	03/16/98	02/24/98	(S) 3-Pyridinecarbosylic acid, 2-acetyl-
P–97–1036	03/16/98	02/16/98	(G) Perfluorinated alcohol
P–97–1037	03/16/98	03/02/98	(G) Fluorinated phosphate
P–97–1038	03/16/98	03/02/98	(G) Fluorinated phosphorodichloridate
P–98–0093	03/16/98	02/23/98	(G) Polyester resin
P–98–0115	03/16/98	03/09/98	(G) Acrylic copolymer

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 20, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11414 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51901; FRL–5786–6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from March 23, 1998 to March 27, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51901]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51901]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51901]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: PMNs received.

31 Premanufacture Notices Received From: 03/23/98 to 03/27/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0607	03/24/98	06/22/98	CBI	(G) Coatings binder component	(G) Urethane oligomer
P–98–0608	03/23/98	06/21/98	Strem Chemicals, Inc.	(S) Chemical intermediate for the production of product described in PMN TS-int 506	(G) Derivative tetrasubstituted alkane
P–98–0609	03/23/98	06/21/98	Strem Chemicals, Inc.	(S) Chemical intermediate for the production of product described in pmn TS-int 222	(G) Tetrasubstituted alkane
P–98–0610	03/23/98	06/21/98	Creanova Inc.	(G) Coatings component	(S) Propanedioic acid, bis(1-methylethyl) ester*
P–98–0611	03/23/98	06/21/98	Strem Chemicals, Inc.	(S) Chemical intermediate for the production of product described in PMN TSs-PRD380	(G) Derivatized tetrasubstituted alkane
P–98–0612	03/23/98	06/21/98	CBI	(G) Coatings binder component	(G) Urethane oligomer
P–98–0613	03/23/98	06/21/98	U.S.Polymers Inc.	(S) This resin is used in two component isocyanate crosslinked urethane coatings	(G) Reaction product of-methyl methacrylate, *N*-butyl methacrylate, hydroxy functional methacrylate, aliphatic methacrylates and methacrylate acid
P–98–0614	03/23/98	06/21/98	Olin Corporation	(S) Film-forming polymer	(G) Polyamic acid, ethyl ester, acrylate ester
P–98–0615	03/26/98	06/24/98	CBI	(G) Chemical intermediate	(G) Polyoxyalkylated alcolhol
P–98–0616	03/26/98	06/24/98	CBI	(G) Open, non-dispersive use	(G) Polyester resin
P–98–0617	03/23/98	06/21/98	Gateway Additive Company.	(S) Metalworking fluids, water extendable, cutting oils, lubricants	(S) Hexanedioic acid, polymer with 2,2-bis(hydroxymethyl)-1,3-propanediol, isooctadecanoate
P–98–0618	03/23/98	06/21/98	CBI	(G) Molding compounds	(G) Poly(ester-ether)
P–98–0619	03/24/98	06/22/98	CBI	(G) Open, non-dispersive	(G) Acrylic polymer
P–98–0620	03/24/98	06/22/98	CBI	(G) Open, non-dispersive	(G) Acrylic polymer
P–98–0621	03/27/98	06/18/98	CBI	(G) Developer	(G) Derivative bisphenol sulfone

31 Premanufacture Notices Received From: 03/23/98 to 03/27/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0622	03/23/98	06/21/98	Strem Chemicals, Inc.	(S) Chemical intermediate for the production of product described in PMN TS-254	(G) Derivatized tetrasubstituted alkane
P–98–0623	03/23/98	06/21/98	Strem Chemicals, Inc.	(S) Chemical intermediate for the production of product described in PMN TS-254	(G) Derivatized tetrasubstituted alkane
P–98–0624	03/23/98	06/21/98	Strem Chemicals, Inc.	(S) Chemical intermediate for the production of product described in PMN TS-254	(G) Derivatized tetrasubstituted alkane
P–98–0625	03/23/98	06/21/98	Strem Chemicals, Inc.	(G) Commercial r&d	(G) Metal derivatized tetrasubstituted alkane compound
P–98–0626	03/23/98	06/21/98	Strem Chemicals, Inc.	(G) Commercial r&d	(G) Metal derivatized tetrasubstituted alkane compound
P–98–0627	03/23/98	06/21/98	Strem Chemicals, Inc.	(G) Commercial r&d	(G) Metal derivatized tetrasubstituted alkane compound
P–98–0628	03/23/98	06/21/98	Strem Chemicals, Inc.	(G) Commercial r&d	(G) Metal derivatized tetrasubstituted alkane compound
P–98–0629	03/23/98	06/21/98	Strem Chemicals, Inc.	(G) Commercial r&d	(G) Metal derivatized tetrasubstituted alkane compound
P–98–0630	03/23/98	06/21/98	W.R. Grace & Company-Conn.	(G) Material processing additive	(G) Grace isopropanolamine salt solution
P–98–0631	03/25/98	06/23/98	CBI	(S) Paper dye	(G) 1*H*- imidazolium, 1,1′ [alkanediylbis[4,1-phenylazo(1,2-dihydro-6-hydroxy-alkyl-2-oxo-3,5-pyridindiyl)]]bis3-[alkyll, salt with alkanoic acid
P–98–0632	03/25/98	06/23/98	CBI	(S) Paper dye	(G) 1*H*-imidazolium, 1,1′ [alkanediylbis[4,1-phenylazo(1,2-dihydro-6-hydroxy-alkyl-2-oxo-3,5-pyridindiyl)]]bis3-[alkyll, salt with alkanoic acid*
P–98–0633	03/26/98	06/24/98	Salsbury Chemicals, Inc.	(G) Chemical intermediate	(G) Amino substituted aromatic acid derivative
P–98–0634	03/26/98	06/24/98	Henkel Adhesives	(S) Hot melt adhesive	(S) Fatty acids, C^{18}-unsaturated, dimers, polymers with adipic acid, ethylenediamine, piperazime and polypropylene glycol diamine
P–98–0635	03/26/98	06/24/98	CBI	(G) Used in plating for electrodeposition of nickel	(G) Substituted organic metal salt
P–98–0636	03/26/98	06/24/98	CBI	(G) Resin for coating	(G) Epoxy resin
P–98–0637	03/26/98	06/24/98	CBI	(S) Resin for paints	(G) Copolymer of methyl methacrylate

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 20, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11415 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51902; FRL–5786–7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from March 30, 1998 to April 3, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51902]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51902]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be

clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51902]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: PMNs received.

21 Premanufacture Notices Received From: 03/30/98 to 04/03/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0638	03/30/98	06/28/98	ELF Development inc.	(S) Lubricity improver for low sulfur diesel fuel engine	(G) Mixtures of fatty acids in solution of a naphta petroleum solvent
P–98–0639	03/30/98	06/28/98	CBI	(G) Highly dispersive	(G) Disubstituted alkenol
P–98–0640	04/01/98	06/30/98	AKZO Nnobel Resins	(S) Resin used to manufacture; industrial coatings	(S) Fatty acids, soya, polymers with benzoic acid, 12-hydroxyoctadecanoic acid, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, pentaerythritol, phthalic anhydride, polyethylene glycol mono-me ether and trimethylolpropane

21 Premanufacture Notices Received From: 03/30/98 to 04/03/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0641	04/01/98	06/30/98	Reichhold Chemicals Inc	(S) UV curable coating	(G) Acrylic acrylate resin
P–98–0642	04/01/98	06/30/98	Applied Power Concepts, Inc.	(G) A dioremediation material	(S) Xylitol, pentakis [2-[2-[2-(2-hydroxy-1-oxopropoxy)-1-oxopropoxy]-1-oxpropoxy]propanoate]
P–98–0643	03/30/98	06/28/98	CBI	(G) Surfactant in a fabric softeners; hair conditioning softener	(G) Quaternary ammonium compound
P–98–0644	03/30/98	06/28/98	H.B. Fuller Company	(S) Filter paper saturant and coating	(G) Grafted acrylate polymer ammonium salt
P–98–0645	04/01/98	06/30/98	3M Company	(G) Polymer additive	(G) Fluorochemical polymer
P–98–0646	03/30/98	06/28/98	The Dow Chemical Company	(S) Paving and roofing compounds; molded and extruded parts	(S) Benzene, ethenyl-, polymer with ethene and 1-propene
P–98–0647	03/30/98	06/28/98	Sivento Inc.	(S) Fiberglass treatment	(S) Siloxanes and silicones, 3-[[2-[[(ethenylpheny-l)methyl]amino]ethyl]amino]propyl methoxy, methoxy-terminated, acetates
P–98–0648	04/02/98	07/01/98	Eastman Kodak Company	(G) Contained use in an article	(G) Substituted heterocyclic alkylamino alkyl benzoic acid ester
P–98–0649	03/31/98	06/29/98	Orient Chemical Corporation	(S) Manufacture of ink	(S) Benzenamine, 4-[2,6-bis(2-ethoxyphenyl)-4-pyridinyl]-*N,N-dimetyl-*
P–98–0650	03/31/98	06/29/98	Champion Technologies	(S) Demulsifer for crude oil product	(S) Formaldehyde, polymers with branched 4-nonylphenol, ethylene oxide, propylene oxide and TDI
P–98–0651	04/01/98	06/30/98	3M Company	() Low adhesion backsice coating for paper	(G) Siloxyacrylate polymer
P–98–0652	04/01/98	06/30/98	Zeon America Inc.	(S) Film (electric insulation, etc.; sheet (electric insulation, etc); molded articles (lens, etc)	(G) Cycloolefin polymer
P–98–0653	04/01/98	06/30/98	Zeon America Inc.	(S) Film (electric insulation, etc.; sheet (electric insulation, etc); molded articles (lens, etcs)	(G) Cycloolefin polymer
P–98–0655	04/01/98	06/30/98	CBI	(G) Surfactant in chemical specialities; highly dispersive use	(G) Flurinated amine oxide
P–98–0656	03/30/98	06/28/98	CBI	(G) Lubricating agent	(G) Alkylarylbisurea
P–98–0657	03/30/98	06/28/98	Applied power concepts, inc.	(G) A bioremediation material	(S) Propanoic acid, 2-[2-[2-(2-hydroxy-1-oxopropoxy)-1-oxopropoxy]-1-oxopropoxy]-1,2,3-propanetriyl ester*
P–98–0658	04/01/98	06/30/98	3m Company	(S) Chemical intermediate	(G) Alkylethoxylate chloride
P–98–0659	04/03/98	07/02/98	P chem, inc.	(S) A hydrogen sulfide scavenger for use in oil and gas operations for sweetening of natural gas one use only	(G) Reaction products of formaldehyde, amine substitiuted piperazine, and alkyl amine

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 20, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11416 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–VA; FRL–5781–6]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Commonwealth of Virginia Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On December 19, 1997, the Commonwealth of Virginia submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Virginia's application, and provides a 45–day public comment period and an opportunity to request a public hearing on the application. Virginia has provided a certification that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in Virginia.

DATES: The State program became effective December 19, 1997. Submit

comments on the authorization application on or before June 14, 1998 . Public hearing requests must be submitted on or before May 29, 1998.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket number ''PB-402404-VA'' (in duplicate) to: Environmental Protection Agency, Region III, Waste and Chemicals Management Division, 841 Chestnut Building, Philadelphia, PA 19107.

Comments, data, and requests for a hearing may also be submitted electronically to: valls.gerallyn@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Gerallyn Valls (3WC33), Regional Lead Coordinator, Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Telephone: (215) 566–2084; e-mail address: valls.gerallyn@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the U.S. Congress passed Pub. L. 102-550 which included the Residential Lead-Based Paint Hazard Reduction Act of 1992. This Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV--Lead Exposure Reduction (15 U.S.C. 2681 *et seq.*).

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. In lieu of the Federal program, a State or Tribe may seek authorization from EPA to administer and enforce their own lead-based paint activities program (TSCA, Title IV, section 404(a)).

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated the final TSCA section 402/404 regulations. On August 31, 1998, EPA will institute the Federal program in States or Tribes that do not have an authorized program. States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. These applications must be reviewed by EPA within 180 days of receipt of the complete application. To receive final program authorization, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684 *et seq.*).

A State or Tribe may choose to certify that its lead-based paint activities program meets the requirements for EPA approval by submitting a letter signed by the Governor or Attorney General (or equivalent) that states that the program meets all the requirements set by section 404(b) of TSCA. Upon receipt of a self-certification letter, the program is deemed authorized. This authorization can be disapproved or the application can be withdrawn if EPA determines that upon review, the program is not as protective of human health and the environment and/or does not provide adequate enforcement.

II. State Program Description Summary

The following is a description of the Commonwealth of Virginia's training, certification, and accreditation program.

The primary State agency that is responsible for administering and enforcing the Virginia Lead-Based Paint Activities Program is the Department of Professional and Occupational Regulation, Board for Asbestos and Lead.

As a result of the Virginia General Assembly House Bill 2454 (1995), the Virginia Department of Professional and Occupational Regulation, on behalf of the Virginia Board for Asbestos and Lead, established regulations and requirements for individuals and firms who wish to perform lead-based paint activities and abatement on target housing, public and commercial buildings, and steel structures and superstructures in the Commonwealth of Virginia. The Virginia Lead-Based Paint Activities Regulations were promulgated in accordance with the provisions of section 9-6.114:7.1 *et. seq.* of the Code of Virginia, also known as the Virginia Administrative Process Act, and other relevant State statutes, Executive Orders, and agency policies.

The Virginia Lead-Based Paint Activities regulations became effective under emergency provisions of the Virginia Administrative Process Act, section 9-6.14:4.1(C)(5), on October 1, 1995. The text of the emergency regulation was later adopted and implemented as a final regulation which became effective on November 14, 1996.

These regulations establish: (1) Procedures and requirements for the accreditation and reaccreditation of lead-based paint activities training providers; (2) procedures and requirements for the certification of individuals engaged in lead-based paint activities and abatement; (3) work practice standards for conducting lead-based paint activities by appropriately licensed and certified contractors; (4) requirements that all lead-based paint activities be conducted by appropriately certified contractors; and (5) development of the appropriate infrastructure or government capacity to carry out and enforce this program.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail, or refuse to comply with any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure, or refusal to comply with any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number ''PB–402404–VA.'' Copies of this notice, the Commonwealth of Virginia's authorization application, and all comments received on the application are available for inspection in the Region III office, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The office is located at U.S. Environmental Protection Agency, Region III, Waste and Chemicals Management Division, 841 Chestnut Building, Philadelphia, PA.

Electronic comments can be sent directly to EPA at:

valls.gerallyn@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 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''PB–402404–VA.'' Electronic comments on this document may be filed online at many Federal Depository Libraries.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: April 16, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–11417 Filed 4–28–98; 8:45 a.m.]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

April 22, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 29, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0806.

Title: Universal Service - Schools and Libraries Universal Service Program.

Form No.: FCC Forms 470 and 471.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions; state, local or tribal governments.

Number of Respondents: 60,000.

Estimated Time Per Response: 6 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Cost to Respondents: N/A.

Total Annual Burden: 660,000 hours.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit a description of the services desired to the Administrator via FCC Form 470. FCC Form 471 is submitted by schools and libraries that have ordered telecommunications services, Internet access, and internal connections. The purpose of this information is to help determine which schools are eligible for the greater discounts. These requirements are designed to help schools and libraries avoid the waste that might arise from requests for services that the schools and libraries would be unable to use for the educational purposes intended. Applicants will be able to electronically file or fax their submissions. Copies of the forms are available via the Administrator's website.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–11349 Filed 4–28–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–009548–050

Title: United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference

Parties:

Farrell Lines, Inc.

Waterman Steamship Corporation

Synopsis: The proposed amendment would clarify the authority of the Agreement with respect to European inland rates and delete the requirement that the members post a financial guarantee. It also provides for the election of a Chairman and the employment of a Secretary and makes a number of administrative changes to the Agreement to accommodate the above modifications.

Agreement No.: 202–010424–038

Title: Dominican Republic Agreement

Parties:

NPR, Inc. d/b/a/ Navieras

Sea-Land Service, Inc.

Crowley American Transport, Inc.

A.P. Moller-Maersk Line

Del Line, LLC.

Sea-Board Marine, Ltd.

Tecmarine Lines, Inc.

Tropical Shipping and Construction Co., Ltd.

Synopsis: The proposed amendment would require a unanimous vote for all actions under the Agreement, except an amendment to the Agreement, which requires a vote of unanimous less one. The amendment also authorizes the member lines to enter into individual service contracts.

Dated: April 23, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–11322 Filed 4–28–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–06]

Sea-Land Service Inc. Possible Violations of Sections 10(b)(1), 10(b)(4) and 19(d) of the Shipping Act of 1984; Order of Investigation and Hearing

Sea-Land Service Inc. (''Sea-Land'') is a vessel-operating common carrier with offices at 6000 Carnegie Boulevard, Charlotte, North Carolina. Sea-Land provides regular liner services, *inter alia*, between the United States West Coast ports and points and ports and points in the Far East and currently operates as many as 21 containerships in its Transpacific services. Further shipping services are furnished by Sea-Land worldwide both directly and through participation in reciprocal

space charter agreements with Maersk, P&O Nedlloyd and others. As relevant herein, Sea-Land operates as a member of the Transpacific Westbound Rate Agreement (''TWRA''), and participates in the tarrifs and service contracts established by that conference.

Through interviews and on-site examinations of shipping records maintained by World Pacific Container (USA) Inc. (''World Pacific'') and other non-vessel-operating common carriers (''NVOCCs'') providing services in the outbound trades from the U.S. West Coast to the Far East, it appears that World Pacific and competing NVOCCs in the Los Angeles area were actively engaged in equipment substitution malpractices on shipments transported by Sea-Land. Due in substantial part to the actions of its Los Angles sales representatives, Sea-Land has been substantially implicated in the subject malpractices with respect to cargoes destined for the Far East during 1997 and thereafter.

Shipment records of World Pacific and other NVOCCs reflects the near-routine abuse of the TWRA equipment substitution rules as a means by which Sea-Land apparently furnishes an NVOCC with a larger container while still assessing the per-container rates normally applied only to a container of smaller capacity. The NVOCC then loads the container beyond the cubic capacity of the container initially requested, and obtains the financial benefits of paying the freight rate applicable to the smaller box. The above equipment substitution malpractices occur both in conjunction with, and independent of, shipments on which the commodity has been misdescribed.

It is alleged that representatives of Sea-Land solicited cargo on the basis that the carrier would substitute 40-foot container equipment for 20-foot container equipment in order to secure the patronage of World Pacific and other NVOCCs as shipper clients of Sea-Land. Key to this rate malpractice is the understanding that the NVOCC would be required to misdeclare the cubit measurement of the shipment. In practice, World Pacific and other NVOCCs would meet this requirement by routinely declaring the cargo measurements at 25 cubic meters (''CBM''), equivalent to the maximum capacity utilization of a 20-foot container under TWRA rules. Cargo weights, however, were generally correctly declared and shown on the master bill of lading, thus indicating a significant variance between the loading characteristics of the cargo as declared, and the actual commodity and cubic measurements of the goods physically loaded within the substituted container.

In addition, it appears that Sea-Land subsequently made payment of freight forwarder compensation on many of these same NVOCC shipments, with such compensation being paid to ITL Shipping Co. (''ITL Shipping'') as the forwarder on behalf of World Pacific. ITL Shipping did not then possess a valid ocean freight forwarder's license, its license having been revoked effective March 27, 1997.[1] If further appears that ITL Shipping had not provided any certification to Sea-Land claiming entitlement to forwarder compensation upon World Pacific's shipments, nor had ITL Shipping in fact performed services of any kind with respect to securing the cargo or preparing the documentation thereon. Sea-Land allegedly issued forwarder compensation checks automatically to any party shown in the forwarder box of the master bill of lading, without regard to specific requirements for the submission to or receipt by Sea-Land of the forwarder's certification. It is further alleged that Sea-Land had reason to know that no forwarder compensation was payable in any event inasmuch as all details of booking the shipment or preparing or processing the ocean bill of lading were conducted by Sea-Land directly with the NVOCC shipper. In additional instances, it appears that forwarder compensation payments were made by Sea-Land to other forwarders in circumstances in which such forwarders did not perform the requisite forwarding services or were otherwise known to be related to the shipper NVOCC.

It is well-established law that a carrier is charged with a responsibility of reasonably diligent inquiry and exercise of care to ensure its compliance with the shipping statutes. *Prince Line* v. *American Paper Exports Inc.*, 55 F.2d 1053 (2d Cir., 1932). In the case of the subject instances of equipment substitution, it is clear that Sea-Land agreed to furnish a larger container and to apply the equipment substitution rule to the freight rate advantage of the involved NVOCC, with no apparent regard for the NVOCC's subsequent misdeclaration and abuse of the equipment substitution rule. A carrier's persistent failure, moreover, to inform or attempt to inform itself of any false billings through those normal business resources available to the carrier such as weighing or measuring, inquiries of shippers or importers, reference to those ''marks and numbers'' shown on the bills of lading or other means, may reflect that carrier's attempt to keep itself in ignorance of the false billings concerned. *Rates From Japan to United States*, 2 USMC 426, 434 (1940); *Rates From United States to Philippine Islands*, 2 USMC 535, 542 (1941).

Section 10(b)(1) of the 1984 Act, 46 U.S.C. app. § 1709(b)(1), prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges set forth in its tariff. Section 10(b)(4) of the 1984 Act, 46 U.S.C. app. § 1709(b)(4), prohibits any common carrier from allowing any person by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. Section 19(d) of the 1984 Act, 46 U.S.C. app. § 1718(d), provides that a carrier may compensate an ocean freight forwarder only when it has received certification that such forwarder possesses a valid license and that specified services relating to securing the shipment and preparing the documentation thereon have been performed by the forwarder. Under section 13 of the 1984 Act, 46 U.S.C. app. § 1712, a person is subject to a civil penalty of not more than $25,000 for each violation knowingly and willfully committed, and not more than $5,000 for other violations.[2] Section 13 further provides that a common carrier's tariffs may be suspended for violations of sections 10(b)(1) or 10(b)(4) for a period not to exceed one year.

Now therefore, it is ordered, That pursuant to sections 10, 11, 13 and 19 of the 1984 Act, 46 U.S.C. app. §§ 1709, 1710, 1712 and 1718, an investigation is instituted to determine:

(1) Whether Sea-Land violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving less or different compensation for the transportation of property than the rates and charges shown in its tariffs or service contracts;

(2) Whether Sea-Land violated section 10(b)(4) of the 1984 Act by allowing certain NVOCCs to obtain transportation at less than the rates and charges otherwise applicable by an unjust or unfair device or means;

(3) Whether Sea-Land violated section 19(d) of the 1984 Act by compensating

[1] Order of Revocation, Ocean Freight Forwarder License No. 3102, Kyung H. (Harry) Oh d/b/a ITL Shipping Company, served April 1, 1997.

[2] These penalties are increased 10 percent for any violations occurring after November 7, 1996. *See, Inflation Adjustment of Civil Penalties*, 61 Fed. Reg. 52704 (October 8, 1996).

an ocean freight forwarder whose license was revoked, and without requiring the forwarder to provide the necessary certification or furnish those services entitling the forwarder to such compensation;

(4) Whether, in the event violations of sections 10(b)(1), 10(b)(4) and 19(d) of the 1984 Act are found, civil penalties should be assessed against Sea-Land and, if so, the amount of penalties to be assessed;

(5) Whether, in the event violations of sections 10(b)(1) and 10(b)(4) of the 1984 Act are found, the tariff(s) of Sea-Land should be suspended;

(6) Whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge 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 Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge 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 Sea-Land Service Inc. is designated Respondent in this proceeding;

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 parties 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 parties 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, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by April 26, 1999 and the final decision of the Commission shall be issued by August 24, 1999.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 98–11359 Filed 4–28–98; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0121]

Proposed Collection; Comment Request Entitled Contractor's Report of Sales

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance 3090–0121, Contractor's Report of Sales.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Contractor's Report of Sales.

DATES: Comment Due Date: June 29, 1998.

ADDRESSES: Comments regarding this collection of information should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503 and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC, 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0121, Contractor's Report of Sales. The information is used primarily by contracting officers to estimate requirements for the subsequent year, evaluate the effectiveness of a schedule, negotiate better prices based on volume and for special reports.

B. Annual Reporting Burden

Respondents: 5,982; *annual responses:* 119,640; *average hours per response:* .30 minutes; *burden hours:* 997.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street, NW, Washington, DC, 20405 or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: April 20, 1998.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 98–11352 Filed 4–28–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0243]

Submission for OMB Review; Comment Request Entitled Fixed Price Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0243.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Fixed Price Contracts. A request for public comments was published at 63 FR 8455. No comments were received.

DATES: Comment Due Date: May 29, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services

Administration (MVP), 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0243, concerning Fixed Price Contracts. This information collection prescribes an economic price adjustment clause in Federal Supply Service multiple award service (MAS) contracts. This clause is used to adjust MAS contract price and requires a MAS contractor to furnish certain pricing information when the MAS contractor requests a price adjustment under the MAS contract.

B. Annual Reporting Burden

Respondents: 2,914; *annual responses:* 4,371; *average hours per response:* .5; *burden hours:* 2,186.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street, NW., Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: April 23, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–11351 Filed 4–28–98; 8:45 am]

BILLING CODE 6820–61–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 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 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 and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

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: Development and Testing of Emergency Department Utilization as a Measure of Effectiveness for the Health Care for the Homeless Program (NEW)

The Health Resources and Services Administration's Bureau of Primary Health Care (BPHC) seeks clearance from OMB to conduct a performance evaluation of the Health Care for the Homeless Program (HCH). A primary goal of this program is to provide a ''medical home'' for homeless persons in the community, improving their access to primary care. The evaluation will test the hypothesis that the presence of an HCH program in a community reduces the inappropriate (i.e., non-urgent) use of emergency departments (ED) by single homeless adults. The results from this evaluation will provide BPHC with evidence of the HCH program's ability to divert inappropriate use of emergency departments by homeless individuals.

The study will compare the ED experience of HCH program users and non-HCH program users while considering three categories of influencing factors: (1) Predisposing factors (demographics), (2) enabling factors (insurance status and community characteristics), and (3) needs factors (physical and mental health status, presence of drug or alcohol problems). The analysis requires primary data collection through interviews of homeless individuals in communities where there are HCH grantees. The data collection instrument for this evaluation is a brief (20 minute) questionnaire that will measure self-reported health care utilization during the study period, health status and perceived health care needs, and demographics. Information from the study will be used in conjunction with data from ED records of homeless individuals with self-reported ED use during the study period to determine whether a particular ED visit should be considered ''urgent'' or ''non-urgent''.

One thousand three hundred and fifty respondents are expected to be surveyed once. It is expected to take 20 minutes to complete each survey for a total of 450 burden hours.

Send comments to Lyman Van Nostrand, HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: April 22, 1998.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–11344 Filed 4–28–98; 8:45 am]

BILLING CODE 4160–15–P

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 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 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 and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

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: The National Health Service Corps (NHSC) and Native Hawaiian Health (NHH) Scholarship Programs Data Collection Worksheets (in Use Without Approval)

The NHSC and NHH Scholarship Programs were established to assure an adequate supply of trained primary care health professionals to the neediest communities in the Health Professional Shortage Areas (HPSAs) of the United States. Under these programs, allopathic physicians, osteopathic physicians, dentists, nurse practitioners, nurse midwives, physician assistants, and, if needed by the NHSC or NHH program, students of other health professions are offered the opportunity to enter into a contractual agreement with the Secretary under which the Public Health Service agrees to pay the total school tuition, required fees, other reasonable costs (ORC) and a stipend for living expenses. In exchange, the scholarship recipient agrees to provide full-time clinical services at a site in a federally designated HPSA.

In order to accurately determine the amount of scholarship support that students will need during their academic training, the Bureau of Primary Health Care must contact each scholar's school for an estimate of tuition, fees, and ORC. The Data Collection Worksheet collects these itemized costs for both resident and nonresident students.

Six hundred schools are expected to submit one report per year. It is expected to take 30 minutes to complete each form, for a total of 300 hours of burden.

Send comments to Lyman Van Nostrand, HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 22, 1998.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–11346 Filed 4–28–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA Competitive Grants Preview; Community Integrated Service Systems to Support Health of Children in Out of Home Care

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of extension of deadline date.

SUMMARY: This notice extends the application due date for applications for grants for Community Integrated Service Systems to Support Health of Children in Out of Home Care, previously published in the **Federal Register** on October 9, 1997 as part of the General Notice: Availability of the HRSA Competitive Grants Preview (62 FR 52894–52914). The purpose of these grants is to identify, analyze, and disseminate successful State and local approaches for implementing the Model Standards for Children in Foster Care, as developed by the Child Welfare League of America and the American Academy of Pediatrics, and to evaluate and determine the transferability of successful approaches in varied settings.

In the table on page 52894 and on page 52910 in the second column, the deadline date published in the **Federal Register** has been extended to July 1, 1998.

Dated: April 20, 1998.

James J. Corrigan,

Acting Associate Administrator for Management and Program Support.

[FR Doc. 98–11345 Filed 4–28–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Confidentiality of Alcohol and Drug Abuse Patient Records

0930–0092—Extension, no change—Statute (42 U.S.C. 290dd–2) and regulations (42 CFR Part 2) require Federally conducted, regulated, or directly or indirectly assisted alcohol and drug abuse programs to keep patient records confidential. Information requirements are (1) written disclosure to patients, and (2) documenting medical personnel'' status of recipients of a disclosure to meet a medical emergency.

	Annual respondents	Responses per respondent	Burden per response (in hrs.)	Annual burden
Disclosure:				
42 CFR 2.22	10,000	150	.25	375,000
Recordkeeping:				
42 CFR 2.51	10,000	2	.25	5,000
Total				380,000

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 20, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–11331 Filed 4–28–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–16]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: May 29, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 22, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities: Final Rule 24 CFR Part 58.

Office: Community Planning and Development.

OMB Approval Number: 2506–0087.

Description of The Need for The Information and Its Proposed Use: To document compliance with the National Environmental Policy Act (NEPA) and the related environmental statutes. Used to certify compliance and request release of funds using the procedures identified in 24 CFR Part 58.

Form Number: HUD–7015.15.

Respondents: State, Local or Tribal Government and Not-For-Profit Institutions.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	4925		1		.75		3694
Recordkeeping	4925		1		1		4925

Total Estimated Burden Hours: 8,619.

Status: Revision.

Contact: Frederick Regetz, HUD, (202 708–1201 x 4465; Joseph F. Lackey, Jr., OMB (202) 395–7316.

Dated: April 22, 1998.

[FR Doc. 98–11389 Filed 4–28–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4316–N–02]

Announcement of Funding Award—Fiscal Year 1998 Lead-Based Paint Hazard Control, Children's Hospital Research Foundation

AGENCY: Office of the Secretary—Office of Lead Hazard Control, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the Children's Hospital Research Foundation. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Warren Friedman, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–1785, ext. 159. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

The Lead-Based Paint Hazard Control grant for the Children's Hospital Research Foundation was issued pursuant to Pub. L. 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of $239,938 to the Children's Hospital Research Foundation which will be used to evaluate house dust sample collection methods to identify a single collection activity to obtain samples that can be analyzed for both lead dust and allergens.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

Children's Hospital Research Foundation, Division of General Pediatrics, 3333 Burnet Ave., Cincinnati, OH 45229.

Amount of Grant: $239,938.

Dated: April 1, 1998.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 98–11390 Filed 4–28–98; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Notice for Publication; F–14840–B, F–14840–D2, F–14840–E2, F–14840–F2, F–14840–G2 and F–14840–I2; Alaska Native Claims Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Tihteet' Aii, Inc. The lands involved are in the vicinity of Birch Creek, Alaska, within Tps. 15 N., Rs. 8 and 10 E.; Tps. 16 N., Rs. 9 and 11 E.; and Tps. 17 N., Rs. 8 and 10 E., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until May 29, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Elizabeth Sherwood,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98–11330 Filed 4–28–98; 8:45 am]

BILLING CODE 4310–JA–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1320–01]

Notice of Intent for a 30-Day Comment Period on the Draft (Proposed) Amendment to Farmington RMP, Invitation for Public Involvement and Call for Information on Coal, and Other Minerals and Resources; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of schedule change.

SUMMARY: The Bureau of Land Management (BLM), Farmington Field Office, has extended the comment period on the Draft of the Resource Management Plan Amendment and Environmental Assessment originally described on pages 18209 and 18210 of the **Federal Register,** Vol 63, No. 71, Tuesday, April 14, 1998. Due to scheduling conflicts the comment period will now be from April 27, 1998, through May 26, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Moore, Farmington Field Office, (505) 599–6311.

Dated: April 22, 1998.

Joel Farrell,

Acting Field Office Manager.

[FR Doc. 98–11332 Filed 4–28–98; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Extension of Public Comment Period on the Draft 2(a)(ii) Wild and Scenic River Study Report and Environmental Assessment for the Lumber River, North Carolina

AGENCY: National Park Service, Interior.

ACTION: Extension of public comment period.

SUMMARY: The National Park Service is extending the public review and comment period by 21 days for the draft study report on designating portions of the Lumber River, North Carolina, into the National Wild and Scenic Rivers System.

DATES: Comments must be postmarked by June 12, 1998.

ADDRESSES: Copies of the draft report are available for public inspection at: National Park Service, Atlanta Federal Center, 1924 Building, 100 Alabama Street, SW, 5th Floor, Atlanta, Georgia 30303; National Park Service, National Center for Recreation and Conservation, Main Interior Building, 1849 C Street, NW, Room 3611, Washington, DC 20240–0001; and National Park Service, 909 First Avenue, 5th Floor, Seattle, Washington, 98104. Hours of availability are between 8:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Additional copies for review are located in the Columbus County, Whiteville, Hoke County, Raeford, Mary Livermore, Pembroke, Robeson County, Lumberton, and Scotland County in Laurinburg, North Carolina, libraries during normal hours of operation. copies of the draft report may be obtained from Mary Rountree, National Park Service, at the address below.

Comments should be directed to the National Park Service, Southeast Regional Office, attention Mary Rountree at the address below.

FOR FURTHER INFORMATION CONTACT: Mary Rountree, National Park Service, Southeast Regional Office, Atlanta Federal Center, 1924 Building, 100 Alabama Street, SW, Atlanta, Georgia 30303, (404) 562–3175.

Dated: April 17, 1998.

Wallace C. Brittain,

Chief, Rivers, Trails, and Conservation Assistance, National Park Service, Southeast Region.

[FR Doc. 98–11285 Filed 4–28–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF INTERIOR

National Park Service

Request for Public Comment on Appropriate Studies on Winter Use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway

AGENCY: National Park Service, Interior.

ACTION: Solicitation of public comment on appropriate research topics on winter use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway.

SUMMARY: On September 24, 1998 the National Park Service and the Fund for Animals and other individuals and organizations signed a settlement agreement to resolve litigation concerning the National Park Service Winter Use Plan for Yellowstone National and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway. Under the terms of the agreement the National Park Service agreed to solicit comments on appropriate studies they should conduct on winter use in the parks for use in the ongoing winter use planning process. However, due to the time constraints

imposed by the settlement agreement, some of the proposed and ongoing winter use research may not be completed in time for incorporation into the draft winter use plans and environmental impact statement.

The National Park Service requests that all individuals, organizations, agencies or entities that are interested in or affected by winter visitor use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway share comments or concerns on appropriate topics of research for use in the winter use planning process.

Background

Winter use research projects currently underway in the affected national parks include: the social carrying capacity of Yellowstone National Park for winter use, Hayden Valley bison monitoring, bison use of groomed roads in Yellowstone National Park, characterization of snowmobile particulate emissions, measurement of airborne toxics and regulated pollutants emitted from snowmobiles in Yellowstone National Park, and snowpack and snowmelt runoff chemical analysis at Yellowstone National Park. In addition, research projects are currently being conducted on bison ecology and brucellosis. These studies include forage availability, habitat use, and bison population dynamics.

Proposed research topics include, but are not limited to, snowmobile emissions and the effects of ethanol based fuels, snowmobile mogul generation, a field evaluation of gasohol's ability to reduce snowmobiler exposure to carbon monoxide, noise monitoring, an assessment of winter recreation on wildlife in Yellowstone National Park, and a study of the economics of winter use in the Greater Yellowstone Area.

Comments

Written comments concerning appropriate research topics on winter use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway should be postmarked no later than sixty (60) days from the publication of this notice. Comments should be addressed to Winter Use Research, Planning Office, Box 168, Yellowstone National Park WY, 82190.

FOR FURTHER INFORMATION CONTACT: Sarah Creachbaum, Planning Office, Box 168, Yellowstone National Park WY, 82190, (307) 344–2024; or Nancy Arkin, Planning Office, Grand Teton National Park, Box 170, Moose WY, 83102 (307) 739–3486.

Dated: April 15, 1998.

John E. Cook,

Regional Director, Intermountain Region.

[FR Doc. 98–11286 Filed 4–28–98; 8:45 am]

BILLING CODE 4310–70–P

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, notice is hereby given that on April 16, 1998, the United States of America, on behalf of the United States Environmental Protection Agency (''EPA'') filed a complaint with the United States District Court for the District of Idaho alleging that defendant Monsanto Company and its affiliate P4 Production L.L.C. (together with ''Monsanto'') are liable under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 & 9607, for the implementation of EPA's selected remedy for the Monsanto Company Superfund Site in Caribou County, Idaho (''the Site''), and for the reimbursement of all costs incurred by the United States in response to the release of hazardous substances at the Site. The action is styled *United States* v. *Monsanto,* Civil Action No. C98–*154–E–ELW* (D. Idaho). On the same day, the United States lodged with the United States District Court for the District of Idaho a Consent Decree resolving the United States' claims in this action.

The Consent Decree requires Monsanto to implement EPA's selected remedy for the Site, and to reimburse the United States for $17,980.70, which represents the full amount of unreimbursed costs incurred by the United States in response to releases of hazardous substances from the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Monsanto,* DOJ Ref. #90–11–2–1277.

The proposed Consent Decree may be examined at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98104 (206) 553–1504, and may be obtained from the Office of the United States Attorney for the District of Idaho, P.O. Box 32, Boise, Idaho 83707 (208) 334–1211. A copy of the proposed consent decrees may also 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 *United States* v. *Monsanto,* No. C98–*154–E–ELW* (D. Idaho), and enclose a check payable to the Consent Decree Library in the amount of $20.00 (80 pages at 25 cents per page reproduction costs).

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–11324 Filed 4–28–98; 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, notice is hereby given that a proposed Consent Decree in *United States and State of Connecticut* v. *Town of Southington, et al.,* Civil Action Nos. 3: 98cv8 and 3:98cv236 was lodged on March 12, 1998 with the United States District Court for the District of Connecticut.

The complaint in this action seeks (1) to recover, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 et seq., response costs incurred and to be incurred by the U.S. Environmental Protection Agency (''EPA'') at the Old Southington Landfill Superfund Site located in the Town of Southington, Connecticut (''Site''); and (2) injunctive relief under Section 106 of CERCLA, 42 U.S.C. 9606. The defendants include Town of Southington, United Technologies Corp. and 266 other parties.

The proposed Consent Decree embodies an agreement with two potentially responsible parties (''PRPs'') at the Site pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, to perform a remedial action at the Site including the relocation of businesses located on the Site, the construction of a multi-layer cap, the excavation and consolidation of a ''hot-spot'', the extraction and possible treatment of landfill gases, and the performance of additional goundwater studies. The proposed Consent Decree also embodies an agreement with 266

PRPs at the Site, including the U.S. Army, the U.S. Navy and the General Services Administration, to pay approximately $5.1. million, in aggregate, in settlement of claims for EPA's past and future response costs, and certain private parties' past costs at the Site. The monies paid by these 266 settlers will be used to reimburse past costs incurred at the Site and to partially fund the remedial action being performed by the two performing parties.

The Consent Decree provides the settling defendants with releases for civil liability for: (1) EPA's and the State of Connecticut's (''State's'') past CERCLA response costs at the Site; (2) response costs in connection with the remedy for the Site; and (3) for damages for natural resources under the trusteeship of the Secretary of Commerce, through the National Oceanic and Atmospheric Administration.

Notice of the Consent Decree originally was published on March 26, 1998. See 63 Fed. Reg. 14730–31. Since that time however, the Consent Decree's appendix listing the names of the settling defendants was modified to add the names of additional settling defendants. Because of this modification, the public notice period will be extended. 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, P.O. Box 7611, Washington, D.C. 20044–7611, and should refer to *United States and State of Connecticut* v. *Town of Southington, et al.,* DOJ Ref. No. 90–11–2–420A.

The proposed consent decree may be examined at the Office of the United States Attorney, U.S. Courthouse, 915 Lafayette Blvd., Rm. 309, Bridgeport, CT 06604; the Region I Office of the Environmental Protection Agency, Region I Records Center, 90 Canal Street, First Floor, Boston MA 02203; and at the Consent Decree Library 1120 G Street, N.W., Fourth 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, Fourth Floor, N.W., Washington D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $175.00 (25 cents per page reproduction costs); payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–11325 Filed 4–28–98; 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 Departmental policy, 28 U.S.C. 50.7, and pursuant to 42 U.S.C. 7413(g), notice is hereby given that a proposed Consent Decree in *United States* v. *Total Petroleum, Inc.,* Civil Action No. *97–182 P,* was lodged on April 3, 1998, with the United States District Court for the Eastern District of Oklahoma.

The Consent Decree settles an action brought under section 113 of the Clean Air Act (''the Act''), 42 U.S.C. 7413, and the Standards of Performance for New Stationary Sources (''NSPS''), 40 CFR part 60, subparts A, Ka, VV, GGG, and QQQ. The Consent Decree provides for Total's payment of a civil penalty to the United States in the amount of $75,000, and requires Total to implement and complete a Pollution Reduction Supplemental Environmental Project (''SEP'') costing $315,700 at its Ardmore, Oklahoma facility. The SEP involves the redesign of the alkylation neutralization system to minimize emissions to the atmosphere, eliminate the risk of soil, air and ground water contamination from the system and eliminate any risks to operators by installing a bulk dry line system with enclosed auger delivery into a sealed covered unit. The sealed covered unit will have double containment and leak detection system and scrubbers will minimize fumes and lime dust.

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, DC 20530, and should refer to *United States* v. *Total Petroleum, Inc.,* DOJ Ref. #90–5–2–1–1985.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Oklahoma, 1200 W. Okmulgee Street, Muskogee, Oklahoma 74401; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas; and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 2005, (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 $*5.75* (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–11323 Filed 4–28–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Information Infrastructure Testbed

Notice is hereby given that, on November 12, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Information Infrastructure Testbed, Inc., d/b/a InfoTEST International (''InfoTEST'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have become members of the National Information Infrastructure Testbed: Bellcore, Piscataway, NJ; and Agility Forum—Lehigh University, Bethlehem, PA. Organizations that are no longer National Information Infrastructure Testbed members are: Jet Propulsion Laboratory; PeerLogic; Institute for Defense Analysis; and Lawrence Livermore Laboratory.

No other changes have been made in the membership, nature, or objectives of the consortium. Membership in InfoTEST remains open, and the consortium intends to file additional written notifications disclosing all changes in membership.

On December 7, 1993, InfoTEST filed its original notification (as the National Information Infrastructure Testbed) pursuant to section 6(a) of the Act. The Department of Justice published a notice

in the **Federal Register** pursuant to section 6(b) of the Act on May 18, 1994 (60 FR 25960).

The last notification was filed with the Department of Justice on August 11, 1997. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 31, 1997 (62 FR 58982).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–11326 Filed 4–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Meetings and Agenda

The Spring meetings of committees of the Labor Research Advisory Council will be held on May 19, 20, and 21. All of the meetings will be held in the Conference Center of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE, Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, May 19, 1998

9:30 a.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 3

1. Discuss methods for estimating fatality rates by State
2. Review worker demographic and injury and illness characteristic information from the 1996 Survey of Occupational Injuries and Illnesses
3. Discuss strategies for special epidemiological studies as followback surveys to the BLS Survey of Occupational Injuries and Illnesses
4. Discuss the increase in the occurrence of injuries and illnesses with restricted work activity

1:30 p.m.—Committee on Prices and Living Conditions—Meeting Room 3

1. Update on program developments
   a. Producers Price Indexes
   b. The Consumer Price Index
2. Other business

Wednesday, May 20, 1998

9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 10

1. Union membership as measured by the Current Population Survey (CPS)—Federal employee membership in CPS compared to Office of Personnel Management data
2. Local Area Unemployment Statistics data on the Internet—outlook for easier access to these data
3. Job Opening and Labor Turnover Survey—plans for FY 1999
4. Wage data from the Occupational Employment Statistics Survey—what data are available
5. Longitudinal Database—status of project
6. Supplements to the Current Population Survey
7. Current Employment Statistics—discussion of fluctuations in Average Weekly Hours and Average Hourly Earnings series related to varied length of bi-monthly and monthly payrolls

1:30 p.m.—Committee on Foreign Labor Statistics—Meeting Room 10

1. Report on recent developments in the Office of Productivity and Technology
2. International comparisons of unit labor costs in manufacturing

Committee on Productivity, Technology and Growth—Meeting Room 10

1. Recent trends in productivity measures for major sectors of the U.S. economy
2. The new BLS industry productivity data set
3. Review of 1996–2006 projections publications
4. Overview of the Office of Employment Projections internet site
5. Discussion of information technology worker job market

Thursday, May 21, 1998

9:30 a.m.—Committee on Compensation and Working Conditions (Formerly Wages and Industrial Relations—Meeting Room 3

1. Factors explaining wage variation in the National Compensation Survey
2. Office of Compensation and Working Conditions compensation data on the internet
3. Benefits in the National Compensation Survey

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on (Area Code 202) 606–5970.

Signed at Washington, DC, this 22nd day of April, 1998.

Katharine G. Abraham,

Commissioner.

[FR Doc. 98–11355 Filed 4–28–98; 8:45 am]

BILLING CODE 4510–24–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 98–3]

Change in Procedure for Recording Certain Multiple Title Documents

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of policy decision.

SUMMARY: The Copyright Office of the Library of Congress issues this policy decision changing the recordation procedure for a narrow category of multiple title documents. The change will be incorporated in a revised Chapter 1600 of the Compendium of Copyright Office Practices, ''Recordation of Transfer and Other Documents Pertaining to a Copyright,'' to be made available on-line on the Copyright Office Website on July 1, 1998.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Kent Dunlap, Principal Legal Advisor Copyright, GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Currently, titles that are repeated in documents submitted for recordation are indexed as a single ''title'' and are counted as a single title. Similarly, titles that are repeated and followed by consecutive issues, volumes, chapters or installments are counted and indexed as a single title, even when different registration numbers or dates are listed. For index purposes, the title is followed by a notation such as ''vol. 1, no. 1–12''.

Under the changed practice, titles that are repeated in documents will continue to be counted as a single title, except where the document lists different issues, volumes, chapters, or installments following the title. Each such entry will be regarded as a separate title, and will be indexed separately and counted separately for purposes of computing the recordation fee.

The Office believes that this change will facilitate the search for individual issues or volumes in the Copyright Office records, and that the new method of assessing the fee will more accurately

reflect the additional work involved in separately indexing each entry.

Policy Decision

The Copyright Office's recordation procedure set out in § 1615.07 of Chapter 1600 of the Compendium is amended to read as follows:

Single and multiple titles distinguished. A single title that is repeated is counted as a single ''title'' for the purpose of computing the fee. However, when multiple issues or numbers of a serial, or different chapters or installments are contained in a document, each will be indexed and therefore each is considered to be an individual title for which a separate fee is charged.

Dated: April 23, 1998.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 98–11373 Filed 4–28–98; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME:

May 6, 1998, 1:30 p.m., Closed Session
May 7, 1998, 9:30 a.m., Open Session
May 7, 1998, 12:30 p.m., Closed Session
May 7, 1998, 2:30 p.m., Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1225, Arlington, VA 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Wednesday, May 6, 1998

Closed Session (1:30 p.m.–2:00 p.m.)

—Minutes, February 1998
—National Science Board and Executive Committee Elections

Thursday, May 7, 1998

Open Session (9:30 a.m.–12:00 p.m.)

—Presentation on Third International Mathematics & Science Study (TIMSS)
—Science & Engineering Indicators Web Demonstration
—NOVA Demonstration

Thursday, May 7, 1998

Closed Session (12:30 p.m.–2:30 p.m.)

—Executive Committee Election
—Awards and Agreements
—NSF Budget & Long Range Planning

Thursday, May 7, 1998

Open Session (2:30 p.m.–5:00 p.m.)

—Minutes, February 1998
—Closed Session Items for August 1998
—Chair's Report
—Director's Report
—Executive Committee Annual Report
—NSB Annual Calendar
—NSB Logo

Thursday, May 7, 1998

Open Session (2:30 p.m.–5:00 p.m. continued)

—Final Report of the NSB Chairman ''Teaching & Learning for the 21st Century'' (Report of the TIMSS Task Force)
—Committee Reports
—Other Business
—Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 98–11469 Filed 4–24–98; 4:49 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22–ISFSI; ASLBP No. 97–732–02–ISFSI]

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation); Notice of Hearing

(License Application for Independent Spent Fuel Storage Installation)
April 24, 1998.

Atomic Safety and Licensing Board

Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Jerry R. Kline, and Dr. Peter S. Lam.

On July 31, 1997, the Commission published in the **Federal Register** a notice indicating that it (1) was considering issuing a license pursuant to 10 CFR Part 72 authorizing applicant Private Fuel Storage, L.L.C. (PFS), to possess and store reactor spent fuel in an independent spent fuel storage installation (ISFSI) that PFS proposed to construct and operate on the Skull Valley Goshute Indian Reservation in Skull Valley, Utah; and (2) was offering an opportunity for a hearing on the proposed licensing action. (62 FR 41,099.) Four timely hearing petitions and/or intervention requests challenging the PFS application were filed by the State of Utah (State); Ohngo Gaudadeh Devia (OGD), a Native American group; Confederated Tribes of the Goshute Reservation (Confederated Tribes), a Native American tribe, and David Pete, the Confederated Tribes chairman; and three ranching, farming, and land investment companies, Castle Rock Land and Livestock, L.C. (Castle Rock Land), Skull Valley Co., LTD. (Skull Valley), and Ensign Ranches of Utah, L.C. (Ensign Ranches). Two other entities, the Skull Valley Band of Goshute Indians (Skull Valley Band), a Native American tribe, and the Scientists for Secure Waste Storage (SSWS) also submitted intervention petitions, the latter late-filed, indicating they wished to participate in any hearing in support of the PFS application. Ultimately, these participants proffered more than 100 contentions either opposing or supporting the PFS application and the accompanying safety analysis report, environmental report, emergency plan, physical security plan, and preliminary decommissioning plan.

In a September 10, 1997 memorandum, the Commission referred the pending hearing requests to the Atomic Safety and Licensing Board Panel for the appointment of a presiding officer to conduct any necessary proceedings. On September 15, 1997, the Chief Administrative Judge of the Panel appointed this Atomic Safety and Licensing Board to act on the Commission's referral. (62 FR 49,263.) The Board consists of Dr. Jerry R. Kline, Dr. Peter S. Lam, and G. Paul Bollwerk, III, who serves as Chairman of the Board.

On January 26, 1998, accompanied by representatives of the various participants, the Board took a bus tour of the eastern Tooele County, Utah area that included views of, or stops at, various sites in and around Skull Valley the petitioners had identified as potentially relevant to the issues in this proceeding. The Board then conducted a three-day prehearing conference (January 27–29, 1998) during which it heard oral presentations regarding the standing of petitioners Confederated Tribes and Chairman Pete and the admissibility of most of the contentions filed by the petitioners opposing the PFS application. Thereafter, on March 26, 1998, the Chief Administrative Judge issued a notice establishing a separate licensing board to consider and rule on all matters concerning the PSF physical security plan. (63 FR 15,900.)

On April 22, 1998, the Licensing Board issued a memorandum and order ruling on the petitioners' standing and the admissibility of the contentions that did not involve challenges to the PFS physical security plan. (See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP–98–7, 47 NRC ____ (Apr. 22, 1998).) The Board denied the hearing requests of petitioners David Pete, SSWS, and Ensign Ranches, the first two because they lacked standing and the third because it had failed to set forth an admissible contention. Concluding the remaining intervenors had established their standing to intervene and had proffered at least one admissible contention, the Board

granted the petitions of the State, Castle Rock Land/Skull Valley, OGD, Confederated Tribes, and Skull Valley Band and admitted them as parties to the proceeding.

In light of the foregoing, please take notice that a hearing will be conducted in this proceeding. This hearing will be governed by the formal hearing procedures set forth in 10 CFR Part 2, Subpart G (10 CFR 2.700–.790).

During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 CFR 2.755, may hold additional prehearing conferences pursuant to 10 CFR 2.752, and may conduct evidentiary hearings in accordance with 10 CFR 2.750–.751. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Rooms.

Additionally, as provided in 10 CFR 2.715(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence, but may assist the Board and/or parties in defining the issues being considered. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Rulemakings and Adjudications Staff. A copy of the statement also should be served on the Chairman of the Atomic Safety and Licensing Board. At a later date, the Board will entertain oral limited appearance statements at a location or locations in the vicinity of the proposed PFS facility. Notice of these oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Rooms.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. 20555; and at the NRC Local Public Document Room at the University of Utah, Marriott Library, Documents Division, 295 S. 1500 East, Salt Lake City, Utah 84112–0860.

Rockville, Maryland, April 24, 1998.

For the Atomic Safety and Licensing Board *.

G. Paul Bollwerk, III,

Chairman, Administrative Judge.

[FR Doc. 98–11404 Filed 4–28–98; 8:45 am]

BILLING CODE 7590–01–P

* Copies of this notice of hearing were sent this date to counsel for the applicant PFS, and to counsel for petitioners Skull Valley Band, SSWS, OGD, Confederated Tribes/Pete, Castle Rock Land/Skull Valley/Ensign Ranches, and the State by Internet e-mail transmission; and to counsel for the NRC staff by e-mail through the agency's wide area network system.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 301]

Wisconsin Electric Power Company; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Wisconsin Electric Power Company (the licensee) to withdraw its December 13, 1995, application for proposed amendments to Facility Operating License Nos. DPR–24 and DPR–27 for the Point Beach Nuclear Plant, Unit Nos. 1 and 2, located in Manitowoc County, Wisconsin.

The proposed amendments would have revised the Technical Specifications to include the provisions for a core operating limits report.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on January 22, 1996 (61 FR 1638). However, by letter dated April 6, 1998, the licensee withdrew the proposed changes. For further details with respect to this action, see the application for amendments dated December 13, 1995, and the licensee's letter dated April 6, 1998, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 20th day of April 1998.

For the Nuclear Regulatory Commission.

Linda L. Gundrum,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–11340 Filed 4–28–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306]

Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–42 and DPR–60, issued to Northern States Power Company (NSP or the licensee), for operation of Prairie Island Nuclear Generating Plant, Units 1 and 2, located in Goodhue County, Minnesota.

Environmental Assessment

Identification of the Proposed Action

The proposed action would permit the licensee to use American Society of Mechanical Engineers (ASME) Code Case N–514 for setting the pressure setpoint of each unit's overpressure protection system (OPPS) so that the pressure-temperature (P–T) limits required by 10 CFR Part 50, Appendix G, could be exceeded by 10 percent during a low temperature pressure transient. By application dated March 6, 1998, the licensee requested an exemption from certain requirements of 10 CFR 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation,'' and 10 CFR Part 50, Appendix G, ''Fracture Toughness Requirements.''

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all lightwater nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR Part 50, Appendix G. Appendix G of 10 CFR Part 50 defines P–T limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime, and specifies that these P–T limits must be at least as conservative as the limits obtained by following the methods of analysis and the margins of safety of the ASME Code, Section XI, Appendix G.

By letter dated March 6, 1998, NSP submitted an exemption request to enable the use of ASME Code Case N–514 as an alternative method for determining the OPPS setpoint. NSP

determined that the exemption request from the provisions of 10 CFR 50.60 and Appendix G was necessary since these regulations require, as noted above, that the reactor vessel conditions not exceed the P–T limits established by Appendix G. In referring to 10 CFR 50.12 on specific exemptions, NSP cited special circumstances as stated in 10 CFR 50.12(a)(2)(ii) on achieving the underlying purpose of the regulations as its basis for requesting this exemption.

The underlying purpose of 10 CFR Part 50, Appendix G, is to establish fracture toughness requirements for the reactor coolant system (RCS) pressure boundary to provide adequate margins of safety during any condition of normal operation. The OPPS provides a physical means of protecting these limits. NSP proposed that establishing the OPPS pressure setpoint per the N–514 provisions such that the vessel pressure would not exceed 110 percent of the P–T limit allowables would still provide an acceptable level of safety and mitigate the potential for an inadvertent actuation of the OPPS.

The plant operators must operate the plant in a pressure window that is between the minimum pressure required to preserve reactor coolant pump seals and at a maximum pressure that does not challenge the power-operated relief valve setpoint. Without the application of ASME Code Case N–514, Prairie Island would have an operating window that is too narrow to permit reasonable system makeup and pressure control. Further reduction of the OPPS setpoint below 500 psig would increase the probability that the reactor coolant pumps' no. 1 seal will fail as a result of OPPS operation, and that such a seal failure could produce a breach in the RCS boundary that could not be isolated. Therefore, inadvertent OPPS actuation could lead to a small break loss-of-coolant accident and the unnecessary release of reactor coolant inside containment.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action involves features located entirely within the protected areas as defined in 10 CFR Part 20.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Prairie Island Nuclear Generating Plant.

Agencies ad Persons Consulted

In accordance with its stated policy, on April 7, 1998, the staff consulted with the Minnesota State official, Mike McCarthy of the Department of Public Service, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 6, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 23rd day of April, 1998.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–11339 Filed 4–28–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Survey of Steel Mills: Support of a Risk Assessment of Generally and Specifically Licensed Devices

AGENCY: Nuclear Regulatory Commission.

ACTION: Survey of Steel Mills: Withdrawal.

SUMMARY: On August 14, 1997, (62 FR 43556) NRC announced its intentions to conduct a survey of the steel industry for obtaining data tailored to a risk analysis. The survey would have provided empirical data about discoveries of radioactive material in the recycling stream. A risk analysis would use this information as the basis to systematically evaluate the effectiveness of current regulation and possible regulatory changes. The analysis supports regulatory changes toward improving the control of radioactive devices commonly used in many industries.

The NRC received three letters from trade associations and a steel mill. All of these letters indicated that their organizations would not support the survey. Because participation in the survey would be voluntary and the letters were negative, the response rate for the survey would likely be low, resulting in insufficient data for a risk analysis as originally planned. Therefore, the NRC has decided not to conduct the survey.

NRC is continuing the risk analysis with appropriate adjustments to accommodate for the lack of data available without the survey. The NRC will re-evaluate the need for the survey after the risk analysis is completed. If the NRC decides to conduct the survey at a later date, the survey will be announced in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Christopher Ryder, Mail Stop TWFN 10E–50, Division of Systems Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6102; electronic mail address: CPR@NRC.GOV.

Dated at Rockville, MD., this 22nd day of April, 1998.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–11341 Filed 4–28–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: Form RI 20–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for reclearance of a revised information collection. RI 20–1, Application for Minimum Annuity, is completed by annuitants to determine if they qualify for minimum annuity under the provisions of 5 U.S.C. 8345(f).

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 50 RI 20–1 forms will be completed annually. We estimate it takes approximately 15 minutes to complete the form. The annual burden is 13 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before June 29, 1998.

ADDRESSES: Send or deliver comments to Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–11405 Filed 4–28–98; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, May 7, 1998.

The meeting will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: April 20, 1998.

Phyllis G. Heuerman,

Acting Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 98–11356 Filed 4–28–98; 8:45 am]

BILLING CODE 6325–01–P

POSTAL SERVICE

Revised Form 8125, Plant-Verified Drop Shipment (PVDS) Verification/ Clearance and New Facsimile Consolidated Form 8125, Plant-Verified Drop Shipment (PVDS) Verification/ Clearance; Consolidated

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: This notice presents pending revisions to Form 8125, *Plant-Verified Drop Shipment (PVDS) Verification/ Clearance*, and Form 8125–C, a new *Plant-Verified Drop Shipment (PVDS) Verification/Clearance—Consolidated* form intended for use as a computer-generated facsimile. The Mailer's Technical Advisory Committee (MTAC) 8125 Redesign Work Group developed the revised forms. The Postal Service expects the revised hard copy Form 8125 to be available this summer. Once the final format is approved, Forms 8125 and 8125–C will be available on the USPS Web (www.usps.gov/busctr/welcome.htm under business forms).

In addition, Form 2866–IP, In-Plant Verification for Second- and Fourth-Class Matter, will be eliminated upon implementation of the revised forms 8125 and 8125–C. Form 2866–IP is used by some Periodicals mailers who pay postage through the Centralized Postage Payment (CPP) program.

To ensure that the revised Forms 8125 and facsimile 8125–C meet the needs of customers, the Postal Service is seeking comments from PVDS mailers regarding the revisions described in this notice. Copies of the revised draft Forms 8125 and 8125–C are available for review on the USPS Web page in the business section under Rates & Classification

initiatives. You may also request copies using the address indicated below.

DATES: Comments must be received on or before May 29, 1998.

ADDRESSES: Mail or deliver written comments to the Manager, Business Mail Acceptance, USPS Headquarters, 475 L'Enfant Plaza SW Rm 6801, Washington, DC 20260–6808. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION: Under the provisions of *Domestic Mail Manual* (DMM) P750.2.9, mailers must submit a completed Form 8125 to the origin (verifying) post office for each PVDS mailing destined for a destination entry post office. The completed form serves as a receipt indicating that the postage for a shipment being presented to a destination entry postal facility for acceptance as mail has been paid at the appropriate rates.

Many mailers are using early versions of Form 8125 rather than the most recent version (October 1996). Other mailers are using computer-generated facsimile Form 8125 with formats and data elements that vary from the current Form 8125. A large number of mailers are using a facsimile consolidated Form 8125 (replaced by Form 8125–C) to represent multiple mailings for a single destination entry office that originate from the same mailing plant. Because the information on many of these forms appears in varied locations or formats, or is missing altogether on some older Forms 8125 and on facsimile forms, it often is difficult for destination entry facilities to readily identify key information on the forms to attempt to compare the information with the physical mail being presented for acceptance.

The MTAC 8125 Redesign Work Group was formed to develop a usable Form 8125 for single mailings to an entry postal facility, as well as to develop a standard format for consolidated facsimile Form 8125, for use by all PVDS mailers. Use of the new forms 8125 and 8125–C is intended to allow entry postal facilities to readily identify key information on the forms for comparison with the physical mail. The attendees of the work group agreed to limit the focus of their efforts to the design and use of Form 8125 rather than to any broader issues related to PVDS in general that do not directly relate to the current clearance document. The Postal Service proposes phasing out older versions of Form 8125 and facsimiles that do not meet the new format standards over a 6-month period to begin 30 days from the publication of the final notice in the **Federal Register** announcing availability of the revised forms.

The MTAC work group agreed that Form 8125 does not necessarily need to be a hard copy document and that future developments, such as Direct Link, may offer an electronic alternative for some mailers. However, the focus of the group was on the general needs of the Postal Service and mailing industry in our current hard copy environment.

Form 8125

The following key features are incorporated into the revised Form 8125 for single mailings:

- Form 8125 contains only essential elements presented in an easy-to-read format.
- Form 8125 will continue to be a three-part form.
- Facsimile forms used by mailers must closely mirror the layout and content of Form 8125.
- Detailed instructions for completion of the form will be printed on the reverse of each page of the Form 8125. These instructions will not be required to be printed on facsimile forms. Removing the instructions from the front of the form will make the form less cluttered and ensure that key information about mailing(s) will appear more prominently. Facsimile forms also will be easier to print. The instructions to appear on the reverse have been expanded to include more information about PVDS requirements because these postal forms are more likely to be used by mailers less familiar with PVDS than mailers who use computer-generated facsimile forms.
- The information on the front of Form 8125 more clearly describes the mail verified for both mailers and postal employees responsible for verifying and accepting PVDS mailings.
- The revised form includes information for contacting the origin postal facility and mailer when problems are identified at destination entry offices.
- Because it is the key to closing out an appointment in the Drop Ship Appointment System (DSAS), the confirmation (appointment) number is moved to the top of Form 8125 to make it clearly identifiable.
- No data elements of the revised Form 8125 appear in shaded areas (currently the entry post office block is shaded) because shaded areas do not photocopy well.
- Information about the units comprising the mailing are described more clearly to differentiate between mail properly presorted and cleared for acceptance at origin as palletized mail and mail that was not cleared at origin as palletized mail (e.g., trays presorted on pallets will be identified as such while trays that are not verified and cleared as properly palletized trays will be identified as nonpalletized mail).
- A mailer comment section is included in Part 1. This may be used for information relevant to the load or the shipper, such as the name (and possibly the telephone number) of the consolidator, if one is used, if known at the time the form is being completed.
- Information has been added to accommodate drop-shipped international mail (e.g., ISAL).
- Information about load condition for completion by entry postal facilities is included on Form 8125 in a manner (as a list of items to check) that will facilitate entering the information into DSAS.

Proposed Format for Form 8125–C

Some mailers have been approved to present facsimile consolidated Forms 8125. The new Form 8125–C will allow mailers to identify multiple mailings for the same destination entry office that are prepared by a single mailer and verified and cleared for dispatch on a single day. The mailings must be transported on the same vehicle to the destination entry office. The consolidated form contains line item information about each mailing and total information about the unit loads being presented to the destination facility. It simplifies the process by which the destination entry office compares total mail units presented with the totals shown on the consolidated form (e.g., total pallets). The new Form 8125–C was established by the MTAC work group members to replace the variety of formats currently being used by mailers. Because these forms are most likely to be computer generated, there is no justification for the Postal Service to print Form 8125–C.

The proposed format of Form 8125–C omits several separate data blocks that appear in Part 1—Mailer and Part 2—Post Office of Origin sections on Form 8125 because the information is shown in the line item entries describing each individual mailing reported on the facsimile consolidated Form 8125–C in Part 1. For example, the following items that appear in separate sections in Parts 1 and 2 on the revised Form 8125 are included in the line entry (in columns) for each mailing reported on the consolidated Form 8125–C:

- Class of mail

- Product name/ID
- Type and number of containers
- Piece weight
- Weight of mailing
- Postage payment method.

Other information to be included for each mailing reported as a line item entry includes:

- Permit holder
- Postage statement sequence number
- Number of pieces in the mailing.

Elimination of Form 2866–IP

Some mailers who pay postage through the CPP program still use Form 2866–IP, In-Plant Verification for Second- and Fourth-Class Matter, for Periodicals mailings that are verified at a central location and deposited at destination entry offices. Because the information on Form 2866–IP is duplicated on Form 8125, there is no longer any need for a separate Form 2866–IP. CPP customers have already been notified that Form 2866–IP will be eliminated when the revised Forms 8125 and 8125–C are available.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–11045 Filed 4–28–98; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23126; 812–10892]

The Americas Growth Fund, Inc., et al.; Notice of Application

April 23, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under section 57(c) of the Investment Company Act of 1940 (the ''Act'') from section 57(a) of the Act.

SUMMARY OF APPLICATION: The order would permit The Americas Growth Fund, Inc. (''AGRO''), a business development company (''BDC''), to complete a merger with an affiliated person.

APPLICANTS: AGRO and JW Charles Financial Services, Inc. (''JWCFS'').

FILING DATE: The application was filed on December 9, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 19, 1998, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: AGRO, 701 Brickell Avenue, Suite 2000, Miami, Florida 33131 and JWCFS, 980 North Federal Highway, Suite 310, Boca Raton, Florida 33432.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

Applicants' Representations

1. AGRO is a Maryland corporation that is a closed-end non-diversified management investment company and that has elected to be regulated as a BDC under the Act. AGRO's common stock was listed on Nasdaq until delisted on March 17, 1998. JWCFS is a Florida corporation and a financial services holding company. JWCFS, through wholly-owned subsidiaries, engages primarily in securities brokerage, investment banking, and clearing and execution of securities transactions. JWCFS's common stock trades on the American Stock Exchange (''AMEX'').

2. On August 13, 1997, JWCFS commenced an exchange offer (the ''Exchange Offer'') to AGRO's shareholders to acquire each share of AGRO common stock for .431 shares of JWCFS common stock (the ''Exchange Ratio''). The Exchange Ratio was calculated based upon the net asset value (''NAV'') per share of AGRO common stock on March 31, 1997 and the average of the last reported sales prices of JWCFS common stock on AMEX for the ten trading days immediately preceding the public announcement of the Exchange Offer on June 9, 1997. In connection with its consideration of the Exchange Offer, the board of directors of AGRO (''Board'') engaged an independent appraiser to provide an opinion concerning the fairness of the transaction from a financial point of view to the shareholders of AGRO. Based upon the value of the offer using the traded market price of the common stock of both AGRO and JWCFS and applying the Exchange Ratio and its comparison to: (a) the traded market price of AGRO's common stock; (b) the NAV per share of AGRO's common stock; and (c) the liquidation value per share of AGRO's common stock, the appraiser delivered an opinion to the Board on August 22, 1997 concluding that the JWCFS common stock to be received as consideration for the sale of AGRO common stock to JWCFS, if the JWCFS common stock had a value of $3.40 per share or higher, was fair from a financial point of view to the shareholders of AGRO. The price of JWCFS common stock on August 14, 1997 (the date the Exchange Offer began) and September 22, 1997 (the date of the Exchange Offer ended) was $3.66 and $3.50, respectively. The JWCFS common stock to be received per share of AGRO common stock represented a premium to AGRO shareholders of 23.2% and 12.5% in August 14 and September 22, 1997, respectively. A prospectus and related letter of transmittal relating to the Exchange Offer were mailed to AGRO's shareholders on August 14, 1997. The prospectus stated that the Exchange Offer would be followed by a consolidating merger. As a result of the Exchange Offer, JWCFS now owns approximately 91 percent of the issued and outstanding common stock of AGRO.

3. Applicants propose to merge AGRO into JWCFS at the earliest practicable date following receipt of the requested order (the ''Merger''). Because JWCFS now owns more than 90 percent of the outstanding AGRO common stock, JWCFS may carry out the Merger as a ''short-form'' merger under the relevant provisions of Florida and Maryland corporate law. The short-form merger would permit the Merger to be accomplished without a vote of the shareholders of either corporation.

4. Under the proposed terms of the Merger, each share of AGRO common stock not owned by JWCFS would be canceled and those AGRO shareholders would be entitled to receive .431 share of JWCFS common stock for each share of AGRO common stock owned by them (which is the same as the Exchange Ratio used for the Exchange Offer). In the Merger, JWCFS would become the owner of all of the issued and outstanding common stock of AGRO and, as the sole shareholder of AGRO, intends to approve the withdrawal of AGRO's status as a BDC under the Act.

JWCFS would be the surviving corporation in the Merger.

5. Prior to the Merger, AGRO's minority shareholders will receive a prospectus with respect to the shares of JWCFS common stock being offered in connection with the Merger (the ''Prospectus'') which discloses the terms and the effective date of the Merger and the consideration to be paid by JWCFS. In addition, the Prospectus will inform AGRO's minority shareholders of their appraisal rights under Maryland law. The appraisal rights would entitle the shareholders to dissent from the Merger and receive the fair value of their shares of AGRO in cash.

6. The Merger will constitute a reorganization pursuant to section 368(a) of the Internal Revenue Code of 1986, as amended. Any AGRO minority shareholder receiving solely shares of JWCFS in the Merger will not recognize any gain or loss for federal income tax purposes. In addition, the Merger will have no material tax consequences for AGRO or JWCFS.

Applicants' Legal Analysis

1. Section 57(a) generally prohibits, with certain exceptions, sales or purchases of securities or other property between a BDC and certain of its affiliated persons as described in section 57(b) of the Act, including a person controlling the BDC. JWCFS owns approximately 91 per cent of AGRO's shares and, thus, controls AGRO under section 2(a)(9) of the Act. Because the Merger may involve the purchase of the property of AGRO by JWCFS, applicants are requesting relief from section 57(a) to complete the Merger.

2. Section 57(c) of the Act provides that the SEC will exempt a proposed transaction from section 57(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; and the proposed transaction is consistent with the policy of the BDC concerned and with the general purposes of the Act. Applicants believe that the requested relief from section 57(a) meets these standards for the reasons discussed below.

3. Applicants state that the Board has determined that the Exchange Ratio is fair consideration for the minority shareholders of AGRO to receive in the Merger. Applicants state that a comparison of the closing sales price of JWCFS common stock on April 13, 1998 ($11^{15}/_{16}$) to AGRO's NAV of $3.46 on December 31, 1997 (the most recent date on which AGRO's Board determined AGRO's NAV) indicates that the Exchange Ratio would represent a premium to AGRO's minority shareholders of approximately 48.7%.

4. Applicants state that the Board also considered, in addition to other factors: that AGRO has never paid dividends on its common stock and has no plans to pay any dividends in the future; that there are no possible alternative transactions similar to the Merger with unaffiliated third parties; that, if the Merger is not consummated, it is unlikely that the minority shareholders of AGRO will realize any return on their holdings in the foreseeable future; that the Merger would provide AGRO's minority shareholders with a way of disposing of their shares and obtaining a return on their investment that would not otherwise be available; that following the Merger, AGRO's assets could be redirected into the existing business of JWCFS for the benefit of JWCFS shareholders (which would include all of AGRO's minority shareholders who do not choose to exercise appraisal rights under Maryland law to receive cash); and that the AGRO minority shareholders have available appraisal rights under Maryland law. In addition, the boards of directors of both AGRO and JWCFS have reserved the right to abandon the Merger at any time if the boards determine that it would not be in the best interests of the respective company to consummate the Merger.

For the Commission, by the Division of Investment Management, under delegated authority.

[FR Doc. 98–11394 Filed 4–28–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23125; 812–11080]

Freedom Mutual Fund, et al.; Notice of Application

April 23, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of new investment advisory agreements, for a period of up to 150 days following the later of: (i) the date the assignment of the existing investment advisory agreements is deemed to have occurred, or (ii) the date the requested order is issued (but in no event later than October 31, 1998), and to permit the investment adviser to certain registered management investment companies to receive all fees earned under the new agreements during this interim period.

APPLICANTS: Freedom Mutual Fund (''Freedom Mutual''), on behalf of Freedom Cash Management Fund and Freedom Government Securities Fund (''Freedom Funds''), Freedom Group of Tax Exempt Funds (''Freedom Group''), on behalf of Freedom Tax Exempt Money Fund and Freedom California Tax Exempt Money Fund (''Group Funds''), FundManager Portfolios (together with Freedom Mutual and Freedom Group, ''Trusts''), on behalf of FundManager Aggressive Growth Portfolio, FundManager Growth Portfolio, FundManager Growth with Income Portfolio, FundManager Bond Portfolio, FundManager Managed Total Return Portfolio, FundManager International Portfolio (together with the Freedom Funds and the Group Funds, ''Funds''), and Freedom Capital Management Corporation (the ''Adviser'').

FILING DATES: The application was filed on March 20, 1998, and amended on April 14, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 14, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Freedom Capital Management Corporation, One Beacon Street, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser (202) 942–0562, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trusts are registered under the Act as open-end management investment companies. The Advisers, an investment adviser registered under the Investment Advisers Act of 1940, is an indirect wholly-owned subsidiary of Freedom Securities Corporation (the ''Parent''). The Adviser manages the Funds' assets under investment advisory agreements with the Trusts (the ''Existing Agreements''). Thomas H. Lee Equity Fund III, L.P., Thomas H. Lee Foreign Fund III, L.P., and THL–CCI, L.P. (the ''Thomas Lee Entities'') own more than 25% of the outstanding voting securities of the Parent.

2. The Parent currently is involved in a series of transactions which will result in its issuing a significant number of additional shares of its common stock, and pursuant to which the Thomas Lee Entities will be selling their shares of the Parent's common stock to the public. Upon the issuance of additional shares of the Parent's common stock pursuant to these transactions, the Thomas Lee Entities will own less than 25% of the outstanding voting securities of the Parent. In addition, a stockholder agreement between the Thomas Lee Entities and certain other shareholders of the Parent with respect to the exercise of certain shareholder voting rights held by the shareholders (the ''Stockholders Agreement'') is expected to terminate 45 days following the closing of the Parent's public offering of its common stock. As a result of the occurrence of these events, the Thomas Lee Entities may no longer be deemed to control the Parent, and an indirect change in control of the Adviser may be deemed to have occurred.

3. The indirect change in control of the Adviser will result in an assignment, and thus automatic termination, of the Existing Agreements. Applicants request an exemption to permit the Adviser and the Trusts to enter into new advisory agreements (''New Agreements'') without prior shareholder approval. The requested exemption would cover an interim period of not more than 150 days beginning on the later of (a) the earliest date on which either (i) the stock ownership of the Thomas Lee Entities in the parent falls below 25%, or (ii) the Stockholders Agreement terminates (either event, the ''Transaction''), or (b) the date on which the requested order is issued, and continuing with respect to each Fund through the date the New Agreements are approved or disapproved by the shareholders of the respective Funds (but in no event later than October 31, 1998) (the ''Interim Period''). The Transaction is expected to occur in May 1998.[1]

4. The Trusts' boards of trustees (the ''Boards'' or the ''Boards of Trustees''), including a majority of the Trustees who are not ''interested persons'' of the Trust (''Independent Trustees''), met on March 17, 1998, and voted unanimously to approve the preparation and filing of preliminary proxy materials for a special meeting of shareholders of each Fund to consider the New Agreements. The Boards also met in person on March 30, 1998, to consider and act upon the approval of the New Agreements in accordance with section 15(c) of the Act, and to evaluate whether the terms of the New Agreements are in the best interests of the Funds and their shareholders. The Trustees, including a majority of the Independent Trustees, unanimously approved the New Agreements, and recommended their approval to the shareholders of the Funds.

5. The fees payable to the Adviser during the Interim Period under the New Agreements will be paid into an interest-bearing escrow account with an unaffiliated bank. The escrow agent will release the amounts held in the escrow account (including interest earned on paid fees) to: (i) The Adviser if shareholders of the Funds approve the relevant New Agreement; or (ii) the relevant Fund, in the absence of approval by shareholders. Before amounts are released from the escrow accounts, the Boards will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Section 15(a) further requires that such written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that, when the Transaction occurs, the Thomas Lee Entities may no longer be deemed to control the Parent, and an indirect change in control of the Adviser may be deemed to have occurred. The Transaction thus may be deemed to result in an assignment of the Existing Agreements within the meaning of section 2(a)(4) of the Act, and a termination of the Existing Agreements according to their terms.

3. Rule 15a–4 provides, in pertinent part, that if any investment advisory contract with an investment company is terminated by assignment, the adviser may continue to act as such for 120 days under a written contract that has not been approved by the investment company's shareholders, provided that: (a) The new contract is approved by the board of directors (including a majority of trustees that are not ''interested persons'' of the investment company); (b) the compensation to be paid under the new contract does not exceed the compensation which would have been paid under the contract most recently approved by shareholders of the investment company; and (c) neither the adviser nor any controlling person of the investment adviser ''directly or indirectly receives money or other benefit'' in connection with the assignment. Applicants state that they may not rely on rule 15a–4 because the Parent or the Thomas Lee Entities may be deemed to receive a benefit in connection with the Transaction.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that the requested relief satisfies this standard.

5. Applicants state that, without an exemption, there may not be an adequate period to obtain approval of the New Agreements by the shareholders of each Fund prior to the Transaction. Applicants state that they mailed proxy materials to shareholders on April 15, 1998, and April 16, 1998, and the requisite shareholder meetings to consider approval of the New Agreements are expected to be held on or about May 20, 1998.

[1] Applicants state that if the Transaction precedes the issuance of the requested order, the Adviser will continue to serve as investment adviser after the Transaction (and prior to the issuance of the order) in a manner consistent with its fiduciary duty to continue to provide advisory services to the Funds even though approval of the new arrangements has not yet been secured from the Funds' shareholders. Applicants also state that the Funds may be required to pay, with respect to the period until receipt of the order, no more than the actual out-of-pocket cost to the Adviser for providing advisory services.

6. Applicants state that, given the frequency of the failure of shareholders to return proxies, and the large number of beneficial owners of shares of the Funds, 150 days is necessary to obtain shareholder approval of the New Agreements. Applicants state that during the Interim Period, each Fund would operate under the New Agreements, which are substantially identical to the Existing Agreements, except for the effective dates, termination dates and the updated names of the Funds. Applicants also state that no changes are anticipated in the personnel providing investment management services to the Funds during the Interim Period. Applicants therefore submit that each Fund should receive, during the Interim Period, the same investment advisory services, provided in the same manner, at the same fee levels, and by substantially the same personnel as before the Transaction.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. The New Agreements will have the same terms and conditions as the Existing Agreements, except for the effective dates, termination dates, and the updated names of the Funds.

2. Fees earned by the Adviser in respect of the New Agreements during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account, (including interest earned on such paid fees), will be paid (a) to the Adviser, after the requisite approval of shareholders are obtained, or (b) to the respective Fund, in the absence of such approvals.

3. The Funds will hold meetings of shareholders to vote on approval of the New Agreements on or before the 150th day following the termination of the Existing Agreements (but in no event later than October 31, 1998).

4. The Advisor and/or Parent will bear the costs of preparing and filing the application and the costs relating to the solicitation of shareholder approval of the New Agreements.

5. The Adviser will take all appropriate steps to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Boards, including a majority of the Independent Trustees, to the scope and quality of services previously provided under the Existing Agreements. If personnel providing material services during the Interim Period change materially, the Adviser will apprise and consult with the Board of the affected Funds to assure that they, including a majority of the Independent Trustees, are satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–11288 Filed 4–28–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act, Release No. 23124; 812–11022]

Nations Fund Trust, et al.; Notice of Application

April 22, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain series of Nations Fund Trust (''NFT''), Nations Fund, Inc. (''NFI''), and Nations Institutional Reserves (''NIR'') to acquire all of the assets and liabilities of all of the series of Emerald Funds (''Emerald'').

APPLICANTS: NFT, NFI, NIR, NationsBanc Advisors, Inc. (''NBAI''), Emerald, and Barnett Capital Advisors, Inc. (''Barnett'').

FILING DATES: The application was filed on February 23, 1998. Applicants have agreed to file an amendment, the substance of which is included in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 13, 1998 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: NFT, NFI, NIR, and NBAI, One NationsBank Plaza, Charlotte, NC 28255; Emerald, 3435 Stelzer Road, Columbus, OH 43219; and Barnett, 9000 Southside Boulevard, Building 100, Jacksonville, FL 32256.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, (202) 942–0583, or Christine Y. Greenlees, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

Applicants' Representations

1. Emerald, a Massachusetts business trust, is an open-end management investment company registered under the Act. Emerald currently offers shares in fourteen series (the ''Acquired Funds'').

2. NFT and NIR, each a Massachusetts business trust, and NFI, a Maryland corporation, are open-end management investment companies registered under the Act. Each company offers shares in certain series, some of which constitute the ''Acquiring Funds'' (together with the Acquired Funds, the ''Funds''). NFT offers shares in thirty-nine series, seven of which are Acquiring Funds. NFI offers shares in eight series, four of which are Acquiring Funds. NIR offers shares in four series, one of which is an Acquiring Fund. Each of NFI and NIR is organizing a new shell series, which also will be Acquiring Funds.[1]

3. Barnett is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and is the investment adviser to the Acquired Funds. Barnett is a wholly-owned subsidiary of Barnett Bank, N.A., which, in turn, is a wholly-owned subsidiary of Barnett Banks, Inc. As of the date of the application, Barnett and its affiliates, all of which are part of a common control group (the ''Barnett Group''), held of record, in their name and in the names of their nominees, more than 25% of the outstanding voting shares of certain classes of shares of the Acquired Funds. All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity, except that Barnett Bank, N.A.

[1] Registration statements for the two shell Acquiring Funds were declared effective on April 6, 1998, and April 7, 1998. These funds are expected to commence operations upon the consummation of the Reorganizations (as defined below).

may, from time to time, own more than 5% but less than 10% of a certain class of shares of certain Acquired Funds for its own account.

4. NBAI is registered under the Advisers Act and is the investment adviser for the Acquiring Funds. NBAI is a wholly-owned subsidiary of NationsBank, N.A., which, in turn, is a wholly-owned subsidiary of NationsBank Corporation (''NationsBank'').

5. On January 9, 1998, Barnett Banks, Inc. merged into NB Holdings Corporation, a subsidiary of NationsBank (the ''Holding Company Merger''). As a result of the Holding Company Merger, Barnett became an indirect wholly-owned subsidiary of NationsBank.

6. On January 16, 1998, and February 12, 1998, respectively, the boards of directors and trustees of NFT, NFI, and NIR (the ''Nations Funds' Boards'') and the board of trustees of Emerald (the ''Emerald Board''), including their disinterested directors and trustees, unanimously approved Agreements and Plans of Reorganization between Emerald and each of NFT, NFI, and NIR (each a ''Reorganization Plan'' and collectively, the ''Reorganization Plans''). Pursuant to the Reorganization Plans, each Acquiring Fund will acquire all of the assets and liabilities [2] of the corresponding Acquired Fund in exchange for shares of designated classes of the Acquiring Fund (the ''Reorganizations'').[3] The number of Acquiring Fund shares to be issued to shareholders of the Acquired Fund will be determined by dividing the aggregate net assets of each Acquired Fund class by the net asset value per share of the corresponding Acquiring Fund class, each computed as of the close of business on the closing date (''Closing Date''). The Reorganization Plans provide that these Acquiring Fund shares will be distributed *pro rata* to the shareholders of record in the applicable Acquired Fund class, determined as of the close of business on the Closing Date. This distribution will be accomplished by issuing the Acquiring Fund shares to open accounts on the share records of the Acquiring Funds in the names of the Acquired Fund shareholders. Simultaneously, all issued and outstanding shares of the Acquired Funds will be cancelled on the books of the Acquired Funds. Each Acquired Fund, and Emerald, thereafter will be dissolved.

7. The Acquiring Funds fall into three categories. First, there are three Acquiring Funds that offer shares in six classes (Primary A, Primary B, Investor A, Investor B, Investor C, and Daily) (''Category 1 Acquiring Funds''). Second, there are nine Acquiring Funds that offer shares in four classes (Primary A, Investor A, Investor B [formerly Investor N], and Investor C) (''Category 2 Acquiring Funds''). Seven of the Category 2 Acquiring Funds also offer Primary B class shares. Third, there are two Acquiring Funds that offer shares in four classes (Adviser, Capital, Liquidity, and Market) (''Category 3 Acquiring Funds''). Shares in the following classes will be issued in the Reorganizations: Primary A, Investor A, and Daily shares in the Category 1 Acquiring Funds; Primary A and Investor A shares in the Category 2 Acquiring Funds; and Capital shares in the Category 3 Acquiring Funds. No distribution fees are paid by the Primary A shares in either the Category 1 or Category 2 Acquiring Funds or by the Capital shares in the Category 3 Acquiring Funds. Investor A shares in both the Category 1 and Category 2 Acquiring Funds are subject to distribution and shareholder servicing fees under a rule 12b–1 plan. Daily shares in the Category 1 Acquiring Funds also are subject to distribution and servicing fees. None of the Acquiring Funds is subject to a front-end or contingent deferred sales load.

8. The Acquired Funds also fall into three categories. First, there are three Acquired Funds that offer Institutional, Retail, and Service class shares (''Category 1 Acquired Funds''). Second, there are nine Acquired Funds that offer Institutional and Retail class shares (''Category 2 Acquired Funds''). Third, there are two Acquired Funds that offer shares in a single, unnamed class (''Category 3 Acquired Funds''). None of the Acquired Funds is subject to a front-end or contingent deferred sales load. Retail shares in the Category 1 and Category 2 Acquired Funds are subject to distribution and servicing fees. No. rule 12b–1 fees are paid by the Institutional shares in the Category 1 and Category 2 Acquired Funds. Service shares in the Category 1 Acquiring Funds also do not pay rule 12b–1 fees, but they are subject to fees under a shareholder and processing services plan. Neither of the Category 3 Acquired Funds is subject to any rule 12b–1 or shareholder servicing fees.

9. As a result of the Reorganizations, holders of the Institutional, Retail, and Service shares of the Category 1 Acquired Funds will become holders, respectively, of Primary A, Daily and Investor A shares of the Category 1 Acquiring Funds. Holders of the Institutional and Retail shares of the Category 2 Acquired Funds will become holders, respectively, of Primary A and Investor A shares of the Category 2 Acquiring Funds. Holders of shares of the Category 3 Acquired Funds will become holders of Capital shares of the Category 3 Acquiring Funds. The rights and obligations of each class of shares of the Acquired Funds are similar to those of the corresponding class of shares of the Acquiring Funds. No sales load will be imposed with respect to the shares of the Acquiring Funds to be issued in the Reorganizations, but those shares will be subject to the asset-based distribution and shareholder servicing fees of the particular Acquiring Fund.

10. The investment advisory fees for the Acquiring Funds and the Acquired Funds are paid monthly. At the present time, NBAI and Barnett are waiving a portion of their advisory fees. NBAI does not presently intend to reduce or eliminate any waivers following the Reorganizations.

11. The investment objectives, policies, and restrictions of each Acquired Fund and its corresponding Acquiring Fund are substantially similar.

12. The Nations Funds' Boards and the Emerald Board (collectively, the ''Boards''), including a majority of their disinterested directors and trustees, found that participation in the Reorganizations is in the best interest of each Fund and that the interests of existing shareholders in the Funds will not be diluted as a result of the Reorganizations.

13. In approving the Reorganizations, the Boards considered, among other things: (a) The terms and conditions of the Reorganizations; (b) the capabilities, practices, and resources of NBAI and other service providers to the Acquiring Funds; (c) the expected cost savings for

[2] Prior to implementation of the Reorganization Plans, the Acquired Funds intend to discharge substantially all of their liabilities. Each Acquiring Fund will assume all remaining liabilities of its corresponding Acquired Fund.

[3] The Acquired Funds and the corresponding Acquiring Funds are: (i) Emerald Balanced Fund and Nations Balanced Assets Fund; (ii) Emerald Equity Fund and Nations Disciplined Equity Fund; (iii) Emerald Equity Value Fund and Nations Value Fund; (iv) Emerald Florida Tax-Exempt Fund and Nations Florida Municipal Bond Fund; (v) Emerald International Equity Fund and Nations International Value Fund (shell); (vi) Emerald Managed Bond Fund and Nations Strategic Fixed Income Fund; (vii) Emerald Prime Fund and Nations Prime Fund; (viii) Emerald Prime Advantage Institutional Fund and Nations Money Market Reserves (shell); (ix) Emerald Short-Term Fixed Income Fund and Nations Short-Term Income Fund; (x) Emerald Small Capitalization Fund and Nations Small Company Growth Fund; (xi) Emerald Tax-Exempt Fund and Nations Tax-Exempt Fund: (xii) Emerald Treasury Fund and Nations Treasury Fund; (xiii) Emerald Treasury Advantage Institutional Fund and Nations Treasury Reserves; and (xiv) Emerald U.S. Government Securities Fund and Nations government Securities Fund.

certain of the Acquired Funds; (d) the relative performance of the Funds and the compatibility of their investment objectives, policies, and limitations; (e) the tax-free status of the Reorganizations; (f) the number of investment portfolio options that would be available to shareholders after the Reorganizations; (g) the shareholder services of the Acquiring Funds; and (h) the investment advisory and other fees paid by the Acquiring Funds, and the historical and projected expense ratios of the Acquiring Funds as compared with those of the Acquired Funds. In addition, the Emerald Board considered that the Acquired Fund shareholders would benefit from the distribution and shareholder servicing plans of the Acquiring Funds, as well as their fee structure and shareholder services. The Emerald Board also considered that seven of the twenty-nine classes of Acquired Funds will be reorganized into Acquiring Fund classes with greater operating expense ratios. It noted, however, that those seven classes are comprised of institutional investors, many of which have fiduciary or other arrangements through which they receive other related services and pay other fees outside of the fund. Further, the Emerald Board considered that, as a result of the Reorganizations, Acquired Fund shareholders should benefit from improved economies of scale and will have access to a larger and more diverse family of mutual funds.

14. NBAI will assume all expenses incurred by the Funds in connection with the Reorganizations.

15. The Reorganization Plans may be terminated by mutual written consent of the Emerald Board and the applicable Nations Board at any time prior to the Closing Date. In addition, either party may terminate the Reorganization Plan if: (a) The closing has not occurred prior to December 31, 1998; (b) the other party materially fails to perform its obligations; (c) the other party materially breaches its representations, warranties, or covenants; or (d) a condition precedent to the party's obligations cannot be met.

16. Registration statements on Form N–14 (''N–14 Registration Statements'') were filed with the SEC on February 23, 1998 and became effective on March 25, 1998. Applicants mailed a prospectus/proxy statement to shareholders of the Acquired Funds on March 30, 31, and April 1, 1998. A special meeting of the Acquired Fund shareholders will be held on or about May 4, 1998.

17. The consummation of the Reorganizations is subject to the following conditions, as set forth in the Reorganization Plans: (a) The N–14 Registration Statements will have become effective; (b) the Acquired Fund shareholders will have approved the Reorganization Plans; (c) applicants will have received exemptive relief from the SEC with respect to the issues in the application; (d) the Acquired Funds will have received an opinion of counsel concerning the federal income tax aspects of the Reorganizations; and (e) each Acquired Fund will have declared a dividend or dividends to distribute substantially all of its investment company taxable income and net capital gain, if any, to its shareholders. Applicants agree not to make any material changes to the Reorganization Plans that affect the application without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 because the Funds may be affiliated for reasons other than those set forth in the rule. First, the Barnett Group holds of record more than 25% of the outstanding voting securities of certain classes of each Acquired Fund. Because of this ownership, each Acquired Fund may be deemed an affiliated person of Barnett under section 2(a)(3)(B). Second, as a result of the Holding Company Merger, NBAI and Barnett are under the common ownership and control of NationsBank. Because of this ownership, each Acquiring Fund may be deemed an ''affiliated person of an affiliated person'' of each Acquired Fund. Accordingly, the Reorganizations may not meet the ''solely by reason of'' requirement of rule 17a–8. Applicants thus are requesting an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganizations.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganizations satisfy the standards set forth in section 17(b). Applicants note that the Boards, including a majority of the disinterested directors and trustees, found that participation in the Reorganizations is in the best interests of the Funds and that the interests of the existing shareholders of the Funds will not be diluted as a result of the Reorganizations. Applicants also note that the exchange of the Acquired Funds' shares for shares in the Acquiring Funds will be based on the Funds' relative net asset values.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–11287 Filed 4–28–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before May 29, 1998. If you intend to comment but cannot prepare comments promptly, please advise the

OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, *Telephone:* (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Grant/Cooperative Agreement Cost Sharing Proposal.

Form No's: 1222 and 1224.

Frequency: On Occasion.

Description of Respondents: SBA Grant Applicants and Recipients.

Annual Responses: 427.

Annual Burden: 30,141.

Dated: April 20, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–11290 Filed 4–28–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before May 29, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, *Telephone:* (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Settlement Sheet.

Form No: 1050.

Frequency: On Occasion.

Description of Respondents: SBA Borrowers.

Annual Responses: 17,000.

Annual Burden: 12,750.

Dated: April 20, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–11291 Filed 4–28–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before May 29, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, *Telephone:* (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory, Affairs Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Financing Eligibility, Social or Economic Disadvantaged.

Form No's: 1941A, 1941B, and 1941C.

Frequency: On Occasion.

Description of Respondents: SBA Businesses seeking financing from Specialized Small Business Investment Companies (SSBIC).

Annual Responses: 932.

Annual Burden: 1,864.

Dated: April 21, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–11292 Filed 4–28–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 181; Joint RTCA Special Committee/Eurocae WG–13 Standards of Navigation Performance

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint Special Committee 181/EUROCAE WG–13 meeting to be held May 18–22, 1998, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: Monday, May 18: Opening Plenary Convenes at 9 a.m.: (1) Introductory Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Review and Approval of the Agenda; (4) 10:45 a.m.–12 noon, All Working Groups Meet Separately; (5) 1–5 p.m., All Working Groups Meet Separately. Tuesday, May 19; (6) All Working Groups Meet Separately. Wednesday, May 20–Thursday, May 21: Plenary; (7) Final Review of DO–200A; Friday, May 22: 8:30–11:30 a.m.; (8) Final Review of DO–200A; 12:30–2 p.m., Closing Plenary Sessions; (9) Working Group Reports; (10) Chairman's Remarks; (11) Dates and Locations of Future Meetings; (12) New Business; (13) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 22, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–11336 Filed 4–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33546]

Kokomo Grain Co., Inc.; Control Exemption; The Central Railroad Company of Indianapolis and The Central Railroad Company of Indiana

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323–25, Kokomo Grain Co., Inc.'s, control of The Central Railroad Company of Indianapolis and The Central Railroad Company of Indiana, Class III rail carriers, through the acquisition of controlling stock interest in their noncarrier holding company, Central Properties, Incorporated.

DATES: This exemption will be effective May 29, 1998. Petitions to stay must be filed by May 14, 1998, and petitions to reopen must be filed by May 25, 1998.

ADDRESSES: Send an original and 10 copies of pleadings referring to STB Finance Docket No. 33546 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of pleadings to petitioner's representative: Thomas F. McFarland, Jr., 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD Services (202) 565–1695.]

Decided: April 20, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–11144 Filed 4–24–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of International Financial Analysis within the Department of the Treasury is soliciting comments concerning Treasury International Capital Form BC/BC(SA), Reporting Bank's Own Claims and Selected Claims of Broker or Dealer, on Foreigners, Denominated in Dollars; and Treasury International Capital Form BL–1/BL–1(SA), Reporting Bank's Own Liabilities, and Selected Liabilities of Broker or Dealer, to Foreigners, Denominated in Dollars.

DATES: Written comments should be received on or before June 29, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Gary A. Lee, Manager, Treasury International Capital Reporting System, Department of the Treasury, Room 5452, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Gary A. Lee, Manager, Treasury International Capital Reporting System, Department of the Treasury, Room 5465, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 622–2270.

SUPPLEMENTARY INFORMATION:

Titles: Treasury International Capital Form BC/BC(SA), Reporting Bank's Own Claims and Selected Claims of Broker or Dealer, on Foreigners, Denominated in Dollars; and Treasury Capital Form BL–1/BL–1(SA), Reporting Bank's Own Liabilities, and Selected Liabilities of Broker or Dealer, to Foreigners, Denominated in Dollars.

OMB Numbers: 1505–0017 and 1505–0019.

Abstracts: Forms BC/BC(SA) and BL–1/BL–1(SA) are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; EO 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements. Form BC/BC(SA) is a monthly report (with a semiannual supplement) report that covers own U.S. dollar claims of banks, other depository institutions, brokers and dealers, *vis-a-vis* foreign residents. Form BL–1/BL–1(SA) is a monthly report (with a semiannual supplement) that covers own U.S. dollar liabilities of banks, other depository institutions, brokers and dealers *vis-a-vis* foreign residents. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies. Current Actions: No changes to reporting requirements for either form are proposed at this time.

Type of Review: Extensions.

Affected Public: Business or other for-profit organizations.

Form BL–1/BL–1(SA) (1505–0017).

Estimated Number of Respondents: 825.

Estimated Average Time per Respondent: Seven (7) hours per respondent per filing.

Estimated Total Annual Burden Hours: 69,300 hours, based on 12 reporting periods per year.

Form BC/BC(SA) (1505–0019).

Estimated Number of Respondents: 900.

Estimated Average Time per Respondent: Seven (7) hours per respondent per filing.

Estimated Total Annual Burden Hours: 75,600 hours, based on 12 reporting periods per year.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether Forms BC/BC(SA) and BL–1/BL–1(SA) are necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness, and clarity of the information to be collected; ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

Thomas Ashby McCown,

Director, Office of International Financial Analysis.

[FR Doc. 98–11296 Filed 4–28–98; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

April 22, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 29, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0963.

Regulation Project Number: IA–146–81 Final.

Type of Review: Extension.

Title: Installment Method Reporting by Dealers in Personal Property; Change from Accrual to Installment Method of Reporting.

Description: These regulations describe the procedure by which dealers in personal property may adopt or change to the installment method of accounting from another method of accounting.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (at time of election).

Estimated Total Reporting/ Recordkeeping Burden: 50,000 hours.

OMB Number: 1545–1070.

Regulation Project Number: TD 8223 Temp, TD 8432 Final and Temp, and TD 8657 Final and Temp.

Type of Review: Extension.

Title: Branch Tax (TD 8223); Branch Profit Tax (TD 8432); and Regulations on Effectively Connected Income and the Branch Profits Tax.

Description: The regulations explain how to comply with section 884, which imposes a tax on the earnings of a foreign corporation's branch that are removed from the branch and which subjects interest paid by the branch, and certain interest deducted by the foreign corporations to tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 28,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 27 minutes.

Estimated Total Reporting/ Recordkeeping Burden: 12,694 hours.

OMB Number: 1545–1117.

Notice Number: Notice 89–61.

Type of Review: Extension.

Title: Imported Substances; Rules for Filing a Petition.

Description: The Notice sets forth procedures to be followed in petitioning the Secretary to modify the list of taxable substances in section 4672(a)(3).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 100 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–11357 Filed 4–28–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

April 20, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 29, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0044.

Form Number: IRS Form 973.

Type of Review: Extension.

Title: Corporation Claim for Deduction for Consent Dividends.

Description: Corporations file Form 973 to claim a deduction for dividends paid. If shareholders consent and IRS approves, the corporation may claim a deduction for dividends paid, which reduces the corporation's tax liability. IRS uses Form 973 to determine if shareholders have included the dividend in gross income.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	4 hours, 4 minutes.
Learning about the law or the form.	30 minutes.
Preparing and sending the form to the IRS.	35 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 2,580 hours.

OMB Number: 1545–0754.

Regulation Project Number: LR–255–81 Final.

Type of Review: Extension.

Title: Substantiation of Charitable Contributions.

Description: Congress intended that the Internal Revenue Service prescribe rules and requirements to assure substantiation and verification of charitable contributions. The regulations serve these purposes.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Recordkeepers: 26,000,000.

Estimated Burden Hours Per Recordkeeper: 5 minutes.

Estimated Total Recordkeeping Burden: 2,158,000 hours.

OMB Number: 1545–0976.

Form Number: IRS Form 990-W.

Type of Review: Extension.

Title: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

Description: Form 990-W is used by tax-exempt trusts and tax-exempt corporations to figure estimated tax liability on unrelated business income and on investment income for private foundations and the amount of each installment payment. Form 990-W is a worksheet only. It is not required to be filed.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 27,265.

Estimated Burden Hours Per Respondent/Recordkeeper:.

Form	Recordkeeping	Learning about the or the form	Preparing the form
990-W	9 hr., 49 min	1 hr., 59 min	2 hr., 14 min.
990-W, Sched. A (Pt I)	11 hr., 14 min	47 min	1 hr., 1 min.
990-W, Sched. A (Pt II)	23 hr., 26 min	24 min	47 min.
990-W, Sched. A (Pt III)	5 hr., 16 min		5 min.

Frequency of Response: Annually.

Estimated Total Reporting/ *Recordkeeping Burden:* 398,273 hours.

OMB Number: 1545–1592.

Revenue Procedure Number: Revenue Procedure 98–20.

Type of Review: Extension.

Title: Certification for No Information Reporting on the Sale of a Principal Residence.

Description: The revenue procedure applies only to the sale of a principal residence for $250,000 or less ($500,000 or less if the seller is married). The revenue procedure provides the written assurances that are acceptable to the Internal Revenue Service for exempting a real estate reporting person from information reporting requirements for the sale of a principal residence.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 2,390,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Minutes
Reporting	10
Recordkeeping	25

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 420, 500 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 98–11358 Filed 4–28–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 27–01]

Organization and Functions of the Office of the Assistant Secretary for Management and Chief Financial Officer

April 21, 1998.

1. *Purpose.* This Directive describes the organization of the Office of the Assistant Secretary for Management and Chief Financial Officer (CFO).

2. *The Assistant Secretary for Management and CFO.* The following are the functions of the Assistant Secretary for Management and Chief Financial Officer (the ''Assistant Secretary'').

a. Serves as the Department's Chief Operating Officer and represents the Department on the President's Management Council.

b. Provides Departmental oversight and supervision of the Treasurer of U.S., who supervises the U.S. Mint and the Bureau of Engraving and Printing.

c. Serves as the Vice Chair of the Internal Revenue Service Management Board (IRSMB) pursuant to Executive Order 13051.

d. Serves as the Chief Financial Officer of the Department of the Treasury, with authorities and functions pursuant to the Chief Financial Officers Act of 1990, Public Law 101–576. As CFO, is responsible for preserving the integrity and reliability of Treasury financial systems and carrying out the following functions for the Department and all bureaus.

(1) Oversees Departmentwide financial management, accounting policy, internal controls, cash management, credit management, debt management, and centralized coordination and monitoring of Departmentwide General Accounting Office activities.

(2) Specifies the format, content and frequency of financial reports and statements, including overseeing the development of performance measurement indicators prepared by bureau program and financial components.

(3) Reviews and approves the development, implementation, and maintenance of an integrated agency and bureau financial management system(s), as defined by Office of Management and Budget (OMB) Circular A–127, to ensure that such systems produce information in compliance with generally accepted accounting principles, standards, and requirements for all administrative and program areas.

(4) Reviews and approves financial statements and reports prepared at the bureau or Departmental level prior to submission to external parties.

(5) Prepares and transmits to the Secretary and OMB an annual report which includes items specified in 31 U.S.C. 902(a)(6).

(6) Directs the biennial review of fees, royalties, rents and other charges imposed by the Department or a bureau and recommends changes.

(7) Reviews all legislative items related to or concerning financial management matters, subject to review and coordination with the Executive Secretary and General Counsel, to provide advice and comments on financial management issues, including costs and benefits.

(8) Provides direction and policy guidance to program managers on financial management matters.

(9) Chairs the Treasury Chief Financial Officers Council and represents the Department at the governmentwide Chief Financial Officers Council.

(10) Assumes any other function conferred upon the CFO by statute, governmentwide regulation, or Treasury Orders and Directives.

(11) Oversees the Treasury Franchise Fund.

e. On behalf of the Secretary and Deputy Secretary, oversees the strategic management process and Government Performance and Results Act compliance to provide Treasury officials with a means to systematically articulate priorities, develop and implement strategies to achieve them, allocate resources to achieve them, and receive performance information on their accomplishment. This process includes: (1) Development of strategic plans; (2) preparation of budget requests/performance plans; (3) monitoring the execution of the budget and performance plans; and (4) development of performance reports.

f. Serves as the principal policy advisor to the Secretary and Deputy Secretary on matters involving the internal management of the Department and its bureaus.

g. Through the Deputy Assistant Secretary (Strategy and Finance), oversees the Department's strategic planning, budget formulation, organizational improvement activities, and the analytical staff of the IRSMB.

h. Through the Deputy Assistant Secretary (Management Operations), oversees the development and implementation of security policies in the areas of personnel security, systems security, emergency preparedness and domestic counter terrorism; oversees Treasury-wide management programs which include reinvention initiatives, small business utilization, occupational safety and health, environmental quality and pollution abatement, real and personal property management, fleet management, energy and water conservation, historic preservation, recycling, metrication; procurement programs and systems.

i. Through the Deputy Assistant Secretary (Administration), provides comprehensive administrative services (except personnel services) to Departmental Offices and other components of the Department, as appropriate.

j. Through the Deputy Assistant Secretary (Human Resources), oversees the Department's personnel programs which include personnel policy, personnel services and training for the Departmental Offices, the payroll/personnel system, affirmative action and equal employment opportunity. The Assistant Secretary is the Director of EEO for the Department.

k. Through the Deputy Assistant Secretary (Information Systems), oversees management and development of a Treasury-wide information infrastructure. The Deputy Assistant Secretary serves as Treasury's Chief Information Officer (CIO). Under the Clinger-Cohen Act, the Treasury CIO has direct access to the Secretary on information technology issues and has responsibility for oversight of Treasury's information resources management.

3. *Organization Structure.* The Assistant Secretary for Management and CFO supervises the Treasurer of the U.S., the Deputy CFO and five Deputy Assistant Secretaries: (a) Strategy and Finance; (b) Management Operations; (c) Information Systems and CIO; (d) Administration; and (e) Human Resources. An organization chart is attached. Unless otherwise noted, the responsibilities of these officials and their subordinate offices are Departmentwide.

4. *The Treasurer of the U.S.* advises the Assistant Secretary, Deputy Secretary and the Secretary on matters relating to coinage, currency and the production of other instruments issued by the United States and serves as the National Honorary Director for the Savings Bonds program. Serves as the principal policy official on all matters concerning general coinage and currency policy; and provides oversight of the U.S. Mint and the Bureau of Engraving and Printing by monitoring key bureau operations and activities, identifying problem areas, and tracking corrective actions. In this capacity, the Treasurer represents the Department on major media programs and other public forums.

5. *The Deputy Chief Financial Officer* reports to the Assistant Secretary and has responsibility for implementing the Chief Financial Officers Act of 1990 and the Government Management Reform Act of 1994. The Deputy CFO also has responsibility for accounting policy and procedures; management controls; financial management systems integration; and financial execution of the budget. The Deputy CFO supervises the following offices.

a. *The Office of Accounting and Internal Control* develops, implements and evaluates accounting policy, designs form and content guidelines which are used to prepare financial statements; develops and reviews financial performance measures; reviews and coordinates accounting policy guidance developed by the Federal Accounting Standards Advisory Board; oversees compliance with the Federal Managers' Financial Integrity Act, Prompt Payment Act, Cash Management Improvement Act, and Federal Debt Collection Improvement Act of 1996; monitors the resolution and implementation of audit findings and recommendations; provides centralized coordination and monitoring of all Treasury related General Accounting Office audit activities; prepares the CFO's Annual Report/Accountability Report; provides policy direction and oversight of the travel management and advisory committee management programs; and coordinates all activities associated with Treasury's financial management oversight of the Institute of American Indian Art.

b. *The Office of Financial Systems Integration* develops policies, procedures, and standards for integrating financial management and revenue systems; provides for automated financial reporting; reviews financial reports and financial statements; provides technical advice to bureaus on financial and revenue systems design and implementation; reviews and provides advice on financial management and revenue systems proposals submitted by bureaus under Treasury Directive 32–02, ''Approval of Financial Management Systems''; serves as systems administrator for Departmental level financial management systems; codifies the process for financial systems reviews and documentation; coordinates committees, user groups, task forces, and project teams that focus attention on financial management systems; and coordinates with the Joint Financial Management Improvement Program on development of governmentwide financial management systems requirements and standard general ledger requirements.

c. *The Office of Financial and Budget Execution* provides advice, guidance, and instructions on budget execution matters; maintains the Treasury Budget and Strategic Planning Manual in coordination with the Office of Budget and the Office of Strategic Planning; issues budget execution reports on Full Time Equivalents, budget authority, outlays, and receipts; coordinates the status of funds reviews, reprogramming and fund transfers; monitors congressional and OMB directives; validates and reconciles appropriations and budgetary resources; and supports budget formulation.

6. *The Deputy Assistant Secretary (Strategy and Finance)* has responsibility for strategic planning; budget formulation; organizational issues; program evaluation; and oversight of the staff of the IRSMB. The Deputy Assistant Secretary supervises the following offices.

a. *The Office of Strategic Planning* oversees the strategic planning process and the implementation of the Government Performance and Results Act; guides bureaus in developing long-range plans; works with policy officials to establish priorities and strategic objectives; works with the bureaus to analyze current goals, objectives and activities in terms of future threats and opportunities; and advises policy officials regarding ways to improve the strategic management process across the Department.

b. *The Office of Budget* analyzes bureau resource requests and completes financial analyses related to resource allocations; makes recommendations to policy officials concerning budget priorities and strategy; in full collaboration with the Office of Strategic Planning, the Office of Budget coordinates and facilitates development of performance measures in the budget in consultation with OMB and Congress; maintains the budget formulation and presentation portions of the Treasury Budget and Strategic Planning Manual in coordination with the Office of Financial and Budget Execution; and represents the Department on budget matters in contacts with OMB, congressional committees and other agencies.

c. *The Office of Organizational Improvement* provides management consulting services relating to organizational change and performance improvement strategies; researches and serves as the repository of advanced management concepts, and proposes strategies for employing them in Treasury operations; conducts studies of specific operating or policy issues having long term or strategic effect on operations; develops customer service and management improvement plans; reviews bureau reorganization proposals; coordinates streamlining initiatives; and manages the Orders and Directives System.

d. *The Director, Internal Revenue Service Management Board* is under the supervision of the Deputy Assistant Secretary for purposes of administrative and managerial control and provides analytical support to the Board. The Board was established pursuant to Executive Order 13051 as a permanent oversight board to assist the Secretary in ensuring effective management of the IRS.

7. *The Deputy Assistant Secretary (Management Operations)* has responsibility for security, real and personal property, procurement program management, small business programs, and reinvention initiatives. The Deputy Assistant Secretary supervises the following offices.

a. *The Office of Security* develops and administers policies for personnel, physical, systems security, emergency preparedness, domestic counter terrorism, disaster recovery, infrastructure protection, and continuity of operations. Physical security includes industrial and information security, and systems security includes the following functional areas: Computer security, telecommunications security, operations security (threat/vulnerability assessments), emissions security (TEMPEST), certificate management, and electronic authentication. The Departmental Offices Personnel Security Branch under the Office of Security performs the operating personnel security functions for the Departmental Offices. The Office of Security represents the Department on committees organized under the Security Policy Board and the Overseas Security Policy Board and consults and coordinates with other agencies to fulfill program responsibilities.

b. *The Office of Real and Personal Property Management* develops, implements, and administers policies to ensure compliance with the requirements governing operations in the areas of space management, real and personal property, fleet management, energy and water conservation, environmental quality and pollution abatement, historic preservation, metrication, recycling, occupational safety and health, and audiovisual management programs; represents Treasury on interagency committees, task forces, and work groups related to each of these areas; prepares the Department's position on new and proposed changes to any legal authorities which affect Treasury operations or facilities; and offers consulting services to the bureaus.

c. *The Office of Procurement* provides guidance for Departmentwide procurement programs and systems; evaluates bureau procurement operations using balanced scorecard performance measures; directs and expands the use of streamlined, cost effective means of procurement, including the purchase card, commercial item acquisitions, performance based service contracting, and contractor past performance; implements, where necessary, statutory mandates; oversees the activities of the Departmental Advocate for Competition; and administers a Departmentwide career education program for procurement professionals pursuant to Treasury Directive 12–11, ''Procurement Authority.''

d. *The Office of Small and Disadvantaged Business Utilization (OSDBU)* implements the statutory mandate that agencies award a fair proportion of their acquisitions to small business concerns; promotes the participation of small businesses, small disadvantaged businesses, minority business concerns, and women-owned small businesses in prime and subcontract opportunities; promotes increased contracting with non-profit agencies for advancement of people who are blind or severely disabled; provides guidance on the OSDBU program; and assists bureaus to implement their small and minority business programs. The Assistant Secretary is the statutory director of OSDBU under Pub. L. 95–507.

e. *The Office of Treasury Reinvention* serves as a consultant group to assist in achieving reinvention goals and provides focus and guidance on reinvention goals to bureaus and Departmental Offices process owners; encourages process owners to formulate and implement long-term strategies for achieving results in accordance with those envisioned in the National Performance Review report; and assists senior officials in finding ways to improve work processes.

8. *The Deputy Assistant Secretary (Information Systems) and CIO* manages information technology (IT) as a capital asset. In compliance with the Clinger-Cohen Act, the CIO: (a) Fosters communication and exchange among bureaus; (b) ensures effective coordination, management, and deployment of IT architecture, investments, and resources; (c) promotes effective agency operations through performance-based management; (d) enforces accountability for the use of corporate assets to build information technology infrastructure; (e) assists bureaus in aligning IT with their business needs and investment decisions; and (f) formulates policy on IT. Mission critical responsibilities of the CIO include strategic direction and priorities for IT investments; oversight of the Department's information resource management; management of the Departmentwide information infrastructure; and implementation of other statutory mandates, including the Paperwork Reduction Act. The CIO is also responsible for coordination and management of security implementation across all areas of information technology, including policy development, resource management, operations, and the Computer Security Act requirements. The CIO supervises the following offices.

a. *The Office of IT Policy and Management* provides effective IT management policies and procedures, including strategic and capital planning, investment evaluation and control, performance monitoring, resource and information management policies to support missions to achieve the goals of the statutory mandates. Promotes IT process improvements and reengineering across the bureaus, especially for paperwork reduction purposes. Manages a broad range of information resources management functions to include information dissemination, data integrity board activities, public reporting requirements, and the IT standards and records management programs. Establishes a Departmental architectural framework to foster efficient data processing. Manages and coordinates special Departmentwide and cross-agency projects to deliver maximum project value and success. Focuses on developing the competencies of IT professionals.

b. *The Office of Corporate Systems Management* provides comprehensive service management, strategic planning, budgeting, acquisition, service delivery, customer support and program management essential for IT services supporting common voice, data, and video requirements across Treasury. These services include traditional

telecommunications services provided through Executive Agent (EA) and interagency programs as well as a growing array of corporate information services and reinvention-driven IT innovation programs. Develops policies for cost-effective utilization of telecommunications resources by bureaus; provides management and financial oversight on EA programs implemented by bureaus; reviews and coordinates the acquisition of communications systems and services including radio frequency spectrum engineering and management; and manages participation in intergovernmental telecommunications programs.

c. *The Office of CIO Liaison and Business Services* provides for the coordination, planning, and support of inter-business line activities within the CIO organization. It supports outreach and liaison between the CIO office and external constituencies, including bureau customers, business partners, and congressional entities, as well as management and coordination of the Department's participation and involvement in intra/inter-governmental IT programs and initiatives, such as the National Performance Review and the Government Information Technology Services Board.

9. *The Deputy Assistant Secretary (Administration)* has responsibility for the Departmental Offices' administrative and management operating programs which include: administrative services; automated systems; facilities; budget formulation and execution; accounting and internal controls; printing and graphics; and procurement. The Deputy Assistant Secretary (Administration) is responsible for managing the Departmentwide disclosure services program, Working Capital Fund, Gifts and Bequest Fund, printing program and reimbursable agreement operations, which cross bureau lines. The Deputy Assistant Secretary (Administration) also serves as the Departmental Offices' liaison for activities required to comply with the CFO Act. Unless another Treasury Order, Directive, or delegation specifically states otherwise with respect to a specific function, the Deputy Assistant Secretary (Administration) is the head of the Departmental Offices for all administrative and management functions other than personnel and EEO. The Deputy Assistant Secretary supervises the following offices.

a. *The Administrative Operations Division* provides a range of administrative support services to the Departmental Offices to include: Building access security; environmental and physical safety; parking facilities; dining room; library and information services; domestic and international travel; Secretarial delegation travel; and management coordination for special projects. The Division manages the Departmentwide disclosure services program and is responsible for reporting parking and transportation fringe benefits for payroll purposes.

b. *The Automated Systems Division* provides automated information system services to the Departmental Offices including: Security; office automation; data processing; user support; applications development; and telecommunications.

c. *Office of the Curator* provides coordination and direction for the restoration of the Main Treasury Building; conservation and maintenance of its historic collections; historical research on the building and collections to facilitate the development of special exhibits and other educational activities; and administers the Treasury Building tour program for the general public, as well as VIP tours.

d. *The Facilities Management Division* directs and coordinates the management of the Main Treasury Building, Treasury Annex, and related grounds, including space management, construction, maintenance, custodial care, personal property, mail, messenger and motor pool services, and Departmental Offices rental space.

e. *The Financial Management Division* formulates, presents, executes and manages the Departmental Offices' budget; maintains a comprehensive integrated financial management and accounting system in support of the financial resources under the jurisdiction of the Deputy Assistant Secretary (Administration); develops and directs the internal controls activities of the Departmental Offices; and supports the Deputy Assistant Secretary (Administration) in providing information to comply with the CFO Act. In addition, the Division provides financial management for the Department's Working Capital Fund and reimbursable programs which cross bureau lines.

f. *The Printing and Graphics Division* provides Departmentwide printing, graphics and printing procurement services; develops printing and copy machine management policy; and represents the Department on oversight agencies and interagency committees.

g. *The Procurement Services Division* provides operational procurement support for the Departmental Offices and manages certain Departmentwide procurements.

10. *The Deputy Assistant Secretary (Human Resources)* has Departmentwide responsibility for human resource management policies; the Treasury Executive Institute; equal opportunity policies and programs; Treasury integrated management systems. The Deputy Assistant Secretary is also responsible for EEO and personnel operations in the Departmental Offices.

a. *The Office of Personnel Policy* develops personnel management policies and procedures and oversight, consultation and evaluation activities; develops, recommends and implements personnel programs such as: workers compensation, employment and staffing, including Senior Executive Service (SES); classification and compensation; employee development; appraisal, recognition and benefits; employee and labor relations; and drug-free workplace, including drug testing; provides policy for strategic planning and systems life cycle management of the Departmentwide human resources system and ensures that the strategic direction, plans and policies of the Treasury Human Resources System provide the flexibility to manage the workforce through reengineered processes.

b. *The Office of Equal Opportunity Program* develops polices and procedures pertaining to equal employment opportunity; provides for the consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, national origin, age, disability, reprisal and sexual orientation; oversees, evaluates, and sets standards for the operation of the four Regional Complaint Centers which process complaints of discrimination for all bureaus; and directs and administers affirmative employment and special emphasis programs, such as the Hispanic Employment Program, the Federal Women's Program, the Historically Black Colleges and Universities Program, and the Individuals with Disabilities Program.

c. *The Office of Treasury Integrated Management Information Systems* manages, operates, maintains and supports the payroll and personnel system and human resources process support capabilities for bureaus; develops, conducts and maintains a full curriculum of technical training for bureau payroll/personnel staff; provides continuing user support, including user assistance in problem resolution and reporting; and ensures that the system meets the technical requirements of the Treasury community through the identification and development of

system requirements and the negotiation of system modifications.

d. *The Treasury Executive* Institute operates under the guidance of the Treasury Career Advisory Panel (TCAP), which assists the Assistant Secretary by promoting and effecting the continued improvement of the Senior Executive Service (SES) of the Department. The TCAP is comprised of the highest ranking career SES member in each bureau and Departmental Offices.

e. *The Office of Personnel Resources* provides the full range of operating personnel services to the Departmental Offices in the areas of recruiting, position management and classification, retirement and benefits, training and development, employee relations, EEO, and payroll; assists management in recruiting, rewarding and retaining high quality staff; administers the performance management program; serves as a resource for career development; manages the Departmental Offices EEO program; and processes personnel and payroll documents.

11. *Cancellation.* TD 27–01, ''Organization and Functions of the Office of the Assistant Secretary (Management) & Chief Financial Officer (CFO),'' dated June 22, 1995, is superseded.

12. *Expiration.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

13. *Office of Primary Interest.* Office of Organizational Improvement, Office of the Deputy Assistant Secretary (Strategy and Finance), Office of the Assistant Secretary for Management and Chief Financial Officer.

Nancy Killefer,

Assistant Secretary for Management Chief Information Officer.

BILLING CODE 4810–25–P

TD 27-01
04-21-98

Attachment

Office of Management

Assistant Secretary for Management and Chief Financial Officer

4/21/98
Date

1/ BEP & Mint are Treasury Bureaus.
2/ Regional Complaint C nters are located in Washington, D.C., Dallas, Chicago, and San Francisco.

Department of the Treasury
4/13/98

[FR Doc. 98–11353 Filed 4–28–98; 8:45 am]
BILLING CODE 4810–25–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Letter 1117(c)

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Letter 1117(c), Confirmation Letter.

DATES: Written comments should be received on or before June 29, 1998 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: Confirmation letter.

OMB Number: 1545–0301.

Letter Number: Letter 1117(c).

Abstract: Confirmation letters are used to determine whether taxpayers agree with taxpayer delinquency records maintained by the IRS. Internal auditors use this information to verify the accuracy of the Service's records and to determine whether any improprieties have been committed by Service employees. Use of the confirmation letters satisfies General Accounting Office auditing standards for obtaining sufficient, competent, and relevant evidence to afford a reasonable basis for the auditors' judgments and conclusions.

Current Actions: There are no changes being made to Letter 1117(c) at this time.

Type of Review: Extension 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: 4,200.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,050.

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: April 23, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–11395 Filed 4–28–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–12–78]

Proposed Collection; Comment Request For Regulation Project

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 an existing final regulation, EE–12–78 (TD 7611) Nonbank Trustees (§ 1.408–2(e)).

DATES: Written comments should be received on or before June 29, 1998 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 regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Nonbank Trustees.

OMB Number: 1545–0806.

Regulation Project Number: EE–12–78.

Abstract: Internal Revenue Code section 408(a)(2) permits an institution other than a bank to be the trustee of an individual retirement account. This regulation imposes certain reporting and recordkeeping requirements to enable the IRS to determine whether an institution qualifies to be a nonbank trustee and to insure that accounts are administered according to sound fiduciary principles.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 23.

Estimated Time Per Respondent: 34 minutes.

Estimated Total Annual Burden Hours: 13.

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: April 21, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–11396 Filed 4–28–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4598

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4598, Form W–2, or 1099 Not Received or Incorrect.

DATES: Written comments should be received on or before June 29, 1998 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 instructions 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 W–2, or 1099 Not Received or Incorrect.

OMB Number: 1545–0597.

Form Number: Form 4598.

Abstract: Form 4598 is used to resolve taxpayer inquiries concerning the non-receipt of, or incorrect, Forms W–2 or 1099. Parts one and two of Form 4598 are mailed to the employer or payer for response to the IRS and, if necessary, to the taxpayer. Part three is mailed to the taxpayer advising the taxpayer of the action taken on their behalf.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, farms, and Federal, state, local or tribal governments.

Estimated Number of Responses: 850,000.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 212,500.

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: April 21, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–11397 Filed 4–28–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 4852

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4852, Substitute for Form W–2, Wage and Tax Statement or Form 1099R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, Etc.

DATES: Written comments should be received on or before June 29, 1998 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 instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Substitute for Form W–2, Wage and Tax Statement or Form 1099R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, Etc.

OMB Number: 1545–0458.

Form Number: Form 4852.

Abstract: In the absence of a Form W–2 or 1099R from the employer or payer, Form 4852 is used by the taxpayer to estimate gross wages, pensions, annuities, retirement or IRA payments received as well as income or FICA tax withheld during the year. The form is attached to the tax return so the return

can be processed through normal channels the same as those with Forms W–2 or 1099R attached.

Current Actions: Line 7 is being changed to 7A and 7B. Line 7A will show the compensation information from Form W–2. Line 7B will show the distribution information from Form 1099R. Previously, there was no place on the form to report the distrubution information.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 450,000.

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: April 21, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–11398 Filed 4–28–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR 2013 and EE–155–78]

Proposed Collection; Comment Request For Regulation Project

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 existing final regulations, LR 2013 (TD 7533), Disc Rules on Procedure and Administration; Rules on Export Trade Corporations, and EE–155–78 (TD 7896), Income From Trade Shows (§§ 1.6071–1 and 1.6072–2).

DATES: Written comments should be received on or before June 29, 1998, 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 regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: LR 2013 (TD 7533), Disc Rules on Procedure and Administration; Rules on Export Trade Corporations, and EE–155–78 (TD 7896), Income From Trade Shows.

OMB Number: 1545–0807.

Regulation Project Numbers: LR 2013 and EE–155–78.

Abstract: Regulation section 1.6071–1(b) requires that when a taxpayer files a late return for a short period, proof of unusual circumstances for late filing must be given to the District Director. Sections 6072(b), (c), (d), and (e) of the Internal Revenue Code deal with the filing dates of certain corporate returns. Regulation section 1.6072–2 provides additional information concerning these filing dates.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Individual or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 12,417.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 3,104.

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: April 17, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–11399 Filed 4–28–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Announcement of Open Membership Application Period for the Information Reporting Program Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: In 1991 the Internal Revenue Service (IRS) established the Information Reporting Program Advisory Committee (IRPAC) at the request of the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures, and when necessary, suggests ways to improve the operation of the Information Reporting Program. IRPAC is currently comprised of 18 representatives from various segments of the private sector payer community. Seven of these appointments to IRPAC will expire at the end of 1998. Additional members will be selected for two-year terms beginning in January 1999. National business, technical, and professional associations are encouraged to submit multiple nominees.

DATES: Completed questionnaires (or facsimiles) should be received by IRS no later than Friday, June 26, 1998. Questionnaires received after this date will not be considered. An acknowledgment letter will be sent upon receipt.

ADDRESSES: Internal Revenue Service, CP:EX:ST:PC, 1111 Constitution Avenue, NW., Room 2013, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: To have a copy of the application questionnaire mailed or faxed to you, please call Ms. Thomasine Matthews at 202–622–4214 (not a toll-free number). For general information about the application process or IRPAC in general, call Kate LaBuda at 202–622–3404 (not a toll-free number).

SUPPLEMENTARY INFORMATION: IRPAC reports to the National Director, Office of Specialty Taxes, who is the executive responsible for ensuring and facilitating compliance by payers with information reporting requirements. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they will be reimbursed for their travel and lodging expenses to attend two two-day public meetings each year. IRPAC members are expected to attend and pay their own way to between four and six working sessions each year, which are generally held in Washington, DC; New York, NY; or Martinsburg, WV.

The IRS is interested in representation from different areas of the payer community (e.g., educational institutions, software developers, forms developers, corporate compliance, small business compliance, international financial institutions, tax practitioners, etc.). Anyone wishing to be considered for membership on IRPAC should so advise the IRS. Please complete the following application questionnaire (or a facsimile thereof prepared on a word processor), and forward it to Ms. Kate LaBuda of the Office Payer Compliance, at the address above.

Dated: April 21, 1998.

Approved:

Kate LaBuda,

Acting Director, Office of Payer Compliance.

Attachment

Information Reporting Program Advisory Committee Membership Application Questionnaire

The following questions must be answered by anyone interested in becoming a member of the Information Reporting Program Advisory Committee (IRPAC). Applications (or facsimiles produced on a word processor) must be received at the address listed below by June 26, 1998. Those received after this date will not be considered. All applications received will be acknowledged. Questions may be directed to Kate LaBuda at 202–622–3404. Ms. Kate LaBuda, CP:EX:ST:PC, Internal Revenue Service, Room 2013, 1111 Constitution Avenue, N.W., Washington, DC 20224.

1. Name:
2. Title:
3. Employer Name:
4. Business Address:
5. Business Phone:
6. Fax Number:
7. E-Mail Address:
8. If you are applying on behalf of an organization or association other than your employer, please state the name, and address of that organization. Also, provide a letter of reference from that organization stating that you are nominated on their behalf. This letter should contain the name of a contact and this contact's phone number.
9. Home Address:
10. Home Phone:
11. Have you ever served on IRPAC or the Commissioner's Advisory Group (CAG)? If so, please explain. Do you currently have an application pending for CAG membership?
12. Check the *one* segment of the Information Reporting Program (IRP) payer community to which the organization that you represent, and your experience, most closely relate:

_____ Real Estate
_____ Transmitter/Forms Developer
_____ Software Developer
_____ Insurance: Property & Casualty
_____ Insurance: Life
_____ Securities
_____ Mutual Funds
_____ Payroll
_____ State & Local Government
_____ Corporate Compliance
_____ Small Business Compliance
_____ Public Accounting
_____ Employee Plans
_____ Trust Company
_____ Corporate Transfer Agent/ Utilities
_____ Large Banks/Financial Institution
_____ Small Banks/Financial Institution
_____ Restaurant Industry
_____ Other (Please specify).

13. List the number of years of IRP-related experience you have, and specific sources of this IRP experience. (Account for all years of IRP experience claimed.)
14. List professional credentials (e.g., Ph.D., CPA, Enrolled Agent, Attorney, Accountant, etc.)
15. Identify organizations to which you belong and any relevant leadership positions you have held.
16. List any previous IRS employment (please state position(s), title(s), and time in each position):
17. Please propose two topic ideas that you feel would be appropriate for discussion by IRPAC. Include a short description (three sentences) of each topic.

The Following Three Items Are Required for an FBI Name Check

18. Date of Birth:
19. Place of Birth:
20. Other names ever used:

The Following Items Are Required for an IRS Tax Check. (Please Note That a Tax Check Is Not a Tax Audit)

The Internal Revenue Service will perform the standard Federal Advisory Committee member tax check, (pursuant to 26 U.S.C. 6103; 5 U.S.C. 1303; Executive Orders 9397, 11222, 10450; CFR 5.2; 31 CFR Part O, Treasury Department Order Nos. 82 (Revised) and 150–87) and provide the information obtained to the Assistant Secretary (Administration) of the Treasury Department. The purpose of this tax check is to promote public confidence in the integrity of the Treasury Department and its administration of

the Federal tax system. Your Social Security Number is required to identify your tax records accurately. This tax check must be completed prior to any appointment to this Federal Advisory Committee and you are now being asked to voluntarily provide the following information and, at a later time, you will be asked to sign a formal tax check waiver:

21. Social Security Number (SSN):

22. Spouse's name and SSN (if married and filing jointly):

The Following Item Is Required Because of the Foreign Agents Registration Act (FARA), as Amended

23. I presently _____ am / _____ am not required to register as an agent of a foreign principal under FARA, as amended.

Note: Pursuant to 18 U.S.C. sec. 219, an individual who is required to register as an agent of a foreign principal under FARA is prohibited from serving on IRPAC. By executing this questionnaire, you agree that (1) if you are required to register as an agent of a foreign principal under the FARA before your term commences on IRPAC, you will terminate any and all such agencies prior to beginning your tenure and will provide appropriate verification therefor; and (2) you will immediately resign from IRPAC if you become such an agent at any time during your term.

Certification

24. I certify that, to the best of my knowledge and belief, all of my statements are true, correct, complete, and made in good faith. I also agree to the background checks set forth herein.

_____

Signature

Date _____

[FR Doc. 98–11407 Filed 4–28–98; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 63, No. 82

Wednesday, April 29, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–5881–3]

Direct Final Rule Amending the Test Procedures for Heavy–Duty Engines, and Light Duty Vehicles and Trucks and the Amending of Emission Standard Provisions for Gaseous Fueled Vehicles and Engines

Correction

In rule document 97–23352, beginning on page 47114, in the issue of Friday, September 5, 1997, make the following correction:

Appendix I to Part 86 [Corrected]

On page 47136, in the first column, footnote 1 should be added to read as follows: ''[1]Closed throttle motoring.''

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VT-006-01-1219a; A-1-FRL-5998-1]

Approval and Promulgation of Air Quality Implementation Plans; Vermont; VOC Regulations

Correction

In rule document 98–10724, beginning on page 19825, in the issue of Wednesday, April 22, 1998, make the following correction:

§ 52.2381 [Corrected]

On page 19829, in § 52.2381, in the table, in the first column, in the 17th line, ''5–252.13'' should read ''5–253.13''.

BILLING CODE 1505-01-D

Federal Register

Wednesday
April 29, 1998

Part II

Securities and Exchange Commission

17 CFR Parts 201, 240, 242, and 249

Regulations of Exchanges and Alternative Trading Systems and Proposed Amendment to Rule 19b–4; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 201, 240, 242 and 249

[Release No. 34–39884; File No. S7–12–98]

RIN 3235–AH41

Regulation of Exchanges and Alternative Trading Systems

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission today is proposing new rules and rule amendments to allow alternative trading systems to choose whether to register as national securities exchanges, or to register as broker-dealers and comply with additional requirements under proposed Regulation ATS depending on their activities and trading volume. The Commission is also proposing amendments to Form 1 and related rules regarding registration as a national securities exchange. Finally, the Commission is proposing to exclude from the rule filing requirements certain pilot trading systems operated by national securities exchanges and national securities associations. These proposals would more effectively integrate the growing number of alternative trading systems into the national market system, accommodate the registration of proprietary alternative trading systems as exchanges, and provide an opportunity for registered exchanges to better compete.

DATES: Comments should be submitted on or before July 28, 1998.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–12–98. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, Room 1024, 450 Fifth Street, NW., Washington DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Elizabeth King, Senior Special Counsel, at (202) 942–0140, Marianne Duffy, Special Counsel, at (202) 942–4163, Constance Kiggins, Special Counsel, at (202) 942–0059, Lauren Mullen, Special Counsel, at (202) 942–0196, Kevin Ehrlich, Attorney, at (202) 942–0778, and Denise Landers, Attorney, at (202) 942–0137, Division of Market Regulation, Securities and Exchange Commission, Stop 10–1, 450 Fifth Street, NW., Washington, DC 20549. For questions or comments regarding securities registration issues raised in this release, contact David Sirignano, Associate Director, at (202) 942–2870, Division of Corporation Finance, Securities and Exchange Commission, Stop 3–1, 450 Fifth Street, NW., Washington, DC 20549.

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I. Executive Summary

A. Introduction

Technological developments have changed our markets in many ways. They have greatly expanded the number of investment and execution choices, increased market efficiency, and reduced trading costs. Market participants have incorporated technology into their businesses to provide investors with an increasing array of services, and to furnish these services during more hours, often at lower prices. Many of these trading and business functions, however, were not foreseen by a regulatory framework designed more than six decades ago. In particular, market participants have developed a variety of alternative trading systems [1] that furnish services traditionally provided solely by registered exchanges. Consequently, the distinctions between markets, intermediaries, and service providers have blurred.

In light of these changes, in May 1997, the Securities and Exchange Commission (''Commission'' or ''SEC'') published a Concept Release,[2] which requested comment on ways to update the regulatory framework for alternative trading systems. In the Concept Release, the Commission considered two principal alternatives for the regulation of alternative trading systems. First, the Concept Release solicited comment on incorporating these systems into a tiered-exchange regulation framework, under which alternative trading systems would be subject to requirements tailored to their size and role in the market. Second, comment was solicited on increasing the Commission's oversight of alternative trading systems through enhanced broker-dealer regulation.

After reviewing the comment letters and current market conditions, the Commission is proposing to address the activities of alternative trading systems by combining the two approaches discussed in the Concept Release. Under today's proposal, alternative trading systems would be able to choose whether to: (1) Register as national securities exchanges under sections 5 and 6 of the Exchange Act; or (2) register as broker-dealers and comply with the additional requirements being proposed as new Regulation ATS.

B. Need for a New Regulatory Framework for Alternative Trading Systems

The federal securities laws have served the markets well. This basic regulatory structure has enabled the United States to have the safest, most liquid securities markets in the world. One of the principal reasons for these markets' success is the widely acknowledged benefit of securities markets that are free from fraud and manipulation. Moreover, the securities laws—to a great extent—have provided a level playing field so that competition among market participants can thrive. In addition, the Commission has worked to apply and implement the federal securities laws in a way that encourages our securities markets to take advantage of the many benefits of technology.

As a result, investors have available a wide range of options for executing their securities trades. In particular, alternative trading systems now handle more than twenty percent of the orders in securities listed on The Nasdaq Stock Market (''Nasdaq''), which represents an almost one percent increase from the previous year. Alternative trading systems also continue to trade almost four percent of orders in listed securities. Even though these systems provide services that are similar to those provided by the registered exchanges and Nasdaq, most alternative trading systems are regulated as broker-dealers. This creates disparities that affect investors, market intermediaries, and other markets. For example, activity on alternative trading systems is not fully disclosed to, or accessible by, public investors and may not be adequately surveilled for market manipulation and fraud. Moreover, these trading systems have no obligation to provide investors a fair opportunity to participate in their systems or to treat their participants fairly. In addition, they do not have an obligation to ensure that their capacity is sufficient to handle trading demand. Because of the increasingly important role of alternative trading systems, these differences call into question not only the fairness of current regulatory requirements, but also the efficacy of the existing national market system (''NMS'') structure.

In 1996 Congress provided the Commission with greater flexibility in regulating new trading systems by adding Section 36 to the Securities Exchange Act of 1934 (''Exchange Act''). This Section gives the Commission broad authority to exempt any person from any of the provisions of the Exchange Act.[3] As a result, the Commission now has a greater ability to adopt a regulatory approach more tailored to today's securities markets, which will allow the Commission to integrate trading on alternative markets more fully into the NMS, without jeopardizing the commercial viability of these markets. The Commission is also now able to exempt registered exchanges from requirements that are unnecessary or inappropriate.

C. The Concept Release

On May 23, 1997, the Commission issued the Concept Release soliciting comment on ways to update the regulatory framework in light of the dramatic changes in the U.S. securities

[1] The Commission used the term ''alternative trading system'' in the Concept Release, *see infra* note 2, to describe trading systems not registered as exchanges. This term encompasses some systems that previous Commission releases called ''proprietary trading systems,'' ''broker-dealer trading systems,'' and ''electronic communications networks.'' The latter two terms are defined in Rules 17a–23 and 11Ac1–1 under the Exchange Act, 17 CFR 240.17a–23 and 240.11Ac1–1, respectively, and trigger specific regulatory obligations under those rules. In this release, the Commission is proposing to define the term ''alternative trading system.'' *See* Proposed Rule 300(a).

[2] Securities Exchange Act Release No. 38672, 62 FR 30485 (May 23, 1997) (''Concept Release'').

[3] Section 36 of the Exchange Act, 15 U.S.C. 78mm, was enacted as part of the National Securities Markets Improvement Act of 1996, Pub. L. 104–290 (''NSMIA''). *See infra* Section VI.D.1.

markets brought about by new and evolving technology.[4] The Concept Release began a dialogue about how the Commission should best respond to the legal and regulatory challenges created by both existing—and future—technological developments. In particular, the Commission asked for comment on how to effectively oversee alternative trading systems in general, and especially those that are becoming increasingly significant market centers. Although these alternative trading systems perform the functions of a market, they are not required to surveil their markets for manipulative activity, to make all of their quotes public, to treat participants fairly, or to maintain adequate capacity to prevent outages. Thus, as these alternative trading systems are increasingly used for trade execution, the existing regulations fail to provide investors with access to the best prices, or to integrate these systems fully into the NMS, including the surveillance and enforcement mechanisms operated by the registered exchanges and the National Association of Securities Dealers, Inc. (''NASD'').

The Concept Release solicited commenters' views on two principal approaches to address these concerns. Under the first approach, alternative trading systems would be incorporated into the Commission's regulation of exchanges under a three-tiered framework. Under the second approach, alternative trading systems would continue to be regulated as broker-dealers, but would be required to comply with rules designed to improve their transparency and surveillance, as well as their systems capacity, integrity, and security. A wide variety of market participants, including self-regulatory organizations (''SROs''), traditional broker-dealers, and alternative trading systems, provided the Commission with thoughtful comments on both of these approaches.[5]

In general, commenters supported the Commission's efforts to make the regulatory structure more responsive to technological innovation and agreed that the current structure should be revised to apply enhanced linkage, surveillance, and other requirements to alternative trading systems. A number of commenters agreed that technology has made the line between broker-dealers and exchanges more difficult to draw and that the roles of broker-dealers and exchanges are becoming increasingly interchangeable. Many commenters emphasized the need to make any new regulatory scheme flexible enough to accommodate the varying needs and structures of these market participants. Commenters differed considerably, however, on what the Commission's goals should be in enhancing the oversight of alternative trading systems, the extent of change necessary, and how to best achieve enhanced oversight. Consequently, there were few instances in which commenters were in consensus. Nevertheless, commenters did, generally, express a preference for continuing to regulate alternative trading systems as broker-dealers, rather than incorporating them into exchange regulation.

While some commenters argued that the importance of some electronic markets as trading venues justifies the imposition of exchange regulation, several regional exchanges and other market participants were not convinced that the exchange approach would fulfill the regulatory goals outlined in the Concept Release. Many commenters believed integrating alternative trading systems into existing surveillance mechanisms could impose burdens on both the market as a whole and the Commission. Many commenters noted that this approach could potentially lead to uneven and fragmented market oversight. At the heart of many of these objections was the fear that alternative trading systems would be forced to submit to some degree of exchange regulation, albeit modified for most systems, which could lead to structural changes. Commenters also feared that an exchange-based regulatory approach could frustrate innovation and reduce the benefits offered by alternative trading systems.

D. Current Proposal

Technological developments continue to change market structure. The Commission firmly believes that there should be a regulatory framework in place that makes sense both for current and future securities markets. This regulatory framework should encourage market innovation without compromising basic investor protections.

After considering the comment letters, the Commission is proposing to address the activities of alternative trading systems by combining the two approaches discussed in the Concept Release. This combined approach should allay commenters' concerns that a new regulatory scheme would not be flexible enough to accommodate the business objectives of, and the benefits provided by, alternative trading systems. Specifically, the Commission is proposing to allow an alternative trading system to choose whether to: (1) Register as a national securities exchange under sections 5 and 6 of the Exchange Act; or (2) register as a broker-dealer and comply with the additional requirements being proposed as new Regulation ATS.[6] The proposal set forth in this release is intended—to the extent consistent with the federal securities laws—to allow alternative trading systems to choose the market role that works best for them.[7] At the same time, this proposal is designed to preserve the benefits of a competitive market structure that has greatly enhanced market liquidity, transparency, and efficiency.

To implement this approach, the Commission is proposing Rule 3b–12 under the Exchange Act, which would define terms used in the statutory definition of ''exchange''[8] to encompass most alternative trading systems. This new rule would include any organization, association, person, group of persons, or system that: (1) Consolidates orders of multiple parties; and (2) sets non-discretionary material conditions (whether by providing a trading facility or by setting rules) under which subscribers entering such orders agree to the terms of a trade. Proposed Rule 3b–12 would specifically exclude those systems that only: (1) Route orders to a registered exchange, a market operated by a national securities association, or any broker-dealer; (2) display the quotes of a single dealer and allows persons to enter orders for execution against such dealer's quotes;[9] or (3) provide the means for a single broker-dealer to internally manage its customers' orders, including crossing or

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[4] *See* Concept Release, *supra* note 2. The Concept Release also solicited comment on the Commission's regulation of foreign market activities in the United States. The proposals discussed in this release, however, do not address issues relating to foreign market activities in the U.S.

[5] The comment letters and a summary of comments have been placed in Public File S7–16–97, which is available for inspection in the Commission's Public Reference Room.

[6] *See infra* Section III.A. As discussed in the Concept Release, the government securities market is subject to its own specialized oversight structure. For this reason, the Commission does not believe it is necessary to change the regulation of alternative trading systems to the extent that they exclusively trade government securities. *See infra* notes 70 and 71 accompaning text.

[7] The Commission notes that organizations that conduct a regulatory function with respect to their members are excluded from the definition of alternative trading system. Consequently, such system would have to register as national securities exchanges. *See infra* notes 65 and 66 and accompanying text.

[8] The statutory definition of ''exchange'' appears in section 3(a)(1) of the Exchange Act, 15 U.S.C. 78c(a)(1).

[9] The Commission would consider a customer order displayed by a dealer in its quote to be the ''dealer's quote'' for purposes of this exclusion, if a customer order were displayed solely to comply with a Commission or SRO rule.

matching such orders with each other provided that (i) those orders are not displayed to any person other than the broker-dealer and its employees and (ii) those orders are not executed according to a predetermined procedure that is communicated to the customers. Because most alternative trading systems are not encompassed by the Commission's current interpretation of ''exchange,'' [10] the Commission is also proposing to revise its interpretation to better reflect the ever-evolving securities markets and to give alternative trading systems the option of registering as national securities exchanges.

For alternative trading systems that choose to register as national securities exchanges, the Commission is proposing to accommodate their proprietary structure by amending the application for registration and providing guidance on ways for proprietary markets to meet their fair representation requirements as non-membership national securities exchanges.[11]

For alternative trading systems that choose to register as broker-dealers, the Commission is proposing new Regulation ATS, which would require alternative trading systems to comply with additional requirements designed to address the concerns raised by their market activities. To provide for continuing innovation and competition through the introduction of new alternative trading systems, the Commission proposes that systems with limited volume be required only to: (1) File with the Commission a notice of operation and quarterly reports; and (2) maintain records, including an audit trail of transactions. If, however, an alternative trading system with significant trading volume chooses to register as a broker-dealer—instead of as an exchange—the Commission believes it is in the public interest to integrate its activities into the NMS. Therefore, in addition to the requirements for smaller alternative trading systems, significant volume alternative trading systems that trade NMS securities would be required to link with a registered market in order to disseminate the best priced orders displayed in their systems (including institutional orders) into the public quote stream. They would also be required to comply with the same market rules governing execution priorities and obligations that apply to members of the registered market.[12] In addition, alternative trading systems with significant volume in any security, whether equity or debt, would be required to: (1) Grant or deny access based on standards established by the trading system and applied in a non-discriminatory manner; and (2) establish procedures to ensure adequate systems capacity, integrity, and contingency planning. These requirements would more actively integrate those significant alternative trading systems into NMS mechanisms. Moreover, because alternative trading systems that choose to register as broker-dealers would not be required to surveil activities on their markets, the Commission intends to work with the SROs to improve the SROs' ongoing, real-time surveillance for market manipulation and fraud and to develop surveillance and examination procedures specifically targeted to alternative trading systems they supervise.

The Commission is also proposing to repeal Rule 17a–23.[13] This rule was adopted to provide the Commission with certain information about the activities of automated markets operated by broker-dealers. Alternative trading systems would continue to provide the Commission with information about their activities either as registered exchanges or as registered broker-dealers subject to Regulation ATS. Some broker-dealer trading systems that are currently subject to Rule 17a–23, however, would not be alternative trading systems. The Commission believes that these internal broker-dealer systems should, nevertheless, continue to keep records of trading conducted through these systems. Therefore, the Commission is proposing to amend Rules 17a–3 [14] and 17a–4 [15] under the Exchange Act to require that records of these transactions be maintained. Internal broker-dealer trading systems would, however, no longer have to report any information to the Commission.[16]

Finally, the Commission is proposing to allow SROs, without filing for approval with the Commission, to operate pilot trading systems for no more than two years. These pilot trading systems would be subject to specific conditions, including limitations on their trading volumes.[17]

E. Conclusion

The explosive growth of alternative trading systems over the past several years has significant implications for market regulation. The Commission believes it is critical to develop a regulatory framework that both accommodates traditional market structures and provides sufficient flexibility to ensure that new markets promote fairness, efficiency, and transparency. While the questions raised by technological developments in the U.S. markets could be addressed in a variety of ways, the Commission preliminarily believes that the regulatory approach proposed today would be the most effective way to facilitate these goals.

II. Proposed Rule 3b–12 Under the Exchange Act

As part of this new approach, the Commission is proposing new Rule 3b–12 under the Exchange Act. This rule would define terms used in the statutory definition of ''exchange,'' found in section 3(a)(1) of the Exchange Act.[18] The statutory definition of ''exchange'' includes a ''market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange.'' The new rule would define these terms to be *any organization, association, or group of persons that: (1) Consolidates orders of multiple parties; and (2) sets non-discretionary material conditions (whether by providing a trading facility or by setting rules) under which parties entering such orders agree to the terms of a trade.*[19] The Commission recognizes that the proposed rule would revise the current interpretation of the term ''exchange,'' as set forth in the *Delta Release*.[20]

The Commission believes that the proposed rule is an important element of its proposed new regulatory framework for alternative trading systems. As discussed above, the rapid growth and technological advancements of alternative trading systems have eroded the distinctions between the roles played by alternative trading systems and by traditional exchanges. Many alternative trading systems provide services more akin to exchange functions than broker-dealer functions,

[10] The Commission's current interpretation of ''exchange'' is set forth in Securities Exchange Act Release No. 27611 (Jan. 12, 1990), 55 FR 1980, 1900 (Jan. 19, 1990) (''*Delta Release*''). *See infra* Section II for a discussion of proposed Rule 3b–12.

[11] *See infra* Section III.B.

[12] This linkage requirement would not apply to alternative trading systems that do not display participant orders to anyone, including other system participants. In addition, this requirement would not apply to alternative trading systems to the extent that they trade securities other than NMS securities. *See infra* Section III.A.2.c.(i).

[13] 17 CFR 240.17a–23.

[14] 17 CFR 240.17a–3.

[15] 17 CFR 240.17a–4.

[16] *See infra* Section IV.

[17] *See infra* Section V.

[18] 15 U.S.C. 78c(a)(1).

[19] Proposed Rule 3b–12(a).

[20] *See Delta Release supra* note 10. The basis and purpose of the revised interpretation is set forth *infra* Section VI.

such as matching counterparties' orders, executing trades, operating limit order books, and facilitating active price discovery. For many of these systems, regulation as a market would more appropriately fit their economic functions. Thus, a broader interpretation of exchange is needed to cover markets that engage in activities functionally equivalent to markets currently registered as national securities exchanges. Moreover, because in some cases exchange regulation may better meet these systems' business objectives, the Commission believes that alternative trading systems should have the option to register as national securities exchanges.[21] The proposed rule would help modernize the Commission's approach to these systems because it would adapt the concept of what is ''generally understood'' to be an exchange to reflect changes in the markets brought about by automated trading. In addition, proposed Rule 3b–12 would closely reflect the statutory concept of ''bringing together'' buying and selling interests.

The Concept Release set forth a similar interpretation.[22] In response to commenters' concerns that any revised interpretation of exchange should not be so broad as to include traditional brokerage activities, proposed Rule 3b–12 would specifically exclude certain systems whose activities the Commission does not believe rise to the level of being an ''exchange.'' [23] These specific exclusions are designed to clarify the types of activities the Commission would not consider to be exchange activities under proposed Rule 3b–12.

A. Consolidates the Orders of Multiple Parties

In order to be an exchange, a system must satisfy the first part of proposed Rule 3b–12(a)—*consolidate orders of multiple parties.* This incorporates the concept of ''bringing together purchasers and sellers of securities'' set forth in the definition of ''exchange'' in section 3(a)(1) of the Exchange Act. A system would be consolidating orders if it displayed trading interest entered on the system to system users. This would include consolidated quote screens, such as the system operated by Nasdaq.[24] A system would also be consolidating orders if it receives subscribers' orders centrally for future processing and execution. For example, limit order matching book systems that allow subscribers to display buy and sell offers in particular securities and to obtain execution against matching offers contemporaneously entered or stored in the system would be considered to consolidate orders. This type of consolidation is currently performed by systems that consolidate orders internally for crossing [25] or matching,[26] as well as floor based markets that impose trading rules. In addition, interdealer brokers [27] would be considered to consolidate orders, regardless of their level of automation.[28] On the other hand, systems that merely provide information, such as information vendors, would not be viewed as consolidating orders. Consolidation thus means that each order entered in the system for a given security has the opportunity to interact with other orders entered into the system for the same security.

In addition, the system's consolidation of orders must be of *multiple parties—i.e.*, multiple buyers and multiple sellers. Systems designed for the purpose of executing orders against a single counterparty, such as the dealer operating the system, would not be considered to have multiple parties. Thus a single counterparty that buys *and* sells securities through a system, where other parties entering orders only execute against the single designated counterparty, would not meet the requirements of the first part of proposed Rule 3b–12.[29] However, the mere interpositioning of a designated counterparty as riskless principal for settlement purposes after the purchasing and selling counterparties to a trade have been matched would not, by itself, mean that the system does not have multiple parties. In addition, a system that has multiple sellers, but only one seller for each instrument, and multiple buyers for that instrument would not be considered to meet the ''multiple parties'' requirement.[30]

Finally, the proposed rule would make clear that the consolidation must be of participants' ''orders.'' The term ''order'' would be defined in paragraph (c) of proposed Rule 3b–12 to include any firm indication of a willingness to buy or sell a security, whether made on a principal or agency basis.[31] Firm indications of buying or selling interest would specifically include bid or offer quotations, market orders, limit orders, and any other priced order.

B. Non-Discretionary Material Conditions

In addition to consolidating the orders of multiple parties, in order to be an ''exchange'' under proposed Rule 3b–12, a system would have to *set non-discretionary material conditions under which parties entering orders agree to*

[21] *See infra* Section III.B. (discussing registration as a national securities exchanges).

[22] In the Concept Release, the Commission suggested expanding its interpretation of the term exchange ''to include any organization that both: (1) Consolidates orders of multiple parties; and (2) provides a facility through which, or sets material conditions under which, participants entering such orders may agree to the terms of a trade.'' *See* Concept Release, *supra* note 2, at 50.

[23] *See infra* Section II.C. (discussing paragraph (b) of proposed Rule 3b–12).

[24] An electronic bulletin board on which subscribing broker-dealers may post indications of interest in securities they wish to trade, and advertise trades they have recently conducted, would be considered to consolidate orders. For example, AutEx operates such a bulletin board. AutEx, however, would not be an exchange under the proposed interpretation because it does not set non-discretionary material conditions under which parties entering orders agree to the terms of a trade. AutEx does not require that the price and quantity quoted on the screen be firm, nor does AutEx set priorities that govern trades. Further, transactions resulting from posted indications of interest, if any, are executed outside AutEx. *See infra* Section II.B. discussing paragraph (a)(2) of proposed Rule 3b–12.

[25] A crossing system is, typically, one that allows participants to enter unpriced orders to buy and sell securities. Orders are crossed at specified times at a price derived from another market.

[26] Matching systems allow participants to enter limit orders and match those orders with other orders in the system. Participants are able to view unmatched limit orders in the system's book. The sponsor of a matching system typically acts as riskless principal with respect to matched orders, or contracts with another broker-dealer to perform this function.

[27] Currently, debt markets are not centrally organized by a single entity, but are nonetheless informally organized around interdealer brokers. Interdealer brokers (also called blind brokers and brokers' brokers) display, on an anonymous basis, the offers to buy and sell securities that are placed with them by subscribers. In order to place a bid or offer, a subscriber typically telephones the interdealer broker, which enters the order into its system and displays it to other subscribers. Some interdealer brokers display all bids and offers; others display only the best bid and offer. To execute against an offer displayed on the computer screen, a subscriber telephones the interdealer broker, although sometimes execution may be electronic. The identities of the counterparties are, generally, kept confidential through clearance and settlement of the trade. Some interdealer brokers, however, reveal the names of each counterparty after execution. Traditionally interdealer brokers facilitated trading only between dealers. Increasingly, however, interdealer brokers are permitting non-dealers to participate in their systems.

[28] *But see infra* notes 70 and 71 and accompanying text (discussing the exemption for systems that trade exclusively government securities).

[29] This type of system also would be expressly excluded from proposed Rule 3b–12 under paragraph (b)(2). *See infra* Section II.C.2.

[30] An example of this type of system is CP Direct in which issuers offer to sell their commercial paper to the customers of CS First Boston. *See* Bruce Rule, *PSA Panels Embrace Internet for Institutional Trading; and Regulators Love the Audit Trail,* Investment Dealers' Digest, Nov. 18, 1996 (discussing CP Direct). The converse situation—*i.e.*, where there is one buyer and multiple sellers for a given instrument—would also not meet the ''multiple parties'' requirement. The Commission, however, is not aware of any system that currently operates this way.

[31] Proposed Rule 3b–12(c).

the terms of the trade. A system may establish non-discretionary material conditions either by providing a trading facility or by setting rules governing trading among subscribers. The Commission intends for ''non-discretionary material conditions'' to include any conditions that dictate the terms of trading among the multiple counterparties entering orders into the system. In other words, such conditions would include those that set procedures or priorities under which open terms of the trade will later be determined. For example, a system that trades limited partnership units might set non-discretionary material conditions even though approval from the general partner is required prior to settlement. Similarly, systems that allow the trading price to be determined at some designated future date on the basis of pre-established criteria (such as the weighted average trading price for the security on the specified date in a specified market) would be setting non-discretionary material conditions.

Trading rules or trading facilities that do not determine the manner of execution or the means for agreeing to the terms of a trade would not be considered to set non-discretionary material conditions. Similarly, rules that merely address the means of communication with a system (for example, software or hardware tools that subscribers may use in accessing the system), would not satisfy this element of proposed Rule 3b–12. Further, conditions would not be deemed material and non-discretionary unless they were communicated to subscribers. Thus, broker-dealers' internal order management and execution systems would not be exchanges.[32]

1. Non-Discretionary Material Conditions Established by a Trading Facility

A trading facility that sets non-discretionary material conditions would include a traditional exchange floor where specialists are available to receive orders, or a computer system (whether comprised of software, hardware, protocols, or any combination thereof) through which orders may interact, or any other trading mechanism that provides a means or location for the execution of orders. For example, the Commission would consider the use of an algorithm by an electronic trading system that sets trading procedures and priorities to be a trading facility that sets non-discretionary material conditions.

The Commission would attribute the activities of a trading facility to a system if that facility is offered by the system directly or indirectly (such as where a system arranges for a third party or parties to offer the trading facility). Thus, if a system arranges for a third party vendor to distribute software to enable persons to access the system, that system would be deemed to have established a trading facility, even though system participants gained access via a third party provider. Similarly, if a bulletin board operator contracted with another party to provide execution facilities for the bulletin board users, the bulletin board would be deemed to have established a trading facility because it took affirmative steps to arrange for the necessary exchange functions for its users.[33] In addition, if an organization arranged for separate entities to provide different pieces of a trading system which together met the definition contained in paragraph (a) of proposed Rule 3b–12, the organization responsible for arranging the collective efforts would be deemed to have established a trading facility. For example, the arrangement between the Delta Government Options Corporation (''Delta''), RMJ Options Trading Corporation, and Security Pacific National Trust Company, as described in a 1990 Commission release,[34] would together be an exchange. In this case, the arranging organization, Delta, would be considered the exchange under proposed Rule 3b–12.

2. Non-Discretionary Material Conditions Established by Setting Rules

Alternatively, a system can establish non-discretionary material conditions through the imposition of rules under which parties entering orders on the system may agree to the terms of a trade. For example, the NASD imposes basic rules by which securities will be traded on Nasdaq. Specifically, it imposes affirmative obligations on market makers in Nasdaq National Market (''Nasdaq NM'') and SmallCap securities, including obligations to post firm and two-sided quotes.

In addition, the Commission would consider rules imposing execution priorities, such as time and price priority rules, to be non-discretionary material conditions. Similarly, the Commission would consider a system that standardizes the material terms of instruments traded on the system, such as the system operated by Delta at the time the Commission published the *Delta Release*,[35] to set non-discretionary material conditions.

The Commission believes it is appropriate to include markets, such as that operated by the NASD, in proposed Rule 3b–12, although it comprises a dealer market. Through Nasdaq, market participants act in concert to centralize and disseminate trading interest and establish the basic rules by which securities will be traded. The Commission believes that Nasdaq performs what today is generally understood to be the functions commonly performed by a stock exchange. Nasdaq, however, is currently registered as a securities information processor under Section 11A of the Exchange Act[36] and is operated by the NASD, a registered securities association under Section 15A of the Exchange Act.[37] Because the requirements currently applicable to a registered securities association are virtually identical to the requirements applicable to registered exchanges, the Commission does not believe it is necessary or appropriate in the public interest to require Nasdaq to register as an exchange.[38] Under the proposal, however, Nasdaq could choose to register under Section 6 of the Exchange Act as an exchange.[39]

C. Systems Not Included in Proposed Rule 3b–12

The Commission also asked in the Concept Release whether certain specific brokerage functions should be excluded from any revised exchange regulatory scheme. The Concept Release

[32] *See infra* Section II.C.3. (discussing the exclusion of internal broker-dealer systems from the coverage of proposed Rule 3b–12).

[33] Whether or not a bulletin board would be considered an exchange under the proposed rule would also depend on whether it met the other elements of the definition.

[34] *See Delta Release, supra* note 10.

[35] *See Delta Release, supra* note 10, at 1897.

[36] 15 U.S.C. 78k–1.

[37] 15 U.S.C. 78*o*–3. As a registered securities information processor, Nasdaq does not have SRO responsibilities itself. The NASD delegates to NASD Regulation, Inc. (''NASDR''), the wholly owned regulatory subsidiary of the NASD, its SRO responsibilities to surveil trading conducted on Nasdaq and the OTC Bulletin Boards, and to enforce compliance by its members (and persons associated with its members) with applicable laws and rules. If Nasdaq registered as an exchange, it would have its own SRO responsibilities, but the Commission does not expect this to increase Nasdaq's current burden. Nasdaq also surveils trading conducted on its market and refers potential violations to NASDR. The Commission is prepared to use its authority under sections 17 and 19 of the Exchange Act, 15 U.S.C. 78q and 78s, to allocate any obligations Nasdaq would have to enforce compliance by its members (and persons associated with its members) with the federal securities laws to NASDR. *See also infra* note 166.

[38] *See infra* notes 51–53 and accompanying text (discussing Proposed Rule 3a1–1(a)(1), which explicitly exempts any systems operated by a national securities association from the definition of the term ''exchange'').

[39] 15 U.S.C. 78f.

noted that unlike organized markets, traditional broker-dealer activities do not involve the systematic interaction of customer orders where the customers themselves are informed of and have an opportunity to agree to the terms of their trades (or agree to the priorities under which the terms will be set). The Concept Release specifically mentioned several types of activities that could be considered traditional brokerage activities, including routine intermediary functions performed by brokers, such as block positioning, the automation of internal order management where the matching of customer orders is incidental to the order management activities, the automation of order routing and execution for a single market maker, and other types of trading where the broker has discretion as to the means of execution.

Commenters widely agreed that automated brokerage functions should not be encompassed by the meaning of the term ''exchange.'' [40] The Commission agrees. The Commission has included paragraph (b) of proposed Rule 3b–12 to clarify those types of systems that the Commission does not believe should be encompassed within paragraph (a) of proposed Rule 3b–12. Paragraph (b) of Rule 3b–12 would expressly exclude: (1) Systems that merely route orders to other execution facilities; (2) systems that allow customers of a dealer to execute solely against the dealer's inventory; [41] and (3) systems that allow a broker-dealer to cross or match customer orders internally at the broker-dealer's discretion. These exclusions are intended to make clear that paragraph (a) of proposed Rule 3b–12 does not cover customary brokerage activity.

1. Order Routing Systems

Systems that merely route orders to an exchange or broker-dealer for execution, like the New York Stock Exchange's (''NYSE's'') SuperDOT [42] system and BRASS,[43] would be explicitly excluded from proposed Rule 3b–12,[44] because they do not consolidate orders. Instead, all orders entered into a routing system are sent to another facility that consolidates orders. In addition, routing systems do not set non-discretionary material conditions under which parties entering orders agree to the terms of the trade.

2. Dealer Quotation Systems

A sophisticated market maker that develops a system to disseminate its own quotations to the public, or to allow its customers to direct orders for execution solely against that market maker's inventory, is conducting broker-dealer activity. Such systems automate the order routing and execution mechanisms of a single market maker and guarantee that the market maker will execute orders submitted to it at its own posted quotation for the security or, for example, at the inside price quoted on Nasdaq. Because single market maker systems merely provide a more efficient means of communicating the trading interest of separate customers to one dealer, they should not be considered exchanges. Therefore, the Commission proposes that systems that display the quotes of a single dealer and allow customers to execute solely against those quotes be excluded under paragraph (b) of proposed Rule 3b–12. [45]

3. Internal Broker-Dealer Order Management and Execution Systems

Finally, a system that provides the means for a single broker-dealer to internally manage its customers' orders, including crossing or matching such orders with each other, would be specifically excluded from paragraph (a) of proposed Rule 3b–12, if : (1) No orders were displayed to persons other than the broker-dealer's employees; and (2) customer orders were not executed according to a predetermined procedure that is communicated to the customer.[46] For example, broker-dealers may automate part of their intermediary function by developing internal programs that allow traders within a firm to search and match orders with customer orders of other traders within the same firm, or with orders and quotes of other traders. Such systems, however, generally serve as a means of providing information regarding a firm's customer orders solely to the employees of the broker-dealer operating the system to facilitate the employees' crossing of customer orders on a discretionary basis, as described below.

While these internal systems automate traditional brokerage functions, they still require a broker-dealer to use its discretion to handle customer orders. In this situation, a customer that gives its order to a broker-dealer typically gives discretion to that broker-dealer to select the market where the order will ultimately be executed, how the order may be split up or ''worked,'' and whether the broker-dealer will execute the order as principal or as agent. Although a broker-dealer may disclose its standard practices to customers, ultimately these execution decisions are left to the discretion of the broker-dealer, consistent with its statutory responsibilities.[47] Unless otherwise agreed, customers have no other expectations that the broker-dealer will handle the order in accordance with its general broker-dealer obligations. The Commission views this type of system as merely automating traditional broker-dealer functions and not as a means for consolidating the orders of multiple parties.

Similarly, while block trading desks provide a central location where employees of a single broker-dealer trade side-by-side, they do not systematically consolidate the customer orders handled by those employees. Although an employee may ultimately match a customer order with another customer order from a trader sitting across the room, this does not operate as an organized mechanism for ensuring that customer orders are matched, crossed, or otherwise centralized.

The Commission is seeking comment on whether paragraph (a) of proposed Rule 3b–12 accurately captures the fundamental features of an exchange as that term is commonly understood, and whether the proposed exclusions from the definition are appropriate. In addition, the Commission seeks comment on whether there are other types of activities or organizations that should be specifically excluded from proposed Rule 3b–12.

[40] A number of commenters named specific brokerage activities that they believed should not be considered exchange activities. Commenters specifically feared that the revised interpretation of exchange set forth in the Concept Release would capture internal crossing networks, block trading desks, third market makers, OTC market makers, and dealer markets.

[41] *See supra* note 9.

[42] The NYSE's SuperDOT (Designated Order Turnaround) system enables firms to transmit market and limit orders in all NYSE-listed securities directly to the specialist post for execution. Some NYSE members also allow selected institutional customers to route their orders through the members' connection to SuperDOT. A similar system is operated by the American Stock Exchange (''Amex'') (Automated Post Execution Reporting system, or AutoPERS).

[43] BRASS is an order routing system operated by Automated Securities Clearance, Ltd. (''ASC''). ASC provides system users with software and hardware that enables users to enter orders into the system which are then routed to an exchange for execution.

[44] Proposed Rule 3b–12(b)(1).

[45] Proposed Rule 3b–12(b)(2).

[46] Proposed Rule 3b–12(b)(3).

[47] For example, a block positioner may ''shop'' the order around in an attempt to find a contra-side order that has been placed with another trader. In some cases, the block positioner may take the other side of the order, keeping the block as a proprietary position. This decision is dictated by market conditions and typically lies within the block positioner's discretion.

D. Exemption From the Definition of ''Exchange'' for Certain Alternative Trading Systems

Section 36 of the Exchange Act [48] gives the Commission broad authority to exempt any person, security, or transaction from provisions of the Exchange Act and the rules thereunder. Such an exemption may be subject to conditions. Using this authority, the Commission is proposing Rule 3a1–1, which would exempt any alternative trading system that complies with Regulation ATS from the definition of ''exchange.'' [49] The Commission believes that this proposed exemption is in the public interest and will promote efficiency, competition, and capital formation because it has the effect of providing alternative trading systems with the option of positioning themselves in the marketplace as either registered exchanges or as broker-dealers. The Commission believes that allowing alternative trading systems to make a business decision about how to register with the Commission would encourage the development of new and innovative trading facilities. The Commission also believes that the proposed exemption is consistent with the protection of investors.

The Commission intends for the exemption provided by proposed Rule 3a1–1 to make clear that alternative trading systems that register as broker-dealers and comply with proposed Regulation ATS should not be treated as national securities exchanges. The Commission believes that the proposed requirements in Regulation ATS would address the market-like functions of alternative trading systems without treating them as exchanges under the Exchange Act, with the attendant requirements applicable to exchanges. An alternative way that the Commission could accomplish this would be to create an exclusion from the definition in paragraph (a) of proposed Rule 3b–12 for alternative trading systems that register as broker-dealers and comply with the provisions of proposed Regulation ATS. The Commission requests comment on whether this alternative is preferable to today's proposed exemption from the definition of ''exchange'' under Rule 3a1–1.

As described more fully below, an alternative trading system exempt from the definition of ''exchange'' under proposed Rule 3a1–1 would still have to meet certain requirements in proposed Regulation ATS, including broker-dealer registration, notice of operations, and recordkeeping and reporting. Trading systems with significant volume would also have requirements regarding market transparency, fair access, and systems capacity, integrity, and security. Paragraph (b)(1) of proposed Rule 3a1–1 would also condition the exemption on the absence of a Commission determination that the exemption in a particular case would not be necessary or appropriate in the public interest or consistent with the protection of investors.[50] If the Commission determined to exercise this authority, it would be required to provide notice to the affected alternative trading system and an opportunity for that alternative trading system to respond. The Commission would not expect to exercise this authority on a regular basis, but intends for it to be used only in extraordinary circumstances. The Commission requests comment on the scope, form, and conditions of the proposed exemption in Rule 3a1–1.

In addition, because national securities associations are subject to requirements virtually identical to those applicable to national securities exchanges,[51] proposed Rule 3a1–1 would also exempt from the definition of ''exchange'' any system operated by a national securities association.[52] The Commission believes that the regulation of alternative trading systems operated by a national securities association is adequate, and therefore, that such systems should not be required to register either as exchanges, or as broker-dealers and comply with Regulation ATS. Consequently, under the proposals in this release, alternative trading systems operated by national securities associations could continue to operate as they do now.[53]

III. Regulation of Alternative Trading Systems

Securities markets have become increasingly interdependent. The use of technology permits market participants to link products, implement complex hedging strategies across markets and across products, and trade on multiple markets simultaneously. While these opportunities benefit many investors, they may also create misallocations of capital, widespread inefficiency, and trading fragmentation if markets are not coordinated. In addition, a lack of coordination among markets has the potential to increase system-wide risks. Congress adopted the 1975 Amendments, in part, to address these negative effects of potentially fragmented markets.[54] The Commission believes that it is consistent with Congress' goals to integrate significant alternative trading systems into the NMS.

In the 1975 Amendments, Congress specifically endorsed the development of an NMS, and sought to clarify and strengthen the Commission's authority to promote the achievement of such a system.[55] Because of uncertainty as to how technological and economic changes would affect the securities markets, Congress explicitly rejected mandating specific components of an NMS.[56] Instead, Congress recognized that the securities markets dynamically change and, accordingly, granted the Commission broad authority to oversee the implementation, operation, and regulation of the NMS in accordance with Congressional goals and objectives.[57]

Congress identified two paramount objectives in the development of an NMS: The maintenance of stable and orderly markets with maximum capacity, and the centralization of all buying and selling interest so that each investor has the opportunity for the best possible execution of his or her order, regardless of where the investor places the order.[58] In addition, Congress directed the Commission to remove present and future competitive restrictions on access to market information and order systems, and to assure the equal regulation of markets, exchange members, and broker-dealers effecting transactions in the national market system.[59] In particular, Congress found that it was in the public interest

[48] 15 U.S.C. 78mm.

[49] Proposed Rule 3a1–1(b). *See infra* note 65 for the definition of an alternative trading system.

[50] Proposed Rule 3a1–1(b).

[51] Registration as a national securities association under Section 15A of the Exchange Act is voluntary. 15 U.S.C. 78*o*–3. Currently the only national securities association is the NASD, which operates Nasdaq.

[52] Proposed Rule 3a1–1(a)(1) *See also* Proposed Rule 301(a)(3) (excluding alternative trading systems operated by a national securities association from the scope of proposed Regulation ATS.)

[53] Any alternative trading system, however, currently operated by a national securities association could choose to register as an exchange.

[54] *See* S. Rep. No. 75, 94th Cong., 1st Sess. 8 (1975) at 2, 8; H.R. Rep. No. 229, 94th Cong., 1st Sess 92 (1975).

[55] Pub. L. 94–29, 89 Stat. 97 (1975).

[56] *See* S. Rep. No. 75, *supra* note 54. ''[T]he increasing tempo and magnitude of the changes that are occurring in our domestic and international economy make it clear that the securities markets are due to be tested as never before,'' and that it was, therefore, important to assure ''that the securities markets and the regulations of the securities industry remain strong and capable of fostering (the) fundamental goals (of the Exchange Act) under changing economic and technological conditions.'' *Id.* at 3.

[57] S. Rep. No. 75 *supra* note 54, at 8–9.

[58] S. Rep. No. 75 *supra* note 54, at 7; *see* Section 11A(a)(1)(C) of the Exchange Act, 15 U.S.C. 78k-1(a)(1)(C).

[59] *See* S. Rep. No. 75 *supra* note 54, at 104–05.

to assure ''fair competition * * * between exchange markets and markets other than exchange markets.'' [60]

To further NMS goals, Congress granted the Commission broad authority to make rules, including those to: (i) Prevent the use and publication of deceptive trade and order information; (ii) assure the prompt, accurate, and reliable distribution of quotation and transaction information; (iii) enable non-discriminatory access to such information; and (iv) assure that all broker-dealers transmit and direct orders for securities in a manner consistent with the operation of an NMS.[61] Moreover, Congress recognized that in order to implement NMS goals, the Commission would need to classify markets, firms, and securities and facilitate the development of ''subsystems within the national market system.'' [62]

The Commission believes its proposal today advances NMS goals. At present, alternative trading systems are not fully integrated into the national market system, leaving gaps in market access and fairness, systems capacity, transparency, and surveillance. These concerns, together with the increasing significance of alternative trading systems, call into question the fairness of current regulatory requirements, the effectiveness of existing NMS mechanisms, and the quality of public secondary markets. Under the Commission's proposal, those alternative trading systems that have the most significant effect on our markets would be required to integrate their trading into NMS mechanisms. Alternative trading systems could choose to register either as national securities exchanges or as broker-dealers. Systems that elect broker-dealer regulation would be integrated into the NMS under proposed Regulation ATS if they have significant trading volume.[63] Discussed in Section III.A. below are the requirements for alternative trading systems that choose to register as broker-dealers and comply with Regulation ATS. Any alternative trading system that registers as a national securities exchange would be obligated—like currently registered exchanges—to participate in the NMS mechanisms. Section III.B. contains a discussion of the requirements applicable to alternative trading systems that choose to register as exchanges.

A. Regulation ATS

1. Scope of Regulation ATS

The Commission is proposing Rule 300(a) under Regulation ATS, which would define the term ''alternative trading system'' as any system that: (1) Would constitute, maintain, or provide a marketplace or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange under proposed Rule 3b–12 of the Exchange Act; [64] and (2) would not regulate its members or surviel its own market.[65] This proposed definition excludes trading systems that conduct a regulatory function because the Commission believes that self-regulatory systems should be registered as exchanges.[66]

Under proposed Regulation ATS, alternative trading systems would have to register as broker-dealers and comply with certain additional requirements depending on their volume. Any alternative trading system that is registered as an exchange or that is exempt from such registration either because of its limited volume or because it is operated by a national securities association would be excluded from the scope of the proposed regulation. In addition, any alternative trading system that trades only government securities,[67] Brady Bonds,[68] and repurchase and reverse repurchase agreements involving government securities or Brady Bonds would be excluded as long as the alternative trading system is registered as a broker-dealer.[69]

In the Concept Release, the Commission solicited comment on whether it would be appropriate to exempt government securities broker-dealers from any new regulatory scheme for alternative trading systems. Government securities broker-dealers are currently regulated jointly by the Commission, U.S. Department of the Treasury (''Treasury''), and federal banking regulators, under the Exchange Act (particularly the provisions of the Government Securities Act of 1986) and the federal banking laws.[70] Unlike

[60] Section 11A(a)(1)(C)(ii) of the Exchange Act, 15 U.S.C. 78k-1(a)(1)(C)(ii). A fundamental goal of an NMS was to ''achieve a market characterized by economically efficient executions, fair competition, (and the) broad dissemination of basic market information.'' S. Rep. No. 75 *supra* note 54, at 101.

[61] *See* Section 11A(c)(1) of the Exchange Act, 15 U.S.C. 78k–1(c)(1).

[62] S. Rep. No. 75 *supra* note 54, at 7.

[63] In addition to its authority under Section 11A of the Exchange Act, 15 U.S.C. 78k–1, the Commission is proposing Regulation ATS pursuant to its rulemaking power under other parts of the Exchange Act, including Sections 3(b) (power to define terms), 15(b)(1) (registration and regulation of broker-dealers), 15 (c)(2) (prescribing means reasonably designed to prevent fraud), 17(a) (books and records requirements), 17(b) (inspection of records), 23(a)(1) (general power to make rules and classify persons, securities, and other matters), and 36 (general exemptive authority). 15 U.S.C. 78c(b), 78*o*(b)(1), 78*o*(c)(2), 78q(a), 78q(b), 78w(a)(1), and 78mm, respectively. For a discussion on the general exemptive authority in section 36 of the Exchange Act, 15 U.S.C. 78mm, *see supra* Section VI.D.1.

[64] *See supra* Section II. (discussing proposed Rule 3b–12).

[65] Specifically, the proposed definition of ''alternative trading system'' is any ''organization, association, person, group of persons, or system (1) (t)hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of (Rule) 3b–12 of [the Exchange Act]; and (2) [t]hat does not: (A) (s)et rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system, or (B) [d]iscipline subscribers other than by exclusion from trading.'' Proposed Rule 300(a).

[66] Nothing, however, prevents a registered exchange from giving up its self-regulatory functions to register as a broker-dealer.

[67] The term ''government security'' is defined in section 3(a)(42) of the Exchange Act. 15 U.S.C. 78c(a)(42).

[68] In 1989 Treasury Secretary Nicholas F. Brady announced an initiative for the reduction of third world indebtedness. Under the Brady Plan, U.S. creditor banks and a debtor country agree to convert some of the country's existing debt, which generally carries a floating market interest rate, into a bond that carries a fixed, often below market, interest rates. These bonds are referred to as Brady Bonds.

[69] In other words, these systems would not be required to register as either an exchange or to comply with the requirements of Regulation ATS. Proposed Rule 301(a)(4).

[70] *See generally* DEPARTMENT OF THE TREASURY, SECURITIES AND EXCHANGE COMMISSION, AND BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, JOINT STUDY OF THE REGULATORY SYSTEM FOR GOVERNMENT SECURITIES (MARCH 1998); DEPARTMENT OF THE TREASURY, REPORT OF THE SECRETARY OF THE TREASURY ON SPECIALIZED GOVERNMENT SECURITIES BROKERS AND DEALERS (JULY 1995) (''1995 TREASURY REPORT'').

The Government Securities Act of 1986 (''GSA'') amended the Exchange Act to incorporate new Section 15C, which, among other things, established registration and notice requirements for government securities brokers and dealers. Section 15C generally requires government securities brokers and dealers (*i.e.*, 15C firms or specialized government securities brokers and dealers) to register with the Commission and to become members of an SRO (22 firms as of March 1998). Firms that are registered with the Commission as general securities brokers or dealers (*i.e.*, traditional broker-dealers registered under Section 15(b) of the Exchange Act) are required to file notice with the Commission of their government securities business (3,023 firms as of April 1998). In addition, financial institutions that engage in government securities broker or dealer activities as required to file notice of such activities with their appropriate regulatory agency (120 institutions as of March 1998).

Under the regulatory structure established by the GSA, the Treasury was granted authority to adopt regulations for all government securities brokers and dealers concerning financial responsibility, protection of investors' funds and securities, recordkeeping, reporting, and audit requirements, and to adopt regulations governing the custody of government securities held by depository institutions. The Government Securities Act Amendments of 1993 (''GSAA'') expanded the authority of the federal regulators and the SROs over government securities transactions. The GSAA, among other things, reauthorized the Treasury's rulemaking responsibilities, granted the Treasury

surveillance of trading in equities and other instruments traded primarily on registered exchanges,[71] surveillance of trading in government securities is coordinated among the Treasury, the Commission, and the Board of Governors of the Federal Reserve System.

The Commission believes that any further regulation of alternative trading systems that trade these types of government and other related securities is not necessary in light of the specialized oversight structures for these markets. Because of this specialized oversight structure, excluding alternative trading systems that solely trade government securities and other related securities from this proposal should not weaken coordination of overall market oversight or create competitive inequities among differently regulated entities that perform similar functions.

The Commission requests comment on its proposal to exempt alternative trading systems that trade solely government and other related securities from the proposed regulatory framework described in this release. The Commission also requests comments on whether other alternative trading systems that exclusively trade securities with special characteristics should be exempt from Regulation ATS.

2. Requirements for Alternative Trading Systems Subject to Regulation ATS

Discussed below are the proposed requirements for alternative trading systems that would be subject to Regulation ATS.

a. Membership in an SRO. Because alternative trading systems that choose to register as broker-dealers would not themselves have self-regulatory responsibilities, the Commission believes it is important for such systems to be members of an SRO. Most alternative trading systems are currently registered as broker-dealers and, therefore, are also members of an SRO.[72] The Commission believes it is appropriate to continue to require alternative trading systems that register as broker-dealers to be SRO members. While the Commission understands that SROs operate competing markets and, therefore, have potential conflicts of interest in overseeing alternative trading systems, the Commission believes these conflicts can be managed using the Commission's oversight.[73] The Commission understands some alternative trading systems may have concerns about SROs abusing their regulatory authority for competitive reasons. The Commission considers it part of its own oversight responsibility over SROs to prevent such actions by SROs.[74] Further, an alternative trading system that wished to avoid potential conflicts of interest altogether could choose to register as an exchange. The Commission notes that section 15A of the Exchange Act would permit an association of brokers and dealers to establish an SRO that does not operate a market.[75] Such a national securities association could be established solely for purposes of overseeing the activities of alternative trading systems.

The Commission expects SROs to enhance their current surveillance of alternative trading systems to provide a consolidated view of the market through an integrated audit trail. SROs should also incorporate relevant information regarding the entities trading on such systems into their existing surveillance programs. The proposed enhanced recordkeeping requirements for alternative trading systems should aid SRO oversight considerably in this regard.[76]

b. Notice of operation as an alternative trading system and amendments. Under proposed Regulation ATS, alternative trading systems would be required to file an initial operation report with the Commission on Form ATS at least 20 days prior to commencing operation.[77] Form ATS requests information about the alternative trading system, including how it will operate, its prospective subscribers, and the securities it intends to trade. In addition, the alternative trading system would have to describe procedures for reviewing systems capacity, security, and contingency planning. Form ATS is not an application and the Commission would not ''approve'' an alternative trading system before it began to operate. Form ATS would, instead, be a notice to the Commission. Because alternative trading systems would be required to register as broker-dealers under Regulation ATS, proposed Form ATS would request only information about an alternative trading system's market activities that would not be included in the information filed on Form BD. Alternative trading systems are currently required to report most of this information on Part I of Form 17a–23, which the Commission is proposing to repeal.[78]

An alternative trading system would also be required to notify the Commission of material changes to its operation by filing an amendment to Form ATS at least 20 calendar days prior to implementing such changes.[79] A material change would include, among other things, any change to the operating platform of an alternative trading system. Further, changes to the types of securities traded on, or to the types of subscribers to an alternative trading system would be material changes. Alternative trading systems would be required to notify the Commission in quarterly amendments of any changes to the information on Form ATS that had not been reported in a previous amendment.[80] Finally, if an

authority to prescribe large position recordkeeping and reporting rules, extended the Commission's antifraud and antimanipulation authority to all government securities brokers and dealers, required government securities brokers and dealers to provide to the Commission on request records of government securities transactions to reconstruct trading in the course of a particular inquiry or investigation, removed the statutory restrictions on the authority of the NASD to extend sales practice rules to its members' transactions in government securities, and provided the bank regulatory agencies with the authority to issue sales practice rules for financial institutions engaged in government securities broker or dealer activities.

The GSA also strengthened the ability of federal regulators to examine, and to bring enforcement actions against, government securities brokers and dealers. The Commission and the SROs have examination and enforcement authority over government securities brokers and dealers registered under Section 15C and over the government securities activities of general securities brokers and dealers. The Commission's enforcement authority includes the power to censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of the entity. For financial institutions that are government securities brokers or dealers, the institution's appropriate regulatory agency has examination and enforcement authority over the institution. The appropriate regulatory agency must notify the Commission of any sanctions imposed on such institutions, and the Commission must maintain a record of the sanctions.

[71] Although all marketable Treasury notes, bonds, and zero-coupon securities are listed on the NYSE, exchange trading volume is a small fraction of the total over-the-counter volume in these instruments. *See* U.S. Department of the Treasury, U.S. Securities and Exchange Commission, and Board of Governors of the Federal Reserve System, Joint Report on the Government Securities Market 26 (1992).

[72] Section 15(b)(8) of the Exchange Act, 15 U.S.C. 78*o*(b)(8).

[73] For example, the structural reforms undertaken by the NASD since August 1996 should aid in ensuring the independence of NASDR and insulating its staff from the commercial interests of Nasdaq.

[74] *See infra* note 84.

[75] Section 15A of the Exchange Act, 15 U.S.C. 78*o*-3.

[76] Proposed Rule 301(b)(8).

[77] Proposed Rule 301(b)(2)(i) and Proposed Form ATS.

[78] 17 CFR 240.17a–23. *See infra* Section IV.A.

[79] Proposed Rule 301(b)(2)(ii).

[80] Proposed Rule 301(b)(2)(iii). Alternative trading systems would also be required to file an amendment to Form ATS to correct any previously filed information that has been discovered to have been inaccurate when filed. Proposed Rule 301(b)(2)(iv).

alternative trading system ceases operations, it would be required to promptly file a notice with the Commission.[81]

An alternative trading system would be required to provide a duplicate of each of these filings to surveillance personnel designated by the SRO of which it is a member.[82] The Commission is also proposing that the initial operation report, any amendments, and the report filed when an alternative trading system ceases operation be kept confidential. The Commission, however, requests comment on whether the information filed on Form ATS should be public.

The Commission solicits comment on the notice requirements in proposed Form ATS. Specifically, the Commission seeks comment on whether such requirements would be burdensome for alternative trading systems, and if so, whether the burden is inappropriate. The Commission also seeks comment on the proposed frequency of filings and whether more or less frequent filings would be preferable. Finally, the Commission seeks comment on whether it would be appropriate to permit or to require electronic filing of Form ATS and all subsequent amendments.

c. Market transparency. The Commission for many years has been concerned that the development of so-called ''hidden markets,'' in which a market maker or specialist privately publishes quotations at prices superior to the quotation information it disseminates publicly, impedes NMS objectives. Over the course of the last decade, certain alternative trading systems that allow subscribers to disseminate significant trading interest to other system subscribers without making this trading interest known to the public market have become significant markets in their own right. Because these systems are not registered as national securities associations or national securities exchanges, they are not currently required to integrate into the public quote the prices at which their subscribers are willing to trade. The use of these systems to facilitate transactions in securities at prices not incorporated into the NMS has resulted in fragmented and incomplete dissemination of quotation information.

Recent evidence suggests that the failure of the current regulatory approach to fully integrate trading on alternative trading systems into NMS mechanisms has impaired the quality and pricing efficiency of secondary equity markets, particularly in light of the explosive growth in trading volume on such alternative trading systems. Although these systems are available to some market participants, they frequently are not available to the general investing public. The ability of market makers and specialists to display different and potentially superior prices on alternative trading systems than those displayed on markets available to the general public created, in the past, the potential for a two-tiered market.[83]

For example, during the Commission's recent investigation of Nasdaq trading,[84] analyses of trading in the two most significant trading systems for Nasdaq securities (Instinet and SelectNet) revealed that the majority of bids and offers displayed by market makers in these systems were better than those posted publicly on Nasdaq.[85] Moreover, the Commission found that, because market makers could trade with other market professionals through non-public alternative trading systems, they did not have a sufficient economic incentive to adjust their public quotations to reflect more competitive prices.[86] Ultimately, the wider spreads quoted publicly by market makers increased the transaction costs paid by public customers, impaired the ability of some institutional investors to obtain favorable prices in some securities, and placed institutions at a potential disadvantage in price negotiations.[87]

In response to these findings, the Commission took steps to bring greater transparency into the trading environment of certain alternative trading systems. In 1997, the Commission implemented rules that require a market maker or specialist to make publicly available any superior prices that it privately offers through certain types of alternative trading systems known as electronic communications networks (''ECNs'').[88] The new rules permit an ECN to fulfill these obligations on behalf of market makers or specialists using its system, by submitting the ECN's best priced market maker or specialist quotations to an SRO for inclusion into public quotation displays (''ECN Display Alternative'').[89]

These rules, however, were not intended to fully coordinate trading on alternative trading systems with public market trading.[90] While these rules have helped integrate orders on certain alternative trading systems into the public quotation system, they only affect trading that is conducted by market makers and specialists, unless the system voluntarily undertakes to disclose institutional orders that reflect the best prices.[91] In many cases, institutional orders, as well as non-market maker orders, remain undisclosed to the public.[92] Moreover,

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[81] Proposed Rule 301(b)(2)(v).

[82] Proposed Rule 301(b)(2)(vii).

[83] *See* Securities Exchange Act Release No. 36310 (Sept. 29, 1995), 60 FR 52792 (Oct. 10, 1995) (''Order Handling Rules Proposing Release'').

[84] Following the filing of several class action lawsuits alleging collusion among Nasdaq market makers, and public allegations that Nasdaq market makers routinely refused to trade at their published quotes, intentionally reported transactions late in order to hide trades from other market participants, and engaged in other market practices detrimental to individual investors, the Commission opened a formal inquiry to investigate the functioning of the Nasdaq market and to determine whether the NASD was complying fully with its obligations as an SRO. In 1996, as a result of the investigation, the Commission instituted enforcement proceedings against the NASD pursuant to section 19(h) of the Exchange Act and issued a report under section 21(a) of the Exchange Act detailing the Commission's findings. 15 U.S.C. 78s and 78u(a). *See* SEC, REPORT PURSUANT TO SECTION 21(A) OF THE SECURITIES EXCHANGE ACT OF 1934 REGARDING THE NASD AND THE NASDAQ MARKET (1996) (''NASD 21(A) REPORT'').

[85] These conclusions are based on Instinet and SelectNet data for the months April through June 1994. *See* NASD 21(a) Report, *supra* note 84, at notes 48 to 52 and accompanying text.

[86] The Commission found that ''the ability of market makers to attract trading interest through Instinet allowed them to trade without using odd-eighth quotes and narrowing the Nasdaq spread.'' NASD 21(a) Report, *supra* note 84, at 20.

[87] NASD 21(a) Report, *supra* note 84, at 18.

[88] ECNs include any automated trading mechanism that widely disseminates market maker orders to third parties and permits such orders to be executed through the system, other than crossing systems. *See* Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996) (''Order Handling Rules Adopting Release'').

[89] To date, six trading systems have elected to display quotes under the ECN Display Alternative. *See* Letters dated Jan. 17, 1997 from Richard R. Lindsey, Director, Division of Market Regulation, SEC to: Charles R. Hood, Senior V.P. and General Counsel, Instinet Corporation (recognizing Instinet as an ECN); Joshua Levine and Jeffrey Citron, Smith Wall Associates (recognizing the Island System as an ECN); Gerald D. Putnam, President, Terra Nova Trading, LLC (recognizing the TONTO System, now known as Archipelago, as an ECN); and Roger D. Blanc, Wilkie Farr & Gallagher (counsel to Bloomberg) (recognizing Bloomberg Tradebook as an ECN). *See also* Letter dated October 6, 1997 from Richard R. Lindsey, Director, Division of Market Regulation, SEC to Matthew G. Maloney, Dickstein Shapiro Morin & Oshinsky LLP (counsel to Spear, Leeds & Kellogg) (recognizing the REDI System as an ECN); and Letter dated February 4, 1998 from Robert L.D. Colby, Deputy Director, Division of Market Regulation, SEC, to Linda Lerner, General Counsel, All-Tech Investment Group, Inc. (recognizing the Attain System as an ECN).

[90] *See* Order Handling Rules Adopting Release, *supra* note 88, at 87–96.

[91] There is divergence among ECNs in the extent to which they have chosen to integrate non-market maker orders into the prices they display to the public. Of the six ECNs that are currently linked to Nasdaq, three ECNs display to the public the best prices of any orders entered into their systems (including both market makers and institutions). The other three ECNs display to the public only orders of market makers, unless institutional customers of these ECNs choose to have their orders so displayed.

[92] Because such trading interest frequently remains undisclosed, within certain alternative

whether an ECN reflects the best priced quotations in the public quotation system on behalf of market makers and specialists that participate in its system is voluntary.

Because certain trading interest on alternative trading systems is not integrated into the NMS, price transparency is impaired and dissemination of quotation information is incomplete. These developments are contrary to the goals the Commission enunciated over twenty-five years ago when it noted that an essential purpose of a national market system:

> [I]s to make information on prices, volume, and quotes for securities in *all* markets available to *all* investors, so that buyers and sellers of securities, wherever located, can make informed investment decisions and not pay more than the lowest price at which someone is willing to sell, and not sell for less than the highest price a buyer is prepared to offer.[93]

In addition, the Commission believes that it may be inconsistent with congressional goals for an NMS that the best trading opportunities are made accessible only to those customers who, due to their size or sophistication, can avail themselves of prices in alternative trading systems not currently available in the public quotation system. The vast majority of investors may not be aware that better prices are disseminated to alternative trading system subscribers and many do not qualify for direct access to these systems and do not have the ability to route their orders, directly or indirectly, to such systems. As a result, many customers, both institutional and retail, do not always obtain the benefit of the better prices entered into an alternative trading system.

Accordingly, as described in more detail below, the Commission is proposing to further enhance transparency of orders displayed on alternative trading systems to ensure that publicly displayed prices more fully reflect market-wide supply and demand. Specifically, the Commission proposes that alternative trading systems with significant volume be required to disseminate their best priced orders (including institutional and non-market maker orders) into the public quotation system. Further, the Commission is proposing that alternative trading systems subject to these display requirements provide brokers and dealers with access to displayed orders.

(i) Integration of Orders Into the Public Quotation System

Under Proposed Rule 301(b)(3), the Commission proposes to further integrate alternative trading system quotes (priced orders) into the NMS. To accomplish this, an alternative trading system that displays subscriber orders to more than one person (other than alternative trading system employees) would be required to disseminate in the public quotation system the best priced orders in a covered security[94] in which, during at least four of the last six months, it traded more than ten percent of the aggregated average daily share volume for such security.[95] The Commission requests comment on whether the proposed volume threshold would effectively ensure that alternative trading systems comprising a significant percentage of the market are subject to basic market transparency requirements. In particular, the Commission requests comment on whether different volume thresholds are more appropriate for certain securities or types of alternative trading systems. Should the volume threshold be more or less than ten percent, or calculated on a basis other than four of the preceding six months?

The Commission is proposing that the display requirement be applied on a security-by-security basis. Thus, an alternative trading system would not have to display the best orders for any securities in which its trade volume accounted for less than ten percent of the total volume for such security. The Commission, however, requests comment on whether an alternative trading system should be required to display the best priced orders in *all* securities traded in its system, if it reaches the volume threshold in a specified number or percentage of the securities it trades. If commenters believe this type of requirement would be appropriate, the Commission requests comment on what number or percentage of securities would be an appropriate threshold to mandate display of the best priced orders of all securities. It should also be noted that the Commission is not proposing to require alternative trading systems to publicly display orders for securities in which no quotation data is disseminated. This means that trading systems—regardless of their size—would not have to publicly disseminate orders for fixed-income securities or equity securities that are not traded on an exchange or through Nasdaq.

The Commission is proposing today only to require alternative trading systems to publicly display subscribers' orders that are displayed to more than one other system subscriber. Thus, if an alternative trading system, like some crossing systems, by its design does not display orders to other subscribers, this proposal would not require those orders to be integrated into the public quote stream. In addition alternative trading systems would not be required to provide to the public quote stream orders displayed to only one other alternative trading system subscriber, such as through use of a negotiation feature.

In this regard, the Commission's proposal would allow institutions and non-market makers to guard the full size of their orders by using the ''reserve size'' features offered by some alternative trading systems which allow these subscribers to display orders incrementally. For example, such a subscriber that wished to sell 100,000 shares of a given security could place its order in an alternative trading system and specify that only 10,000 shares were to be displayed to other alternative trading system subscribers at a time. In this situation, only 10,000 shares would be required to be reflected in the public quote. Because the Commission would only require that an alternative trading system publicly display those orders that are displayed to alternative trading system participants, these subscribers could shield their orders from public view if they chose not to display their orders to other participants.

However, if the institution or non-market maker subscriber specified that the entire 100,000 share order were to be displayed to all subscribers at once, the order would have to be publicly displayed if it were the best priced order in the alternative trading system. The Commission, however, requests comment on whether alternative trading systems should be required to display

trading systems non-market maker participants are able to display prices that lock and cross the public quotations. If the quotes of such participants were disclosed to the public, the Commission believes it would result in improved price opportunities for public investors.

[93] *See* SEC, STATEMENT OF THE SECURITIES AND EXCHANGE COMMISSION ON THE FUTURE STRUCTURE OF THE SECURITIES MARKETS (FEB. 2, 1972), 37 FR 5286 (FEB. 4, 1972) (EMPHASIS ADDED).

[94] A covered security would be defined in the same way as it is under Rule 11Ac1–1(a)(6) under the Exchange Act. 17 CFR 240.11Ac1–1. Specifically, a ''covered security'' would be any security reported by an effective transaction reporting plan and any other security for which a transaction report, last sale data, or quotation information is disseminated through an automated quotation system as described in section 3(a)(51)(A)(ii) of the Exchange Act, 15 U.S.C. 78c(a)(51)(A)(ii). *See* Proposed Rule 300(g). Accordingly, a covered security would include all exchange-listed securities, Nasdaq NM securities, and Nasdaq SmallCap securities.

[95] Proposed Rule 301(b)(3)(ii)(A). These orders would then be included in the quotation data made available to quotation vendors by national securities exchanges and national securities associations pursuant to Rule 11Ac1–1 under the Exchange Act, 17 CFR 240.11Ac1–1.

the full size of the best priced order, even if the full size is hidden from alternative trading system subscribers through use of a ''reserve size'' or similar feature.

This proposal is consistent with many commenters' recommendation that alternative trading systems be required to display all orders in the public quotation system and that alternative trading systems be more fully incorporated into the NMS.[96] For example, the NYSE suggested that the Commission extend the Order Handling Rules to further integrate alternative trading system trading interest into the NMS, perhaps by matching an alternative trading system with an SRO to reflect that alternative trading system's trading interest in the SRO's quotation.[97] The NASD similarly suggested that transparency could be improved and market fragmentation minimized by requiring the inclusion of non-market maker order information in the NBBO. The NASD pointed out the continued existence of a ''two-tier market,'' despite the new Order Handling Rules, because of the absence of any requirement for ECNs to display orders from institutions and other non-market makers in the public quote system.[98]

The Commission preliminarily believes that in light of the significant trading volume on some alternative trading systems, integration of these orders into the NMS may be essential to prevent the development of a two-tiered market. In response to commenters' concerns that a loss of trading anonymity would adversely affect the value that alternative trading systems provide to institutions, the Commission's proposal would allow an alternative trading system to comply with any public display requirement by identifying itself, rather than the subscriber that placed the order. Thus, the Commission's proposal, much like the ECN Display Alternative, would preserve the benefits associated with anonymity. Moreover, the Commission preliminarily believes that the continued ability of institutions to retain their anonymity and to use features within alternative trading systems to shield the full size of their orders would give institutions the ability to keep their full trading interest private. Requiring high volume alternative trading systems to furnish to the public quotation system the full size of the best displayed buy and sell orders would ensure that the public quote better reflects true trading interest in a particular security. Furthermore, the Commission believes that institutional investors' orders entered into alternative trading systems provide valuable liquidity, and that displaying such trading interest may substantially strengthen the NMS.

A number of commenters recommended that the Commission not require alternative trading systems to publicly display all orders in the public quotation system.[99] The Commission understands that some commenters were concerned that a requirement to display institutional trading interest in the public quotation system might increase its market impact.[100] The types of impact which concerned these commenters included adverse effects on volatility, resulting in worse trade executions for institutional trading interests.[101]

Moreover, some commenters have expressed concerns that requiring the public display of institutional orders may create a disincentive for institutions to continue to route their orders to any alternative trading system subject to such a requirement. These commenters believe that a public display requirement would encourage institutions to route their orders to execution venues that do not offer any pre-trade transparency.

In light of these concerns, the Commission requests comment on whether it would be more appropriate to adopt an alternative to Rule 301(b)(3) that would permit, but not require, the public display of the best-priced institutional orders displayed in a high volume alternative trading system. Under this alternative, an alternative trading system meeting the requirements of Rule 301(b)(3)(i) would only be required to provide to a national securities exchange or national securities association the best-priced

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[96] *See* Letter from Robert H. Forney, President and Chief Executive Officer, Chicago Stock Exchange, to Jonathan G. Katz, Secretary, SEC, dated Oct. 3, 1997 (''CHX Letter'') at 1, 13–14 (the integration of alternative trading systems into the NMS and the transition to decimal trading highlights the need for Commission action in establishing minimum trading increments for NMS securities); Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated Oct. 3, 1997 (''ICI Letter'') at 2, 6 (Commission should enhance the NMS by requiring specialists and market makers to provide access to their limit orders in the same manner as alternative trading systems and by establishing linkages between alternative trading systems, market makers, and exchanges); Letter from Adam W. Gurwitz, Vice President Legal and Secretary, Cincinnati Stock Exchange, to Jonathan G. Katz, Secretary, SEC, dated Oct. 2, 1997 (''CSE Letter'') at 2 (broker-dealers that operate alternative trading systems should make all orders in those systems available to the public quotation system); Letter from Charles J. Henry, President and Chief Operating Officer, Chicago Board Options Exchange, to Jonathan G. Katz, Secretary, SEC, dated Oct. 2, 1997 (''CBOE Letter'') at 4 (development of alternative trading systems should occur within the framework of the NMS); Letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated Oct. 17, 1997 (''NYSE Letter'') at 4 (the best way to advance transparency is by enhancing the dissemination of, and access to alternative trading systems market interest through existing NMS facilities); Letter from Robert W. Seijas and Joel M. Surnamer, Co-Presidents, The Specialist Association, to Jonathan G. Katz, Secretary, SEC, dated Oct. 24, 1997 (''Specialist Assoc. Letter'') at 2 (alternative trading systems that trade NMS securities operate largely outside the NMS; this situation should be corrected).

[97] NYSE Letter at 4. *See also* Letter from R. Warren Langley, President and Chief Operating Officer, Pacific Exchange, to Jonathan G. Katz, Secretary, SEC, dated Oct. 20, 1997 (''PCX Letter'') at 18 (to achieve complete transparency, it is necessary to publicly disseminate information regarding the size and price of all prospective interest for each security, as well as the trade price and volume of completed transactions from all markets trading that security).

[98] Letter from John C. Conley, Secretary, NASD, Nasdaq, and NASD Regulation, to Jonathan G. Katz, Secretary, SEC, dated Oct. 10, 1997 (''NASD Letter'') at 7. *See also* Letter from Kenneth Pasternak, President and CEO, and Walter Raquet, Managing Director, Knight Securities, LP, to Jonathan G. Katz, Secretary, SEC, dated Sept. 11, 1997 (''Knight Letter'') at 3 (the continued exemption of non-market maker information from the public quotation system is damaging to competing over-the-counter market makers, and inconsistent with fair and reasonable regulation).

[99] *See* Letter from Daniel Jamieson, to Jonathan G. Katz, Secretary, SEC, dated July 23, 1997 (''Jamieson Letter'') at 4–5; Letter from Jonathan R. Macey, J. DuPratt White Professor of Law and Director, John M. Olin Program in Law and Economics, Cornell Law School and Maureen O'Hara, Robert W. Purcell Professor of Finance, Cornell University, to Jonathan G. Katz, Secretary, SEC, dated Oct 1. 1997 (''Macey and O'Hara Letter'') at 44–45; Letter from William A. Lupien, Chairman and Chief Executive Officer, OptiMark Technologies, Inc., to Jonathan G. Katz, Secretary, SEC, dated Oct. 6, 1997 (''OptiMark Letter'') at 6–7; Letter from Sam Scott Miller, Orrick, Herrington & Sutcliffe, LLP, to Jonathan G. Katz, Secretary, SEC, dated Oct. 3, 1997 (''OHS Letter (10/3/97)'') at 14–15 (institutions and other non-market maker subscribers should not be required to sacrifice the benefits of limiting the size of their displayed orders because of their use of technology); Letter from Douglas M. Atkin, Instinet, to Jonathan G. Katz, Secretary, SEC, dated Oct. 3, 1997 (''Instinet Letter'') at 12–15 (mandating pre-trade transparency could result in illiquid markets); Letter from John M. Liftin, Chair, Committee on Federal Regulation of Securities and Roger D. Blanc, Chair, Subcommittee on Market Regulation, American Bar Association, to Jonathan G. Katz, Secretary, SEC, dated Oct. 1, 1997 (''ABA Letter'') at 22–24; Letter from Lou Eccleston and Kevin M. Foley, Bloomberg L.P., to Jonathan G. Katz, Secretary, SEC, dated Oct. 3, 1997 (''Bloomberg Letter'') at 8–9; ICI Letter at 3. *Cf.* Letter from A.B. Krongard, Chairman, SIA Task Force on Alternative Trading System Concept Release, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC, dated Oct. 3, 1997 (''SIA Letter (10/3/97)'') at 13 (tentatively supporting the display of the prices of the institutional orders in alternative trading systems, but not the size of such orders).

[100] ABA Letter at 24. *See also* Macey and O'Hara Letter at 45 (commenting that requiring institutional orders to be displayed would reduce market liquidity by reducing both trading volume and investors' incentives to engage in searches for better priced orders).

[101] ABA Letter at 24.

orders in covered securities displayed in the alternative trading system by any broker or dealer and by any other subscriber that elects to make its orders available for public display.

In addition, the alternative approach would contain a separate provision requiring an alternative trading system to provide its institutional subscribers with an ongoing opportunity to decide whether or not to make their orders available for display to the public quotation system. Such a provision would require an institutional subscriber to affirmatively make the decision to opt out of displaying its orders to the public quote. In this regard, an alternative trading system would have to provide that any default setting offered by the system would be set for public display, unless the institutional subscriber affirmatively indicated otherwise. Further, the Commission would interpret this provision to prohibit an alternative trading system from taking any action to discourage its institutional subscribers from choosing to display their orders to the public quote. Except for these differences, this alternative would operate in the same fashion as proposed Rule 301(b)(3). The Commission requests comment on whether such an alternative would sufficiently address the Commission's concerns with transparency and fragmentation in the markets.

The Commission encourages commenters to address whether the proposed transparency requirements achieve the Commission's goals of minimizing the negative effects of fragmented markets, and to offer suggestions for other ways to achieve this goal. The Commission also requests comments and data regarding institutional use of alternative trading systems and the resulting impact of this proposal on market liquidity and pricing. In addition, the Commission requests comment on the most efficient method of integrating an alternative trading system's orders into the quotation system of a national securities exchange or national securities association. Finally, the Commission requests comment on whether institutional orders above a certain size should not be required to be displayed. If so, commenters are requested to specify what size order above which it would be appropriate to allow institutions to elect not to publicly display.

(ii) Access to Publicly Displayed Orders

The Commission is also proposing that alternative trading systems be required to provide non-subscriber broker-dealers equivalent access to the orders alternative trading systems would be required to disseminate in the public quotation system. The Commission agrees with those commenters who stressed the importance of equivalent access for non-participants and stated that requiring alternative trading systems to display prices in the public quotation system would not go far enough to facilitate the best execution of customer orders without a mechanism to access orders at those prices.[102] For example, the SIA commented that it would be reasonable to require alternative trading systems to provide non-participants access to orders in alternative trading systems, provided that access is offered through an entity that meets the general standards for system participants (*e.g.*, credit quality or net worth) and that access is provided through an entity that can provide appropriate clearance and settlement (unless the alternative trading system provides a clearance and settlement mechanism).[103] The NYSE noted that fostering transparency and market coordination also requires enhanced access to alternative trading systems through the Intermarket Trading System (''ITS'').[104] The Commission believes that in addition to the display of better alternative trading system prices in the public quotation system, the availability of such trading interest to public investors is an essential element of the NMS. Therefore, the Commission is proposing that alternative trading systems afford all non-subscriber broker-dealers equivalent access to orders displayed in the public quote, similar to the manner in which ECNs currently comply with the ECN Display Alternative under the Quote Rule.[105]

In particular, the Commission believes that an alternative trading system should allow non-subscribing broker-dealers to execute against the best priced order to the same extent as would be possible had that price been reflected in the public quote by a national securities exchange or national securities association. Thus, an alternative trading system should respond to orders entered by non-participants no slower than it responds to orders entered directly by subscribers. In addition, the Commission believes that for an alternative trading system to comply with this equivalent execution access requirement, the publicly displayed alternative trading system orders would need to be subject to automatic execution through small order execution systems operated by the SRO to which the alternative trading system is linked. For example, under the Integrated Order Delivery and Execution System proposed by the NASD,[106] alternative trading systems linked to Nasdaq would be required to take automatic executions up to the displayed size of orders in their systems. The Integrated Order Delivery and Execution System would replace Nasdaq's Small Order Execution System (''SOES'') and SelectNet (and related NASD rules), while maintaining features of each.

In its letter commenting on the Concept Release, Bloomberg suggested that alternative trading systems should be permitted to establish a direct connection with non-participants so that alternative trading systems would not be affected by any delay caused by an SRO's system to which it is linked.[107] The Commission questions whether this proposal is feasible, however, because such a connection would not permit the non-participant's

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[102] Specialist Assoc. Letter at 10 (recommending that alternative trading systems be required to afford all non-participant broker-dealers equivalent access to orders in their systems); Letter from Jeffery T. Brown, Smith Lodge & Schneider (for Block Trading Inc.), to Jonathan G. Katz, Secretary, SEC, dated Oct. 7, 1997 (''SLS Letter'') at 4.

[103] SIA Letter (10/3/97) at 13. *See also* ABA Letter at 24 (commenting that the Commission consider whether the present SelectNet linkage to ECN prices provides an adequate model on which to base any future non-subscriber access to alternative trading system orders). *But see* Letter from Dan Sheridan, Head of Market Regulation, London Stock Exchange, to Richard R. Lindsey, Director, Division of Market Regulation, SEC, dated Sept. 2, 1997 (''LSE Letter'') at 8 (recommending that alternative trading systems be able to restrict access to executions if a particular non-participant is a credit risk, has a history of unresolved positions, or outstanding fees).

[104] NYSE Letter at 4. *See also* PCX Letter at 30 (noting that non-participant broker-dealers should have ''reasonable'' access to execute orders in an alternative trading system, but this access does not necessarily have to be as quick or convenient as direct participants' access to orders in the alternative trading system).

[105] Rule 11Ac1–1 under the Exchange Act, 17 CFR 240.11Ac1–1 (''Quote Rule''). *See also* Order Handling Rules Adopting Release, *supra* note 88.

[106] Securities Exchange Act Release No. 39718 (Mar. 4, 1998), 63 FR 12124 (Mar. 12, 1998). The Integrated Order Delivery and Execution System would feature a voluntary central limit order file that all market participants would be able to access either directly or through an Integrated Order Delivery and Execution System participant. Registered NASD members and certain customers they sponsor would be able to deliver various sized orders through the Integrated Order Delivery and Execution System to electronically access displayed quotations. Orders would remain anonymous until they are executed.

[107] Bloomberg Letter at 6–7 (recommending that the Commission establish an alternative to the SelectNet linkage for non-participant execution against displayed ECN orders which would allow an ECN to directly connect non-participants to its system without the three-second delay that currently accompanies access through SelectNet).

order to interact with any orders, other than those in the alternative trading system. In addition, a non-participant order sent through an SRO's system would not reach an alternative trading system that had provided a direct link for non-participants in lieu of a link to the SRO. The Commission asks for comment on whether the proposal to require alternative trading systems to provide equivalent access to displayed orders is appropriate and whether there are any reasons that non-participants of alternative trading systems should not be able to access such orders. Is there a feasible way to allow market-wide order interaction without linkage to SRO order execution systems? Is there a feasible way to grant equivalent non-subscriber access to institutions that are not broker-dealers?

(iii) Execution Access Fees

The Commission agrees with those commenters that suggested that fee schedules should not be used to circumvent the ability of non-participants to access a system's publicly displayed orders.[108] The Commission also understands that competitive forces will help determine appropriate fees.[109] Therefore, although reasonable fees are a component of equal access, the Commission is not proposing to set specific fees that alternative trading systems may charge. Rather, the fees would be determined by the system's internal cost structure.

The Commission, however, intends that fees charged not have the effect of denying non-subscribers access to the alternative trading system's publicly displayed orders. Under Regulation ATS, the Commission proposes to prohibit alternative trading systems subject to the display and execution access requirements under proposed Rule 301(b)(3) from charging broker-dealers for access to publicly displayed orders in excess of the fee charged by the alternative trading system to a substantial proportion of its existing broker-dealer subscribers. Specifically, under proposed Rule 301(b)(4), the highest fee an alternative trading system would be permitted to charge non-subscribers would be the lesser of the fee charged by the alternative trading system to a substantial portion of its existing broker-dealer subscribers or the fee permitted under the rules of the applicable national securities exchange or national securities association. The Commission preliminarily believes that the national securities exchange or national securities association to which the alternative trading system provides the prices and sizes of its best priced orders should be authorized to assure that fees charged by alternative trading systems to non-subscribers are consistent with fees typically charged by the exchange or association for access to displayed orders. Therefore, if the exchange or association did not permit any fees for access to the quotes on the system operated by the exchange or association, the exchange or association could prohibit the alternative trading system from charging fees to non-subscribers, regardless of the fees it charged to subscribers. Alternatively, the exchange or association could use this authority to require alternative trading system fees to be charged in a manner consistent with the exchange's or association's market, such as requiring the fee to be incorporated in the displayed quote.

The Commission requests comment on whether there are any reasons that alternative trading systems should be allowed to charge higher fees to non-participants than would be allowed under the proposed rule. The Commission also requests comment on whether there are alternatives for assuring fair execution access for non-subscribers or another test for determining whether the non-subscriber fees assure equal access. Finally, the Commission requests comment on whether fees should be included in the price of an order quoted to the public. The Commission is aware that while orders are displayed in fractions this might prove untenable, but would like commenters' views on this approach assuming orders are quoted in decimals. If this approach is taken, how would variations in a pricing schedule be taken into account?

The proposed rule is intended to ensure that no alternative trading system sets fees that render its system inaccessible to the investing public through non-participant broker-dealers. Further, the Commission encourages SROs that accept alternative trading system quotes to work with alternative trading systems to develop uniform standards regarding display and execution access by SRO members to alternative trading systems linked to the SRO.[110] In addition, to foster equivalent access to alternative trading systems for exchange-listed securities, the Commission would expect ITS participants to modify ITS Plan requirements where necessary to accommodate alternative trading system participation in the markets of ITS participants, and access to those alternative trading systems through ITS.

(iv) Amendment to Rule 11Ac1–1 under the Exchange Act

The Commission is also proposing an amendment to Rule 11Ac1–1 under the Exchange Act (''Quote Rule'').[111] The Quote Rule currently requires all market makers and specialists to make publicly available any superior prices that it privately offers through ECNs. The ECN Display Alternative in the Quote Rule permits an ECN to fulfill these obligations on behalf of market makers and specialists using its system by submitting the ECN's best market maker or specialist priced quotation to an SRO for inclusion into the public quotation.[112] Today's proposed amendment to the Quote Rule is intended to expand the ECN Display Alternative to allow alternative trading systems that display orders and provide equal execution access to those orders under Rule 301(b)(3) of proposed Regulation ATS to fulfill market makers' and specialists' obligations under the Quote Rule.

d. Fair access. The Exchange Act requires registered exchanges and national securities associations to consider the public interest in administering their markets and to establish rules designed to admit members fairly.[113] These requirements are intended to ensure that markets treat investors fairly.[114] Under the current regulatory approach, however, there is no regulatory redress for unfair denials or limitations of access by alternative trading systems. The availability of redress for such actions may not be critical when market participants are able to substitute the services of one alternative trading system with those of another. However, when an alternative trading system has a significantly large percentage of the volume of trading,

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[108] *See* LSE Letter at 7; Bloomberg Letter at 11. *See also* Knight Letter at 8 (all fees charged by SelectNet, SOES, or an ECN should be borne by the taker of liquidity and should be based upon actual costs to ensure that fees are not subsidizing other activities).

[109] *See* Letter from Junius W. Peake, Mofort Distinguished Professor of Finance, University of Northern Colorado, to Jonathan G. Katz, Secretary, SEC, dated July 14, 1997 (''Peake Letter (7/14/97)'') at 15; ABA Letter at 24; PCX Letter at 31.

[110] *See, e.g.*, NASD Rule 4623. Securities Exchange Act Release Nos. 38156 (Jan. 10, 1997), 62 FR 2415 (Jan. 16, 1997); 38008 (Dec. 2, 1996), 61 FR 64550 (Dec. 5, 1996).

[111] Proposed Amended Rule 11Ac1–1(c)(5)(ii) (A) and (B).

[112] *See supra* notes 88–92 and accompanying text.

[113] Sections 6(b)(2) and 6(c) of the Exchange Act, 15 U.S.C. 78f(b)(2) and (c); section 15A(b)(8) of the Exchange Act, 15 U.S.C. 78*o*–3(b)(8).

[114] ''Restraints on membership cannot be justified as achieving a valid regulatory purpose and, therefore, constitute an unnecessary burden on competition and an impediment to the development of a nation market system.'' H.R. Rep. No. 123, 94th Cong. 1st Sess. 53 (1975).

unfairly discriminatory actions hurt investors lacking access to the system.

Fair treatment by alternative trading systems of potential and current subscribers is particularly important when an alternative trading system captures a large percentage of trading volume in a security, because viable alternatives to trading on such a system are limited. Although the Commission is proposing to require alternative trading systems with significant trading volume to publicly display their best bid and offer and provide equal execution access to those orders,[115] direct participation in alternative trading systems offers benefits in addition to execution against the best bid and offer. For example, participants can enter limit orders into the system, rather than just execute against existing orders on a fill-or-kill basis. Participants in an alternative trading system can view all orders, not just the best bid or offer, which provides important information about the depth of interest in a particular security. Participants also have access to unique features of alternative trading systems, such as ''negotiation'' features, whereby one participant can send orders to another participant proposing specific terms to a trade, without either participant revealing its identity. Some alternative trading systems also allow participants to enter ''reserve'' orders which hide the full size of an order from view. Because of these advantages to participation in an alternative trading system, access to the best bid and offer through an SRO is an incomplete substitute. Therefore, the Commission proposes to require alternative trading systems that are registered as broker-dealers and that have a significant percentage of overall trading volume in a particular security to comply with fair access standards, as described in more detail below.[116]

While some commenters did not believe fair access requirements were warranted, they based this conclusion on their belief that denials of access have not been a problem.[117] The Commission, however, is aware of instances in which alternative trading systems applied access standards inconsistently.[118] Consequently, the Commission agrees with commenters who recommended that alternative trading systems provide fair access to subscribers if such systems attain a significant proportion of trading in a security.[119]

Specifically, the Commission is proposing that an alternative trading system subject to Regulation ATS comply with fair access requirements if, during at least four of the preceding six months, the alternative trading system accounted for more than twenty percent of the average daily share volume in any equity security or category of debt.[120] For equity securities,[121] the proposed volume threshold is on a security-by-security basis. Accordingly, if an alternative trading system accounts for greater than twenty percent of the share volume in any equity security, it would be subject to the proposed fair access requirements with respect to that security. The Commission requests comment on whether the twenty percent threshold is appropriate, or whether the volume threshold should be higher or lower than twenty percent. The Commission also requests comment on the best method for an alternative trading system to notify interested parties that its system had reached the volume threshold in a given security. Should the designated examining authority, for example, publish such information for its members?

For debt securities, the Commission proposes that if an alternative trading system accounts for more than twenty percent of the volume in any category of debt security, the alternative trading system would be subject to the fair access requirements with respect to that category. The Commission requests comment on the appropriate categories of debt securities and whether the twenty percent volume threshold is appropriate. For example, the Commission would like comments on categories such as mortgage and asset-backed securities (private label issues only), municipal securities, corporate debt securities, foreign corporate debt securities, and sovereign debt securities. The Commission also requests comment on whether categories of debt securities should be further divided based on an instrument's maturity, credit rating, or other criteria. The Commission also requests comment on the best sources of data for the volume of a particular debt category.

For alternative trading systems that meet the proposed volume thresholds, the Commission is proposing to require those alternative trading systems to establish standards for granting access to trading on its system. An alternative trading system would be required to maintain these standards in its records,[122] but would not be required to provide the Commission with such standards, unless a person denied or limited access to the alternative trading system appealed that action to the Commission. In addition, the alternative trading system would be prohibited from unreasonably prohibiting or limiting any person with respect to access to its services and would be required to provide notice to any person denied or limited access to the alternative trading system that they have a right to appeal the alternative trading system's action to the Commission under the Commission's Rules of Practice.[123]

This right to appeal would be created through several amendments to the Commission's Rules of Practice. In particular, the Commission proposes to amend Rule 420 under the Commission's Rules of Practice [124] to allow a person who is aggrieved by an alternative trading system determination that prohibits or limits that person's access to services to file an application for review by the Commission. The Commission also proposes to amend Rule 410 under the Commission's Rules of Practice [125] so that a person who is aggrieved by a limitation or prohibition of access can move for a stay of action by the alternative trading system pending an appeal. Finally, the Commission proposes to amend Rules 101(a)(9),[126] 202(a),[127] 210(a)(1),[128] and 421 under the Commission's Rules of Practice [129] to include references to alternative trading systems so that the Commission's Rules of Practice with

[115] *See supra* Section III.A.2.c.(ii).

[116] Proposed Rule 301(b)(5).

[117] *See* NASD Letter at 7–8; ICI Letter at 3.

[118] The Commission understands that the NASD is currently reviewing a complaint against an alternative trading system for an unreasonable denial of access.

[119] *See* Jamieson Letter at 7; SLS Letter at 4; Letter from Christopher J. Carroll, Concept Release Task Force, The Bond Market Association, to Jonathan G. Katz, Secretary, SEC, dated Oct. 3, 1997 (''Bond Market Assoc. Letter'') at 10–11. *See also* OptMark Letter at 5–6 (commenting that unreasonable denials of access raise concerns about anticompetitive behavior); LSE Letter at 9 (commenting that alternative trading systems not be required to make the system available to the public generally, but that such systems should not discriminate unfairly and that objective access standards for admission and acceptance should be established by alternative trading systems, subject to oversight by the Commission or the SROs).

[120] Proposed Rule 301(b)(5)(i).

[121] Section 3(a)(11) of the Exchange Act, 15 U.S.C. 78c(a)(11); 17 CFR 240.3a11–1. Options and limited partnerships are included within the definition of an equity security.

[122] Propose Rule 303(a)(1)(iii). The Commission would expect an alternative trading system to maintain a record of its standards at each point in time. If the alternative trading systems amends or modifies its access standards, the records kept should reflect historic standards, as well as current standards.

[123] Proposed Rule 301(b)(5)(ii).

[124] 17 CFR 201.420.

[125] 17 CFR 201.410.

[126] 17 CFR 201.101(a)(9).

[127] 17 CFR 201.202(a).

[128] 17 CFR 201.210(a)(1).

[129] 17 CFR 201.421.

respect to the appeals process apply to allegations of unfair denials of access by alternative trading systems.

These provisions are based on the principle that qualified market participants should have fair access to the nation's securities markets. Alternative trading systems would remain free to have reasonable standards for access. Such standards should act to prohibit *unreasonably* discriminatory denials of access. A denial of access would be reasonable, for example, if it were based on objective standards. For example, an alternative trading system could establish minimum capital or credit requirements for subscribers. Similarly, an alternative trading system could reasonably deny access to investors based on an unfavorable disciplinary history. Provided that these or other standards were applied consistently to all subscribers, an alternative trading system would be considered to be granting and denying access fairly. A denial of access might be unreasonable, however, if it were based solely on the trading strategy of a potential participant.

The Commission requests comment on its proposal to prohibit alternative trading systems with significant volume from unfairly discriminating against market participants in providing access. The Commission seeks commenters views regarding appropriate reasons for denying market participants access to an alternative trading system.[130] The Commission would also like commenters' views on whether the proposed fair access requirement would achieve the Commission's goal of promoting fair access to systems having a significant portion of the market in a particular security. The Commission requests comment on whether an alternative trading system should be required to provide fair access to *all* securities it trades when it reaches the twenty percent threshold in a security. Should fair access be granted only with respect to those securities that have reached the threshold, or with respect to all securities? Should access be granted to all after a certain number or percentage of securities traded have reached the twenty percent threshold? If so, what number or percentage? In addition, the Commission would like commenters' views on whether persons denied access to an alternative trading system should have the right to appeal this action to the Commission, the form the appeal should take, and the appropriate standard for Commission review.

e. Capacity, integrity, and security standards. In November 1989 and May 1991, the Commission published two policy statements regarding the use of technology in the securities markets.[131] These policy statements established the automation review program and called for the SROs to establish, on a voluntary basis, comprehensive planning, testing, and assessment programs to determine systems' capacity and vulnerability. The Commission recommended that SROs: (1) Establish current and future capacity estimates; (2) conduct capacity stress tests; and (3) obtain annual independent assessments of systems to determine whether they can perform adequately.[132] In addition, the Commission staff conducts oversight reviews of the SROs' systems operations. All SROs currently participate in the Commission's automation review program, which has been a significant force in stimulating the SROs to upgrade their systems technology.

The automation review program was established because of ''the impact that systems failures have on public investors, broker-dealer risk exposure, and market efficiency.''[133] While this program did not directly apply to alternative trading systems, the Commission noted that all broker-dealers should engage in systems testing and use the policy statement as a guideline.[134] Because some alternative trading systems now account for a significant share of trading in the U.S. securities markets, failures of their automated systems have as much of a potential to disrupt the securities markets as failures of SROs' automated systems. For this reason, the Commission is proposing to require alternative trading systems with significant volume to meet certain systems capacity, integrity, and security standards.[135] These proposed requirements would be similar to those standards SROs currently follow under the automation review program.

Under proposed Rule 301(b)(6), certain alternative trading systems registered as broker-dealers would be required to comply with requirements designed to ensure adequate systems capacity, integrity, and security. These requirements would apply to an alternative trading system if during four of the preceding six months it had more than twenty percent of the aggregate daily share volume in any equity security or in a specified category of debt security.[136] For equity securities, the proposed volume thresholds are on a security-by-security basis. Accordingly, if any one equity security traded on an alternative trading system accounts for more than twenty percent of the share volume in that security, the alternative trading system would be required to meet the proposed capacity, integrity, and security requirements.

With respect to debt securities, the proposed volume threshold would be applied to categories of debt securities. As discussed in regard to the fair access requirements, the Commission is preliminarily considering categorizing debt securities as: mortgage and asset-backed securities (private issue only), municipal securities, corporate debt securities, foreign corporate debt securities, and sovereign debt securities. These categories could be further broken down into subcategories based on factors such as date of maturity and rating. As stated above, alternative trading systems subject to proposed Regulation ATS would be required to meet the proposed capacity, integrity, and security requirements if the alternative trading system accounted for more than twenty percent of the volume in a category of debt securities.

An alternative trading system that meets these volume thresholds would be required to: (1) Establish reasonable current and future capacity estimates; (2) conduct periodic capacity stress tests of critical systems to determine such system's ability to process transactions in an accurate, timely, and efficient manner; (3) develop and implement reasonable procedures to monitor system development and testing methodology; (4) review the vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters; and (5) establish adequate contingency and disaster

[130] For example, the Commission has reorganized that the creditworthiness of a counterparty is a legitimate concern of market participants. *See* Letter from Richard R. Lindsey, Director, Division of Market Regulation, SEC, to Richard Grasso, Chairman and Chief Executive Officer, NYSE, dated Nov. 22, 1996 at 17.

[131] Securities Exchange Act Release No. 27445 (Nov. 16, 1989), 54 FR 48704 (''ARP I''); Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22489 (''ARP II''). ARP I and ARP II were published in response to operational difficulties experienced by SRO automated systems during the October 1987 market break. These releases predicted future capacity requirements, emphasized the need to maintain accurate trade and quote information, and discussed the degree to which computer automation has become, and is likely to increase as, an intergral part of securities trading.

[132] ARP II, *supra* note 131, set forth guidance concerning the nature of these independent reviews.

[133] ARP I, *supra* note 131, 54 FR at 48705; ARP II, *supra* note 131, 56 FR at 22490.

[134] *See* ARP I, *supra* note 131, 54 FR at 48706 n. 17; ARP II, *supra* note 131, 56 FR at 22493 n.15.

[135] Proposed Rule 301(b)(6).

[136] Proposed Rule 301(b)(6)(i).

recovery plans. An alternative trading system would be required to meet these proposed standards with respect to all its systems that support order entry, order handling, execution, order routing, transaction reporting, and trade comparison.[137] In addition, alternative trading systems subject to this provision would be required to notify the Commission staff of material systems outages and material systems changes.[138] This information would enable Commission staff to maintain an understanding of the operation of alternative trading systems generally and to identify potential problems and trends that may require attention.

Finally, under proposed Regulation ATS, alternative trading systems that meet the volume levels set forth above would be required to perform an annual independent review of the systems that support order entry, order handling, execution, order routing, transaction reporting and trade comparison.[139] As discussed in greater detail in the Commission's May 1991 Policy Statement,[140] an independent review should be performed by competent, independent audit personnel following established audit procedures and standards. If internal auditors are used by an alternative trading system to complete the review, these auditors should comply with the standards of the Institute of Internal Auditors and the Electronic Data Processing Auditors Association (''EDPAA''). If external auditors are used, they should comply with the standards of the American Institute of Certified Public Accountants and the EDPAA.

Some commenters suggested that the Commission need not regulate capacity of alternative trading systems because market forces would ensure that such systems maintain sufficient capacity.[141] A number of commenters, however, said that systems integrity was a concern. In fact, several commenters recommended that the Commission develop general minimum criteria to assure that alternative trading systems maintain sufficient systems capacity.[142]

The Commission's experience has shown that market forces have not been a sufficient incentive for ensuring adequate capacity.[143] For example, during the past year, Instinet, Island, Bloomberg, and Archipelago (operated by Terra Nova) have all experienced system outages due to problems with their automated systems. On a number of occasions, ECNs have had to stop disseminating market maker quotations in order to keep from closing altogether, including during the market decline of October 1997 when one significant ECN withdrew its quotes from Nasdaq because of lack of capacity. Similarly, a major interdealer broker in non-exempt securities experienced serious capacity problems in processing the large number of transactions in October 1997 and had to close down temporarily.

Investors and other market participants increasingly rely on alternative trading systems to buy and sell securities. The ability of these markets to meet the demands of market participants is directly related to the reliability of their automated systems. For this reason, alternative trading systems have significant business incentives to ensure that their systems have adequate capacity so that participants' orders do not experience unnecessary delays. The proposed systems capacity, integrity, and security rules,[144] are intended as a back-up to ensure that alternative trading systems that have a significant role in the market maintain sufficient systems and procedures to avoid or minimize the effects of potential systems problems in the secondary markets. Alternative trading systems that have a significant role in the marketplace should be able to handle reasonably foreseeable volume surges and be prepared for reasonably anticipated future volume increases.

The Commission requests comment on whether the volume thresholds stated above are appropriate for the imposition of these capacity, integrity, and security standards. What volume thresholds would be most appropriate, and what is the best method of calculating them? Are there other capacity, integrity, and security standards that would be more appropriate, or other ways to monitor alternative trading systems capacity? In addition, the Commission would like commenters' views on whether the categories and subcategories of debt discussed above are appropriate and feasible. If commenters believe other categories or subcategories of debt should be used, the Commission requests suggestions. The Commission also asks for comment on whether the volume thresholds for limited partnerships and options should be based on categories of securities rather than on a security by security basis. Would this method better reflect an alternative trading system's market impact?[145]

f. Examination, inspection, and investigations of subscribers. Under the proposed rules, an alternative trading

[137] Proposed Rule 301(b)(6)(ii)(A)–(F)

[138] Proposed Rule 301(b)(6)(ii)(G).

[139] Proposed Rule 301(b)(6). Regulation ATS would also require alternative trading systems to preserve documentation relating to their efforts to meet the requirements of this rule. *See* Proposed Rule 303(a)(1)(iv).

[140] *See* ARP II, *supra* note 131.

[141] *See* Letter from Joanne T. Medero, Barclays Global Investors, to Jonathan G. Katz, Secretary, SEC, dated Oct. 3, 1997 (''BGI Letter'') at 3 (any alternative trading system that is perceived by customers or potential customers as posing execution risks will not be used); Bloomberg Letter at 4 (competition will provide sufficient impetus for alternative trading systems to maintain adequate capacity); Peake Letter (7/14/97) at 16 (customers of alternative trading systems presumably need to be satisfied as to the quality of the vendor); Jamieson Letter at 4–6 (if alternative trading systems do not work customers will not use them); LSE Letter 8–9 (users will take their business elsewhere if an alternative trading system fails); OptiMark Letter at 7 (capacity should not be regulated because alternative trading systems make up a small portion of the market resulting in a relatively little market impact); Macey and O'Hara Letter at 47; OHS Letter (10/3/97) at 17. *See also* Letter from Joseph T. McLaughlin, Managing Director and General Counsel, Credit Suisse First Boston, to Jonathan G. Katz, Secretary, SEC, dated Oct. 7, 1997 (''CSFB Letter'') at 18 (commenting that capacity concerns are misplaced for most systems, but for larger alternative trading systems, the Commission could impose heightened regulation regarding capacity to the extend that the Commission determines that the failure of a particular system could result in risks comparable to the failure of a national securities exchange).

[142] *See* Letter from Scott L. Fagin, LIMITrader, to Jonathan G. Katz, Secretary, SEC, dated June 26 1997 (''Fagin Letter'') at 3; Letter from Thomas J. Jordan, Executive Director, Financial Information Forum, to Jonathan G. Katz, Secretary, SEC, dated Oct. 3, 1997 (''FIF Letter'') at 1; Letter from Robert C. Weaver, Attorney, to Jonathan G. Katz, Secretary, SEC, dated Oct. 2, 1997 (''Weaver Letter'') at 7; Specialist Assoc. Letter at 12 (the Commission should develop criteria for alternative trading systems to safeguard the integrity and security of their trading systems); PCX Letter at 28; NYSE Letter at 5 (although alternative trading systems have strong incentives to ensure their systems have adequate capacity, to the extent that market forces do not provide adequate protection, the Commission should require alternative trading systems to certify at specified intervals that they have adequate capacity, subject to SRO oversight). *See also* ICI Letter at 4 (commenting that it could support a periodic reporting requirement, but substantive regulation might impede innovation).

[143] In addition, the United States General Accounting Office (''GAO'') has conducted several studies on the subject of computer systems and their role in the financial markets. Generally, the GAO has recommended that the Commission take steps to improve systems capacity, integrity, and security. *See* GAO, Stronger System Controls and Oversight Needed to Prevent NASD Computer Outages (Dec. 1994) (regarding Nasdaq system outages); GAO, Stock Markets: Information Vendors Need SEC Oversight to Control Automation Risks (Jan. 1992) (regarding risk assessments of automated operations of stock market information dissemination vendors); GAO, Computer Security Controls at Five Stock Exchanges Need Strengthening (Aug. 1991) (regarding systems related risks at stock markets); GAO, Active Oversight of Market Automation by SEC and CRTC Needed (Apr. 1991) (regarding automation risks of the securities and futures markets); GAO, Tighter Computer Security Needed (Jan. 1990) (regarding the Common Message Switch system and the Intermarket Trading System operated by the Securities Industry Automation Corporation and the Nasdaq system operated by the NASD).

[144] Proposed Rule 301(b)(6)(ii).

[145] *See supra* note 121.

system would be required to cooperate with the Commission's or an SRO's inspection or examination of the alternative trading system or any of the alternative trading system's subscribers.[146] Presently, the Commission has the authority to inspect and examine any member of any national securities exchange or any national securities association directly. This is because all such members are broker-dealers. Alternative trading systems, however, also have certain other subscribers, such as banks, to which the Commission's inspection authority does not extend. Because alternative trading systems could be used by subscribers to manipulate the market in a security,[147] it is imperative that alternative trading systems cooperate in all inspections and examinations. Although neither the Commission nor the SROs have the authority to directly inspect non-broker-dealer subscribers of alternative trading systems, any relevant trading information involving such subscribers would be maintained by the alternative trading system, under its recordkeeping requirements, and be required to be made available upon request to its SRO or the Commission.

g. Recordkeeping. Proposed Regulation ATS would require alternative trading systems to make and keep the records necessary to create a meaningful audit trail.[148] Specifically, the Commission proposes that alternative trading systems maintain daily summaries of trading and time-sequenced records of order information, including the date and time the order was received, the date, time, and price at which the order was executed, and the identity of the parties to the transaction. In addition, alternative trading systems would be required to maintain a record of subscribers and any affiliations between subscribers and the alternative trading system.[149] While some of the information that would be required by the proposed rule will also be required under the NASD's Order Audit Trail System (''OATS''),[150] OATS is an NASD rule and does not cover all securities traded through alternative trading systems.

This proposal also requires alternative trading systems to keep records of all notices provided to subscribers, including notices addressing hours of operation, system malfunctions, changes to system procedures and instructions pertaining to access to the alternative trading system. In addition, alternative trading systems would be required to keep documents made (if any) in the course of complying with the systems capacity, integrity, and security standards in Proposed Rule 301(b)(6). These documents would include all reports to an alternative trading system's senior management, and records concerning current and future capacity estimates, the results of any stress tests conducted, procedures used to evaluate the anticipated impact of new systems when integrated with existing systems, and records relating to arrangements made with a service bureau to operate any automated systems. These records would allow the Commission to examine whether alternative trading systems are complying with the requirements under Proposed Rule 301(b)(6). Finally, an alternative trading system subject to the fair access requirements discussed above would be required to keep a record of its access standards.[151]

The Commission proposes that these records be kept for at least three years, the first two years in an easily accessible place. Proposed Regulation ATS also would require some records, such as partnership articles and articles of incorporation, to be kept for the life of the alternative trading system.[152] The Commission is proposing to allow alternative trading systems to keep records in any form broker-dealers are permitted to keep records under Rule 17a–4(f) under the Exchange Act.[153]

The Commission recognizes that alternative trading systems subject to proposed Regulation ATS would be subject to the recordkeeping requirements for broker-dealers under Rules 17a–3 and 17a–4 of the Exchange Act,[154] which may require that some of the same records be made and kept. Proposed Regulation ATS would not require an alternative trading system to duplicate trading records maintained in the course of its normal recordkeeping operations, provided that the alternative trading system could sort and retrieve system records separately upon request. In addition, as broker-dealers are currently permitted to do,[155] proposed Regulation ATS would permit an alternative trading system to retain a service bureau, depository, or other recordkeeping service to maintain required records on behalf of the alternative trading system as long as the designated party agrees to make the records available to the Commission upon request.[156]

The Commission believes that the records it is proposing to require alternative trading systems to make and keep are records that alternative trading systems would otherwise keep as part of their business, and that therefore these proposed requirements would not place undue burdens upon alternative trading systems.

h. Reporting and Form ATS–R. Proposed Regulation ATS would require alternative trading systems to file with the Commission transaction reports within 30 calendar days of the end of each calendar quarter on Form ATS–R.[157] Specifically, proposed Form ATS–R would require alternative trading systems to report total volume in terms of number of units traded and dollar value for the following categories of securities: (1) Listed equity securities, (2) Nasdaq NM securities, (3) Nasdaq SmallCap securities, (4) equity securities that are eligible for resale pursuant to Rule 144A under the Securities Act of 1933,[158] (5) penny stocks, (6) equity securities not included in (1)–(5), (7) rights and warrants, (8) listed options, and (9) unlisted options. In addition, alternative trading systems would have to report the total dollar value for: (1) Corporate debt securities, (2) government securities, (3) municipal securities, (4) mortgage related securities, and (5) debt securities not included in (1)–(4). The Commission is also proposing that alternative trading systems file after-hours trading information in listed equity, Nasdaq NM, and Nasdaq SmallCap securities, as well as listed options. This information would permit the Commission to monitor the trading on alternative trading systems.

Because this release proposes to eliminate Rule 17a–23,[159] data filed by

[146] Proposed Rule 301(b)(7).

[147] The Commission is aware of several incidents involving the manipulation of quotations through alternative trading systems. The participants who engaged in this manipulation were able to gain a profit as a result.

[148] Proposed Rule 301(b)(8).

[149] Proposed Rule 302.

[150] Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998).

[151] *See supra* notes 122–123 and accompanying text.

[152] Proposed Rule 303.

[153] Proposed Rule 303(b). Rule 17a–4(f) provides for the maintenance of records on microfilm, microfiche, or electronic storage media. The Commission recognizes that alternative trading systems will likely generate much of the information in electronic form and generally may wish to keep records in electronic format. 17 CFR 240.17a–4(f).

[154] 17 CFR 240.17a–3 and 17 CFR 240.17a–4.

[155] 17 CFR 240.17a–4(i).

[156] Proposed Rule 303(d).

[157] Proposed Rule 301(b)(9).

[158] 17 CFR 230.144A. Brokers and others who use alternative trading systems to trade Rule 144A eligible securities and other types of restricted securities should make sure those systems are structured to permit the traders' compliance with their obligations under Rule 144A and under the Securities Act of 1933.

[159] *See infra* Section IV.A. Rule 17a–23 under the Exchange Act generally requires U.S. broker-dealers

alternative trading systems on Form ATS–R would replace the information currently filed on Form 17A–23 by broker-dealers operating trading systems, although proposed Form ATS–R modifies what broker-dealer trading systems are currently required to file on Part II of Form 17a–23. By creating a template for alternative trading systems to file periodic reporting data, the information would be filed in a more uniform manner and would be more useful to the Commission. For example, this information would be used by Commission staff to develop examination modules for the inspection of alternative trading systems. It would also be used by the Commission staff to further understand the effect of alternative trading systems on the securities markets. In addition, the Commission is now proposing to ask for information about the volume of particular types of securities that are not listed on an exchange or traded on Nasdaq. These new reporting requirements on Form ATS–R should improve the quality of the data that the Commission gathers. Due to the highly automated nature of alternative trading system operations and the experiences with Rule 17a–23, the Commission does not anticipate that gathering and submitting the data required on Form ATS–R would be overly burdensome.

Alternative trading systems would also be required to make reports on Form ATS–R available to surveillance personnel of any SRO of which they are a member.[160] Alternative trading systems would not be required to routinely provide these reports to their SRO, but would be required to make such reports available upon request of the SRO. The Commission, however, requests comment on whether alternative trading systems should be required routinely to provide reports made on Form ATS–R to their SROs.

The Commission solicits comment on the transaction reporting requirements and Form ATS–R. In particular, the Commission solicits comment on the frequency and scope of transaction reporting requirements proposed in Regulation ATS, as well as the appropriateness of permitting Form ATS–R to be filed electronically.

i. Procedures to ensure confidential treatment of trading information. The proposed rules would require alternative trading systems to have in place safeguards and procedures to protect trading information and to separate alternative trading system functions from other broker-dealer functions, including proprietary and customer trading. The Commission believes that the sensitive nature of the trading information subscribers send to alternative trading systems requires such systems to take certain steps to ensure the confidentiality of such information.

In inspections of some ECNs, the Commission staff found that some of the broker-dealers operating ECNs used the same personnel to operate the ECN as they did for more traditional broker-dealer activities, such as handling customer orders that were received by telephone. This situation creates the potential for misuse of the confidential trading information in the ECN, such as customers' orders receiving preferential treatment, or customers receiving material confidential information about orders in the ECN. The rules the Commission is proposing today are designed to eliminate the potential for abuse of the confidential trading information that subscribers send to alternative trading systems. The Commission recognizes that some alternative trading systems combine traditional brokerage services with their systems. The proposed rules are not intended to preclude these services; rather, they are designed to prevent the misuse of private customer information in the system for the benefit of other customers, the alternative trading system operator, or its employees.

Therefore, the Commission is proposing that: (i) Information, such as the identity of subscribers and their orders, be available only to those employees of the alternative trading system who operate the system or are responsible for its compliance with the proposed rules; (2) the alternative trading system have in place procedures to ensure that all its employees are unable to use any confidential information for proprietary or customer trading, unless the customer agrees; and (3) procedures exist to ensure that employees of the alternative trading system cannot use such information for trading in their own accounts.[161]

The Commission expects that existing alternative trading systems will implement procedures such as these as quickly as possible, if they do not already have them in place. These procedures should be clear and unambiguous and presented to all employees, regardless of whether they have direct responsibility for the operation of the alternative trading system. Presently, many broker-dealers employ various means to ensure that sensitive information does not flow from one division to another. These methods include physical separation, written procedures, separate personnel, and restricted access. The Commission believes that firewalls such as these could be used by broker-dealers that operate alternative trading systems to ensure that sensitive information regarding the alternative trading system is contained in the proper unit of the broker-dealer.

The Commission is not proposing specific procedures because it believes that the broker-dealers who operate the alternative trading systems are in the best position to know what procedures would best prevent abuses. Experience has demonstrated, however, the potential for abuse and the Commission regards these procedures as essential. Commenters are encouraged to comment on these requirements, including how to prevent misuse of customer confidential information while offering brokerage services. If commenters believe specific procedures would be more beneficial, the Commission requests that suggestions be included with the comments.

j. Name of alternative trading systems. Under proposed Rule 301(b)(11), the Commission proposes to prohibit an alternative trading system registered as a broker-dealer from using the term ''exchange'' in its name. The Commission believes that use of the term ''exchange'' by a system not regulated as an exchange would be deceptive and could mislead investors that such alternative trading system is registered as a national securities exchange. The Commission believes that the proposed regulatory framework provides alternative trading systems with the flexibility to position themselves as either exchanges or broker-dealers. The Commission does not propose to dictate which form of regulation an alternative trading systems chooses, but it is important that the investing public not be confused about the market role such systems have chosen to assume. Accordingly, the Commission believes that if an alternative trading system chooses to register as a broker-dealer under Regulation ATS, it should not use the term ''exchange'' in its name.

The Commission requests comment on issues raised by the proposed prohibition on alternative trading systems registered as broker-dealers under Regulation ATS from using the

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that sponsor broker-dealer trading systems to provide a description of their systems to the Commission and report transaction volume and other information on a quarterly basis. This rule also requires that such broker-dealers keep records regarding system activity and to make such records available to the Commission. 17 CFR 240.17a–23. *See also* Securities Exchange Act Release No. 35124 (Dec. 20, 1994), 59 FR 66702 (Dec. 28, 1994).

[160] Proposed Rule 301(b)(2)(vii).

[161] Proposed Rule 301(b)(10).

term ''exchange'' in their names, and whether other terms, such as ''stock market'' are similarly misleading. The Commission also requests comment on whether it is misleading for other types of systems, such as bulletin board systems, to use the term ''stock market'' in their name.

B. Registration as a National Securities Exchange

1. Benefits of Registration as a National Securities Exchange

Registration as a national securities exchange provides several attractive benefits that may make this option more suitable to the business objectives of certain alternative trading systems. The primary advantage of exchange registration is the relative autonomy that exchanges enjoy in their daily operation. Exchanges are SROs, and are thus subject to surveillance and oversight only by the Commission. Consequently, any alternative trading system that elects exchange registration would not be subject to oversight by a competing national securities exchange or national securities association.[162] Similarly, as a national securities exchange, an alternative trading system would be able to establish its own rules of conduct, trading rules, and fee structures for external access. An alternative trading system registered as a broker-dealer, on the other hand, would have to comply with the rules of the SRO to which it belongs, including any rules regarding the automatic execution of small orders.

In addition, systems that elect to register as exchanges may gain added prestige and investor confidence. As a registered exchange, an alternative trading system would be able to establish listing standards, which could promote investor confidence in the quality of the securities listed on the alternative trading system. In addition, registered exchanges can become direct participants in the NMS mechanisms, such as the ITS, Consolidated Tape Association (''CTA''), and the Consolidated Quotation System (''CQS''). Direct participation in these systems may provide a higher degree of transparency and execution opportunities for alternative trading system subscribers. As direct participants in the NMS mechanisms, registered exchanges are also entitled to share in the profits generated by the NMS systems, such as revenue from CTA fees. Further, only exchanges are eligible to be participants of the Options Clearing Corporation and thereby determine such matters as listing, registration, clearance, issuance and exercise of options contracts.[163]

2. Responsibilities of Registered National Securities Exchanges

A fundamental objective of the Commission's proposal is to create regulations that are sufficiently flexible to accommodate the chosen business objectives of the various alternative trading systems, including those that elect to register as exchanges. Nevertheless, the Commission views certain exchange obligations as fundamental to the fair and efficient operation of exchanges in the marketplace and critical for the protection of investors. Thus, the Commission proposes to require those alternative trading systems that choose to register as exchanges to satisfy these fundamental exchange obligations in order to ensure that the goals of market regulation, as set forth in the Exchange Act, are met. The Commission requests comment on whether any exemptions from exchange regulatory provisions would be necessary or appropriate to enable alternative trading systems to register as exchanges.

a. Self-regulatory responsibilities. One of the central functions performed by exchanges under the current regulatory structure is the self-regulatory function, which includes the implementation and enforcement of rules for trading on the exchange, and surveillance of members' trading and sales activities. The self-regulatory role of exchanges is vital to the effective management of the securities industry. Therefore, as a prerequisite for the Commission's approval of an exchange's application for registration, an exchange would have to organize and have the capacity to carry out the purposes of the Exchange Act. Specifically, an exchange would have to be able to enforce compliance by its members and persons associated with its members with the federal securities laws and the rules of the exchange. The exchange's rules would have to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to refrain from imposing any unnecessary or inappropriate burdens on competition, among other things.[164] In addition, once registered, an exchange would have to submit copies of any proposed rule changes to the Commission for approval.[165] As part of its compliance activities, an exchange must maintain procedures to surveil for violations such as insider trading and manipulation on its facilities. While an exchange is required to have adequate measures in place, not all exchanges must use the same procedures. Their surveillance procedures, while fundamentally similar in effect, can be tailored to the particular requirements of each exchange and will depend on the nature of trading that occurs and the type of securities that are traded on the exchange.

The Commission would consider, however, measures to reduce the surveillance burdens for exchanges. The Commission believes that some of the self-regulatory obligations for exchanges may be contracted to another party. Rule 17d-2 under the Exchange Act permits SROs to establish joint plans for allocating the regulatory responsibilities imposed by the Exchange Act with respect to common members.[166] The Commission has previously permitted existing SROs to contract with each

[162] Alternative trading systems that continue to be regulated as broker-dealers would remain subject to oversight by national securities exchanges and the NASD, in their self-regulatory capacities. *See supra* Section III.A.2.a.

[163] Options Clearing Corporation By-laws, Art. VII, Sections 1 and 4. Registered exchanges that are members of the Options Clearing Corporation are also able to use registration and disclosure materials tailored for standardized options.

[164] Section 6(b) of the Exchange Act, 15 U.S.C. 78f(b).

[165] Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b). If Nasdaq chose to register as an exchange, the Commission notes that any rules governing trading on Nasdaq that have been filed by the NASD and approved by the Commission would not constitute proposed rules changes for purposes of Section 19(b) of the Exchange Act. *See also infra.* Section V (discussing a proposed temporary rule filing exemption).

[166] 17 CFR 240.17d–2. Securities Exchange Act Release No. 12935 (Oct. 28, 1976), 41 FR 49093 (Nov. 8, 1976). In addition to the regulatory responsibilities it otherwise has under the Exchange Act, the SRO to which a firm is designated under these plans assumes regulatory responsibilities allocated to it. Under Rule 17d–2(c), the Commission may declare any joint plan effective if, after providing notice and opportunity for comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in section 17(d) of the Exchange Act. 15 U.S.C. 78q(d). The Commission has approved plans filed by the equity exchanges and the NASD for the allocation of regulatory responsibilities pursuant to Rule 17d–2. *See, e.g.,* Securities Exchange Act Release Nos. 13326 (Mar. 3, 1977), 42 FR 13878 (Mar. 14, 1977) (NYSE/Amex); 13536 (May 12, 1977), 42 FR 26264 (May 23, 1977) (NYSE/BSE); 14152 (Nov. 9, 1977), 42 FR 59339 (Nov. 16, 1977) (NYSE/CSE); 13535 (May 12, 1977), 42 FR 26269 (May 23, 1977) (NYSE/CHX); 13531 (May 12, 1977), 42 FR 26273 (May 23, 1977) (NYSE/PSE); 14093 (Oct. 25, 1977), 42 FR 57199 (Nov. 1, 1977) (NYSE/Phlx); 15191 (Sep. 26, 1978), 43 FR 46093 (Oct. 5, 1978) (NASD/BSE, CSE, CHX and PSE); and 16858 (May 30, 1980), 45 FR 37927 (June 5, 1980) (NASD/BSE, CSE, CHX and PSE).

other to allocate non-financial regulatory responsibilities.[167] An SRO participating in a regulatory plan is relieved of regulatory responsibilities with respect to a broker-dealer member of such an SRO, if those regulatory responsibilities have been designated to another SRO under the regulatory plan. These programs would also be applicable to alternative trading systems that choose to register as exchanges.

These plans permit an SRO to allocate its oversight obligations with respect to certain members' compliance with various requirements, but do not permit an SRO to allocate its oversight obligations with respect to the activities taking place on its market. The Commission believes that the enforcement and disciplinary actions for violations relating to transactions executed in an SRO's market or rules unique to that SRO should continue to be retained by that SRO. Existing exchanges generally employ personnel and establish extensive programs to fulfill this responsibility. Fully automated exchanges, however, might be able to contract with other exchanges to perform certain oversight activities while retaining ultimate responsibility for ensuring that these activities are performed. For example, fully automated exchanges can produce comprehensive, instantaneous automated records that can be monitored remotely. As a result, it may be possible for such an exchange to contract with another exchange to perform its day-to-day enforcement and disciplinary activities. The Commission could consider whether allowing an automated market to do so would be consistent with the public interest.

In addition, existing Commission initiatives and SRO plans that coordinate supervision of broker-dealers that are members of more than one SRO (''common members'') would also apply to alternative trading systems that choose to register as exchanges.[168] In order to avoid unnecessary regulatory duplication, the Commission appoints a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements.[169] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.[170] Consistent with past Commission action, the Commission could continue to designate one SRO, such as the NASD or the NYSE, as the primary DEA for common members of exchanges.

b. Fair Representation. The Commission understands that certain obligations may be inconsistent with the proprietary nature of alternative trading systems. For example, a major obstacle to the regulation of proprietary alternative trading systems as exchanges has been the concern that they would be subject to certain exchange obligations incompatible with their structures.[171] Specifically, section 6(b)(3) of the Exchange Act requires that exchanges have member controlled boards of directors and assure the ''fair representation'' of their members in the selection of their boards of directors.[172] Without some modification, the current application of these requirements could inappropriately dictate the corporate governance choices of alternative trading systems that register as exchanges and could prevent them from adopting innovative means of carrying out self-regulatory obligations. In particular, for a proprietary system, the ''fair representation'' obligations strictly applied could require the customers of a system to govern the system. Customer control of a commercial enterprise could change the relationship of the system to its subscribers, could foreseeably conflict with the profit-driven nature of the organization, and could impose a public structure on a private enterprise. The Commission therefore proposes to allow non-membership, for-profit alternative trading systems that choose to register as exchanges some flexibility in satisfying the ''fair representation'' requirement in the Exchange Act.

The Commission believes that ''fair representation'' does not necessarily require exchanges to be owned by their members. For example, in the past, the Commission has stated that registered clearing agencies may employ several methods to comply with the fair representation standard.[173] These methods include: (1) Solicitation of board of director nominations from all participants; (2) selection of candidates for election to the board of directors by a nominating committee which would be composed of, and selected by, the participants or representatives chosen by participants; (3) direct participation by participants in the election of directors through the allocation of voting stock to all participants based on their usage of the clearing agency; or (4) selection by participants of a slate of nominees for which stockholders of the clearing agency would be required to vote their share. Other structures may also provide independent, fair representation in the material decision making processes of an exchange that is not owned by its subscribers. For example, an alternative trading system that registers as an exchange might be able to fulfill this requirement by establishing an independent subsidiary that has final, binding responsibility for bringing and adjudicating disciplinary proceedings and rule making processes for the exchange, and ensuring that the governance of such subsidiary equitably

[167] For example, the Commission has approved a regulatory plan filed by the Amex, CBOE, NASD, NYSE, PCX, and the Phlx that divides the oversight responsibilities among these SROs for common members, by designating each participating SRO as the options examination authority for a portion of the common members. This designated SRO has sole regulatory responsibility for certain options-related trading matters. *See* Securities Exchange Act Release No. 20158 (Sept. 8, 1983), 48 FR 41265 (Sept. 14, 1983). The SRO designated under the plan as a broker-dealer's options examination authority is responsible for conducting options-related sales practice examinations and investigating options-related customer complaints and terminations for cause of associated persons. The designated SRO is also responsible for examining a firm's compliance with the provisions of applicable federal securities laws and the rules and regulations thereunder, its own rules, and the rules of any SRO of which the firm is a member. *Id.*

[168] For example, while exchanges are required to enforce compliance by their members (and persons associated with their members) with applicable laws and rules, the Commission has used its authority under sections 17 and 19 of the Exchange Act to allocate oversight of common members to particular exchanges, and to exempt exchanges from enforcement obligations with respect to persons that are associated with a member, but that are not engaged in the securities business. *See* 17 CFR 240.17d–2; 17 CFR 240.19g2–1.

[169] With respect to a common member, section 17(d)(1) of the Exchange Act authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions. 15 U.S.C. 78q(d)(1).

[170] *See* Securities Exchange Act Release No. 23192 (May 1, 1986) 51 FR 17426 (May 12, 1986). Moreover, section 108 of NSMIA. *supra* note 3, adds a provision to section 17 of the Exchange Act that calls for improving coordination of supervision of members and elimination of any unnecessary and burdensome duplication in the examination process.

[171] *See Delta Release, supra* note 10, at 1900. In *Board of Trade of the City of Chicago* v. *Securities and Exchange Commission*, 923 F.2d 1270 (7th Cir. 1991) (*Delta II*), the court stated that:

The Delta system cannot register as an exchange because the statute requires that an exchange be controlled by its participants, who in turn must be registered brokers or individuals associated with such brokers. So all the financial institutions that trade through the Delta system would have to register as brokers, and [the system sponsors] would have to turn over the ownership and control of the system to the institutions. The system would be kaput.

Id. at 1272–73.

[172] 15 U.S.C. 78f(b)(3).

[173] *See* Securities Exchange Act Release No. 14531 (Mar. 6, 1978), 43 FR 10288 (Mar. 10, 1978). *See also* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

represents the exchange's participants.[174] As another possibility, certain directors appointed to the board to represent the interests of trading members or participants could be limited to considering certain topics relating to system use and rules, while consideration of ownership issues could be restricted to board members representing the interests of the owners or stockholders.[175] What constitutes fair representation for a particular exchange would be determined in the context of that system's application for registration under Sections 6(a) and 19(a) under the Exchange Act, subject to public notice and comment.[176] The Commission solicits commenters' views regarding application of the fair representation requirement to alternative trading systems that choose to register as exchanges.

c. Membership on a national securities exchange. Section 6(c)(1) of the Exchange Act[177] prohibits exchanges from granting new membership to any person not registered as a broker-dealer, or associated with a broker-dealer. In the Concept Release, however, the Commission sought commenters' views on whether to allow institutional membership on national securities exchanges. Most commenters opposed institutional membership on exchanges, voicing myriad concerns. Some commenters thought that institutional membership would be contrary to the purposes of the Exchange Act and would create a competitive disadvantage for registered broker-dealers. A number of commenters opposed any arrangement that would allow a class of members or participants to be subject to less restrictive regulations than another class. Other commenters feared that the practical implications would overwhelm Commission resources as the Commission tried to decide which rules should apply to institutions and which should not. In addition, a number of commenters feared that institutional exchange membership would subject institutions to unwarranted oversight by exchanges and the Commission or to duplicative or inconsistent regulations for those institutions that are already subject to oversight by other federal agencies.[178] Some commenters were concerned about the ability of exchanges or the Commission to exercise appropriate oversight over institutions and questioned the ability of an exchange to reject the membership or direct access of an institution with a questionable operating history.

After reviewing commenters' concerns, as well as considering the practical effects that institutional membership or access may have on other exchange members and on the effective oversight of exchange trading, the Commission is not proposing to exempt national securities exchanges from the prohibition on membership by non-broker-dealers.[179] Thus, just as currently registered exchanges are required to limit membership to broker-dealers, the Commission proposes that alternative trading systems that choose to register as exchanges be prohibited from including non-broker-dealer participants.

The legislative history of the Exchange Act contemplates possible direct institutional access to exchange execution facilities.[180] In addition, sections 15(e) and 6(f) of the Exchange Act[181] would permit the Commission to subject institutional members to all exchange rules and relevant Exchange Act provisions. The Commission, however, believes that, in order to ensure the central goals of exchange regulation, it would have to subject institutional members or participants to the majority of rules and regulations to which broker-dealers are currently subject. This would undermine most benefits an institution would receive by not having to register as a broker-dealer. At the same time, it would impose ad-hoc regulatory burdens on the Commission and the exchanges as they tried to impose critical rules and regulations on institutions. Thus, the Commission does not believe that allowing institutional membership on exchanges is currently practical or serves the best interests of investors or the markets generally.

The Commission is also concerned about the systemic risks that direct institutional access may pose to the national clearance and settlement systems. If institutional investors were granted exchange membership or direct access to exchanges, they would need to arrange for the clearance and settlement of their trades. This would likely be accomplished by the direct membership of such investors in one or more of the national clearance and settlement corporations. They would also need to demonstrate and maintain financial creditworthiness. The Commission could, pursuant to section 15(e) of the Exchange Act,[182] require non-broker-dealer institutions to comply with risk management obligations, including the requirements to maintain certain minimum levels of net capitalization and appropriate books and records. Insufficient net capital and incomplete books and records could compromise financial soundness, audit trails, and other general risk management objectives that are critical to sound markets and clearance and settlement systems. If these important risk management measures could not be assured for institutions, the health of the markets and the national clearance and settlement systems could be jeopardized. As discussed above, the Commission believes that this course would effectively require non-broker-dealer institutions to comply with the same requirements imposed on registered broker-dealers. Without such requirements, institutional membership on an exchange may also conflict with an exchange's obligation to have rules that foster the efficient clearance and settlement of securities transactions.

Accordingly, the Commission continues to believe that exchange membership should continue to be limited to registered broker-dealers and persons associated with registered broker-dealers in accordance with section 6(c)(1) of the Exchange Act.[183] Institutions, however, would continue to be able to access alternative trading systems registered as exchanges through

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[174] The Commission notes that the proprietary exchange Easdaq, a recognized secondary market in Belgium, has established a ''regulatory authority'' that has a degree of independence from Easdaq's board of directors.

[175] The Commission in the past has approved exchange rules limiting the voting rights of ''special access'' or non-equity members as consistent with section 6(b)(3) of the Exchange Act, 15 U.S.C. 78f(b)(3). *See, e.g.*, Securities Exchange Act Release No. 22959 (Feb. 28, 1986), 51 FR 8060 (Mar. 7, 1986) (approving rule change by NYSE establishing ''electronic access membership'' with restricted voting rights).

[176] 15 U.S.C. 78f(a) and 78s(a).

[177] 15 U.S.C. 78f(c)(1). Section 6(c)(1), adopted in 1975, prohibits exchanges from granting new memberships to non-broker-dealers. At the time this Section was adopted, one non-broker-dealer maintained membership on an exchange. This non-broker-dealer was not affected by the prohibition and continues to maintain its membership. Section 15(e) of the Exchange Act, 15 U.S.C. 78*o*(e), gives the Commission authority to require any member of a registered exchange that is not required to register with the Commission as a broker-dealer to comply with any provision of the Exchange Act (other than section 15(a) which requires registration of broker-dealers with the Commission or an exemption therefrom) and rules thereunder that regulate or prohibit any practice by a broker-dealer.

[178] For example, institutional investors may include commercial banks, mutual funds, insurance companies and pension funds. These institutions may be subject to regulatory oversight by other federal agencies, and may be regulated for purposes that differ from the regulatory goals of the Exchange Act.

[179] Section 6(c)(1) of the Exchange Act, 15 U.S.C. 78f(c)(1).

[180] *See* Concept Release, *supra* note 2.

[181] 15 U.S.C. 78f(f) and 78*o*(e).

[182] 15 U.S.C. 78*o*(e).

[183] 15 U.S.C. 78f(c)(1).

a registered broker-dealer member of such a trading system, similar to the way in which institutions currently have direct access to the NYSE through SuperDOT terminals given to them by NYSE members.[184] For example, the OptiMark System [185] enables institutions to directly enter orders in the OptiMark system through an exchange member. Similarly, Nasdaq's proposed Integrated Order Delivery and Execution System would provide institutional access to Nasdaq through Nasdaq primary market makers.[186] This form of access should not impose significant costs or burdens on institutions or on broker-dealers providing such access. The Commission believes that this approach would readily serve institutional investors' needs without compromising important regulatory objectives.

The Commission, however, is soliciting comment on whether institutions should be permitted to be members of a registered exchange.

d. Fair access. The Commission would continue to require all national securities exchanges to ensure the fair access of registered broker-dealers in accordance with sections 6(b)(2) [187] and 6(c) [188] of the Exchange Act, which prohibit discriminatory denials of access and discriminatory treatment of members.[189] The obligation to ensure fair access for members does not, however, restrict the authority of a national securities exchange or national securities association from maintaining reasonable standards for access.[190] The securities industry and the general public need access to exchanges to ensure the best execution of orders and view exchanges as venues for trading that are open to all qualified persons. Thus, the Commission believes that it is consistent with the objectives of the Exchange Act to prevent any discriminatory denial of access on an alternative trading system that elects to register as a national securities exchange.

In a similar vein, exchanges are prohibited from adopting any anti-competitive rules.[191] To further emphasize the goal of vigorous competition, Congress required the Commission to consider the competitive effects of exchange rules,[192] as well as the Commission's own rules.[193] The fair access and fair competition requirements in the Exchange Act are intended to ensure that national securities exchanges and national securities associations operating markets treat investors and their participants fairly, consistent with the expectations of the investing public. Accordingly, the Commission proposes to require all alternative trading systems registered as exchanges to comply with these requirements of the Exchange Act.

e. Compliance with ARP Guidelines. All national securities exchanges are expected to maintain sufficient systems capacity to handle foreseeable trading volume. The Commission believes that adequate capacity is vital to the efficient operation of exchanges, particularly during periods of high volume or volatility, such as have been experienced in the past year. To ensure adequate systems capacity, the Commission established the automation review program.[194] All exchanges and the NASD currently participate in this program. Given the highly automated nature of most alternative trading systems, the Commission would expect any alternative trading system that registers as an exchange to comply with the policies and procedures outlined by the Commission in its policy statements concerning the automation review program, including cooperation with any reviews conducted by the Commission.

f. Registration of securities. Securities traded on a national securities exchange must be registered with the Commission and approved for listing on the exchange.[195] In addition, national securities exchanges are permitted to trade securities listed on other exchanges and Nasdaq pursuant to unlisted trading privileges, or UTP.[196] Alternative trading systems that choose to register as exchanges would be required to have rules for trading the class or type of securities it seeks to trade pursuant to UTP.[197] Moreover, to trade Nasdaq NM securities, these systems would have to become signatories to an existing plan governing such trading.[198] These requirements ensure that investors have adequate information and that all relevant trading activity in a security is reported to, and surveilled by, the exchange on which it is listed. Alternative trading systems that choose to register as national securities exchanges would be subject to these requirements. Therefore such alternative trading systems could only trade listed securities and would have to comply with Commission regulations governing UTP. These requirements would not apply to alternative trading systems that choose to register as broker-dealers.

The Commission is not proposing that alternative trading systems that choose to register as broker-dealers and be regulated under Regulation ATS be limited in the types of securities they trade. The Commission, however, solicits comment on whether securities traded on all alternative trading systems should be registered under section 12 of the Exchange Act. Alternatively, the Commission requests comment on whether a securities registration requirement should apply when the trading volume on the alternative trading system, or in any particular security traded through an alternative trading system, reaches a specified level. If so, the Commission requests comment on what the appropriate volume threshold should be. Because

[184] Exchange members are subject to regulatory action by the NYSE for violations of NYSE rules by their customers entering orders through the members' SuperDOT terminals.

[185] *See infra* note 255.

[186] *See supra* note 106 and accompanying text.

[187] 15 U.S.C. 78f(b)(2).

[188] 15 U.S.C. 78f(c).

[189] Section 15A(b)(8) of the Exchange Act applies similar obligations to registered national securities associations. 15 U.S.C. 78*o*–3(b)(8).

[190] A denial of access would be reasonable, for example, if it were based on objective standards, such as capital and credit requirements, and if these standards were applied fairly.

[191] Section 6(b)(8) of the Exchange Act, 15 U.S.C. 78f(b)(8); section 15A(b)(9) of the Exchange Act, 15 U.S.C. 78*o*–3(b)(9).

[192] Section 6(b)(6) of the Exchange Act, 15 U.S.C. 78f(b)(6).

[193] Section 23(a) of the Exchange Act, 15 U.S.C. 78w(a).

[194] *See supra* notes 131–134 and accompanying text.

[195] Section 12(a) of the Exchange Act makes it unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration statement has been filed with the Commission and is in effect as to such security for such exchange in accordance with the provisions of the Exchange Act and the rules and regulations thereunder. 15 U.S.C. 78*l*(a). Section 12(b) of the Exchange Act, 15 U.S.C. 78*l*(b), contains procedures for the registration of securities on a national securities exchange. Section 12(a) does not apply to exchanges that the Commission has exempted from registration as national securities exchanges. *See, e.g.,* Securities Exchange Act Release No. 28899 (Feb. 20, 1991), 56 FR 8377 (Feb. 29, 1991). *See also,* Securities Exchange Act Release No. 37271 (June 3, 1996), 61 FR 29145 (June 7, 1996).

[196] Section 12(f) of the Exchange Act, 15 U.S.C. 78*l*(f). Under section 12(f) of the Exchange Act, 15 U.S.C. 78*l*(f), exchanges cannot trade securities not registered on an exchange or classified as Nasdaq NM securities (such as Nasdaq SmallCap or OTC securities) without Commission action. Section 12(f) of the Exchange Act authorizes the Commission to permit the extension of UTP to any security registered otherwise than on an exchange. The OTC–UTP plan which provides UTP for Nasdaq NM securities, is the only extension to date approved by the Commission. *See* OTC–UTP plan, *infra* note 210. Thus, registered exchanges cannot currently trade Nasdaq SmallCap securities or exempted securities that are not separately listed on the exchange.

[197] Rule 12f–5 under the Exchange Act, 17 CFR 240.12f–5.

[198] *See* OTC–UTP plan, *infra* note 210 and accompanying text.

some unregistered securities traded through alternative trading systems may be foreign securities traded on foreign markets, the Commission requests comment on whether any volume threshold should be measured against worldwide trading volume, similar to the test for ''average daily trading volume'' under Rule 100 of Regulation M.[199]

The Commission also requests comment on whether there are other ways to ensure that information about unregistered securities traded on alternative trading systems is available to investors.[200] The Commission requests comment on whether the proposed amendments to Rule 15c2–11 would address this concern.[201]

g. NMS participation. Any alternative trading system that elects to register as a national securities exchange would also be expected to become a participant in the market-wide transaction and quotation reporting plans currently operated by registered exchanges and the NASD. These plans comprise the CQS, the CTA, the ITS,[202] the Options Price Reporting Authority (''OPRA''),[203] and the Nasdaq/National Market System/Unlisted Trading Privileges (''OTC–UTP'').[204] These plans link trading, quotation, and reporting for all registered exchanges and the NASD and are responsible for the transparent, efficient, and fair operation of the securities markets. These plans form the backbone of the NMS and participation in these plans by all registered exchanges is vital to the success of the NMS.

Participation in effective quote and transaction reporting plans and procedures would, therefore, be mandatory for any newly registered exchange, as it is now for currently registered exchanges.[205] The CTA and the CQS, which make quote and transaction information in exchange-listed securities available to the public, satisfy the requirements for effective quote and transaction reporting plans and procedures.[206] Both of these plans have provisions governing the entry of participants to the plans,[207] and allow any national securities exchange or registered national securities association to become a participant.[208] New participants are required to pay certain entry fees to the existing participants.[209] Participants in these plans share in the income and expenses associated with the plans' operations.[210] While national securities exchanges are required to participate in an effective quote and transaction reporting plan, the specific plans are not mandated. Accordingly, if the CTA and the CQS plans' terms are not compatible with the structure of alternative trading systems that register as exchanges, new plans could be formed to satisfy this requirement. Such initiatives may prove cumbersome, and would have to satisfy the goals of consolidation of quotes and trading information. It may ultimately be advisable for the participants of existing plans to work with newly registered exchanges to meet any special needs posed by the new exchanges.

In addition to requiring participation by newly registered exchanges in some or all of the effective quote and transaction reporting plans described above, the Commission would expect newly registered exchanges to participate in ITS,[211] or an equivalent system if one were developed. ITS provides trading links between market centers and enables a broker or dealer who participates in one market to execute orders, as principal or agent, in an ITS security at another market center, through the system.[212] ITS rules require that the members of participant markets avoid initiating a purchase or sale at a worse price than that available on another ITS participant market (''trade-throughs'').[213] Participation in the ITS

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[199] 17 CFR 242.100.

[200] The Commission notes that any market maker in a security that posts quotations in an alternative trading system that is a ''quotation medium'' under Rule 15c2–11 of the Exchange Act, 17 CFR 240.15c2–11, currently would have to comply with Rule 15c2–11, which requires market makers to obtain fundamental information about an issuer prior to initiating or resuming quotes.

[201] The Commission has requested comment in a release proposing changes to Rule 15c2–11 under the Exchange Act on whether the information that would be required by such amendment should continue to apply to quotations in alternative trading systems. *See* Securities Exchange Act Release No. 39670 (Feb. 17, 1998), 63 FR 9661 (Feb. 25, 1998).

[202] The CTA provides vendors and other subscribers (including alternative trading systems) with consolidated last sale information for stocks admitted to dealings on any exchange. The CQS gathers quotations from all market makers in exchange-listed securities and disseminates them to vendors and other subscribers. The ITS is a communications system designed to facilitate trading among competing markets by providing each market participating in the ITS pursuant to a plan approved by the Commission (''ITS plan'') with order routing capabilities based on current quotation information. *See e.g.*, Securities Exchange Act Release Nos. 37191 (May 9, 1996), 61 FR 24842 (May 16, 1996); 17532 (Feb. 10, 1981), 46 FR 12919 (Feb. 18, 1981); 23365 (June 23, 1986), 51 FR 23865 (July 1, 1986) (Cincinnati Stock Exchange/ITS linkage); 18713 (May 6, 1982) 47 FR 20413 (May 12, 1982) (NASD's CAES/ITS linkage); 28874 (Feb. 12, 1991), 56 FR 6889 (Feb. 20, 1991) (Chicago Board Options Exchange/ITS linkage).

[203] *See infra* note 210 and accompanying text for a description of the OPRA plan.

[204] *See infra* note 210 and accompanying text for a description of the OTC–UTP plan.

[205] *See* Rules 11 Ac1–1(b)(1) and 11Aa3–2(c) under the Exchange Act, 17 CFR 240.11Ac1–1(b)(1) and 240.11Aa3–2(c).

[206] Both the CTA and the CQS are presently operated by the eight national securities exchanges and the NASD.

[207] The CTA plan also contains a provision for entities other than participants to report directly to the CTA as ''other reporting parties.'' Pursuant to this provision, parties other than a national securities exchange or association may be permitted to provide transaction data directly to the CTA. Alternative trading systems that do not elect to register as exchanges would be eligible for participation in the CTA plan pursuant to this provision; however, as non-member participants, these systems would neither be obligated to pay the required fees and expenses to the plan, nor able to share in the plan's profits.

[208] *See* Securities Exchange Act Release No. 37191 (May 9, 1996), 61 FR 24842 (May 16, 1996).

[209] These fees represent the ''tangible and intangible assets'' provided by the plans to the new participant. *See infra* notes 342–343 (discussing entry fees for the CTA, CQS, and ITS plans).

[210] Similar to the CTA and CQS plans, the OTC–UTP plan governing trading of Nasdaq NM securities, provides for the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq NM securities by its participants. Any national securities exchange where Nasdaq NM securities are traded may become a full participant of the OTC–UTP plan. The plan also provides that new participants pay a share of development costs, share ongoing operating costs, and are entitled to share in the plans' profits. *See* Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-listed Nasdaq/National Market System Securities and for Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''OTC–UTP plan''). Securities Exchange Act Release No. 24407 (Apr. 29, 1987), 52 FR 17349 (May 7, 1987). *See also* Securities Exchange Act Release No. 36985 (Mar. 18, 1996), 61 FR 12122 (Mar. 25, 1996).

The OPRA plan also provides for the collection and dissemination of last sale and quotation information with respect to options that are traded on the participant exchanges. Under the terms of this plan, any national securities exchange whose rules governing the trading of standardized options have been approved by the Commission may become a party to the OPRA plan. The plan provides that any new party, as a condition of becoming a party, must pay a share of OPRA's start-up costs. It also provides for revenue sharing among all parties. The OPRA plan was approved pursuant to section 11A of the Exchange Act and Rule 11a3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981) (''OPRA plan'').

[211] To become a participant in ITS, an exchange or association must subscribe to, and agree to comply and to enforce compliance with, the provisions of the plan. *See* ITS plan, *supra* note 202, at section 3(c).

[212] ITS also establishes a procedure that allows specialists to solicit pre-opening interest in a security from specialists and market makers in other markets, thereby allowing these specialists and market makers to participate in the opening transaction. Participation in an opening transaction can be especially important when the price of a security has changed since the previous close.

[213] A trade-through occurs when an ITS participant purchases securities at a lower price or sells at a higher price than that available in another ITS participant market. For example, if the NYSE is displaying a bid of 20 and an offer of 20⅛ for an ITS security, the prohibition on trade-throughs would prohibit another ITS participant market from buying that security from a customer at 19⅞ or selling that security to a customer at 20½. In

would give users of these new exchanges access to other ITS participant markets. Moreover, participation in ITS would require new exchanges to comply with other applicable ITS rules and policies on matters such as, for example, trade-throughs, locked markets,[214] and block trades.[215] As with the quote and transaction reporting plans, alternative trading systems that register as exchanges would have to be integrated into ITS, or another system that links markets for trading purposes would have to be created to accomplish full integration of the newly registered exchanges into the NMS. In either case, the linkage system would need to accommodate certain practices important to alternative trading system users that may be incompatible with current ITS requirements.

The Commission solicits comment on issues raised by integration of new exchanges in ITS. It also requests comment on what changes would be necessary to NMS mechanisms to accommodate the registration of alternative trading systems as exchanges and what steps would need to be taken to integrate alternative trading systems registered as exchanges into the NMS mechanisms.

h. Uniform trading standards. In addition to participation in NMS mechanisms, alternative trading systems that register as exchanges would be required to comply with any Commission-instituted trading halt relating to securities traded on or through its facilities.[216] Newly registered exchanges would be required in some instances to adopt trading halt rules to comply with certain Commission rules.[217] Newly registered exchanges would also have the authority and be expected to impose trading halts for individual securities, for classes of securities, and for their system as a whole under the appropriate circumstances.[218] The Commission does not believe that this requirement would present any undue burden for alternative trading systems that elect to register as national securities exchanges because most alternative trading systems are already subject to the imposition of trading halts as members of the NASD.

In addition, to promote the orderly operation of the securities markets in accordance with Section 6 of the Exchange Act,[219] the Commission would expect all newly registered national securities exchanges to implement circuit breaker rules to temporarily halt trading during periods of extraordinary market volatility or unusual market declines. Circuit breakers have been adopted to help stabilize the markets and allow the realignment of order imbalances due to such extreme volatility and believes that for circuit breakers to be effective, all markets must impose corresponding circuit breakers.[220]

3. Application for Registration as an Exchange

Rules 6a–1, 6a–2, and 6a–3 under the Exchange Act[221] set forth the application process for registration as a national securities exchange, for seeking an exemption from the Commission based on limited volume, and the ongoing filing requirements for registered or exempted exchanges. The Commission is proposing to revise these rules to clarify the requirements for registration as an exchange and to accommodate the registration as exchanges of automated and proprietary trading systems. The Commission is also proposing to revise Form 1, the application used by exchanges to register or to apply for an exemption based on limited volume, and to repeal Form 1–A.[222]

a. Revisions to Form 1. Form 1 would be revised by reorganizing and redesignating the Statement and the Exhibits. In addition, because the Commission expects applicants using Form 1 to be fully or partially automated, the Commission is proposing to revise some of the information requested in Form 1 so that it is more applicable to automated exchanges. In particular, the Commission is proposing to add two new exhibits asking an exchange to describe the way any of its electronic trading system operates, and the criteria used by the exchange in admitting members.[223] The information requested on Form 1 would also be updated to reflect new forms of exchange organization, including the possibility that an exchange is owned by shareholders, rather than members. Further, if an exchange is not owned by its members, those trading on the exchange would be considered participants or subscribers, rather than members. The Commission is proposing to amend Form 1 to reflect this possibility. Finally, the Commission is proposing that exchanges use Form 1, rather than Form 1–A, to file amendments. Therefore, the Commission is proposing to repeal Form 1–A.

b. Amendments to Rules 6a–1, 6a–2, and 6a–3 under the Exchange Act. The proposed amendments to Rules 6a–1, 6a–2, and 6a–3 under the Exchange Act are designed to reduce some of the filing burdens for exchanges and to allow exchanges to comply with the filing requirements by posting information on an Internet web page.

addition, each participant market has in place rules to implement the ITS Trade-Through Rule. *See, e.g.*, NASD Rule 5262. The plan also provides a mechanism for satisfying a market aggrieved by another market's trade-through.

[214] A locked market occurs when an ITS participant disseminates a bid for an ITS security at a price that equals or exceeds the price of the offer for the security from another ITS participant or disseminates an offer for an ITS security at a price that equals or is less than the price of the bid for the security from another ITS participant. The plan provides a mechanism for resolving locked markets.

[215] The ITS block trade policy provides that the member who represents a block size order shall, at the time of execution of the block trade, send or cause to be sent, through ITS to each participating ITS market center displaying a bid (or offer) superior to the execution price a commitment to trade at the execution price and for the number of shares displayed with that market center's better priced bid (or offer).

[216] The Commission may suspend trading in any security for up to 10 days, and all trading on any national securities exchange or otherwise, for up to 90 days pursuant to sections 12(k)(1)(A) and (B) of the Exchange Act. 15 U.S.C. 78*l*(k)(1)(A) and (B).

[217] For example, a newly registered exchange would be required under Rule 11Ac1–1 under the Exchange Act, 17 CFR 240.11Ac1–1, to halt trading when neither quotation nor transaction information can be disseminated.

[218] The Commission has found that trading halt rules instituted by a national securities exchange or a national securities association are consistent with the objectives of section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5). *See, e.g.*, Securities Exchange Act Release Nos. 39582 (Jan. 26, 1998), 63 FR 5408 (Feb. 2, 1998); 26198 (Oct. 19, 1988), 53 FR 41637 (Oct. 24, 1988). *See, e.g.*, Amex Rule 117, NASD Rule 4120(a)(3), and NYSE Rules 80B and 717. There is no requirement that exchanges or associations of securities dealers employ identical trading halt rules, and these rules may vary according to the needs of the individual market.

[219] 15 U.S.C. 78f.

[220] If circuit breakers are imposed in one market, but not in another, overall market disruptions caused by trading imbalances can migrate from one market to the next, and efforts to stabilize such imbalances during periods of heavy trading and extreme volatility would be subverted. *See also* Securities Exchange Act Release No. 39846 (Apr. 9, 1998) (approving proposed changes to SRO rules regarding circuit breakers).

[221] 17 CFR 240.6a–1, 240.6a–2, and 240.6a–3.

[222] 17 CFR 249.1; 17 CFR 249.1a.

[223] New Exhibit E would require an exchange to describe, among other things, the means of access to the electronic trading system, the procedures governing display of quotes and/or orders, execution, reporting, clearance, and settlement. New Exhibit L would require an exchange to describe its criteria for membership, conditions under which members may be subject to suspension or termination, and procedures that would be involved in such suspension or termination. Proposed Amended Form 1.

(i) Application for Registration as an Exchange or Exemption Based on Limited Volume of Transactions

Rule 6a–1 generally requires an applicant for registration as an exchange, or for exemption from registration, to file an application with the Commission on Form 1 together with accompanying exhibits.[224] Currently, the only exemption from registration available to an exchange is under section 5 of the Exchange Act, which permits the Commission to grant an exemption ''by reason of the limited volume of transactions effected on such exchange.'' [225] Because proposed Regulation ATS would provide another exemption from exchange registration, under which exchanges would not use Form 1, the Commission is proposing to amend Rule 6a–1 to clarify that Form 1 should only be used by an exchange to apply for registration or for an exemption from registration under section 5 of the Exchange Act based on such exchange's limited volume of transactions.[226]

(ii) Periodic Amendments.

Once registered, or exempted from registration based on its limited volume of transactions, current Rule 6a–3 requires an exchange to file with the Commission written notice of actions that render inaccurate certain information filed in its application.[227] This notice must be filed within 10 days after such action is taken. The Commission is proposing to relieve exchanges from some of these requirements. Under the proposed amendments, an exchange would no longer have to file notices within 10 days of changes to: (1) Its constitution, articles of incorporation or association, or by-laws; (2) written rulings or settled practices of any governing board or committee of the exchange that have the effect of rules or interpretations; and (3) the schedule of securities listed on the exchange. These types of changes are required to be filed with the Commission under section 19(b) of the Exchange Act and must be approved by the Commission.[228] In addition, rather than exchanges filing these changes in the form of a notice, as is currently required under paragraph (a) of Rule 6a–3, the Commission is proposing a technical change that would require changes to be filed in the form of an amendment on Form 1.[229]

In addition, Rule 6a–2 currently requires each registered or exempted exchange to file an annual amendment on Form 1–A.[230] This annual amendment must include: (1) Any changes since the last annual amendment to the basic information about an exchange filed in the Statement to Form 1;[231] (2) consolidated financial statements of the exchange and unconsolidated financial statements for the exchange and each affiliate and subsidiary of the exchange; [232] (3) information about the exchange's affiliates and subsidiaries, including the officers, governors, or members of standing committees of the affiliates, and its subsidiaries; [233] (4) a list of the officers, governors, or members of standing committees of the exchange; (5) a list of all member organizations of the exchange; [234] and (6) schedules of all securities admitted to unlisted trading privileges, and of all unregistered securities trading, on the exchange.[235] The Commission is proposing to eliminate the requirement to file an annual amendment to reflect changes in the information currently filed on the Statement to Form 1. As discussed above, the Commission is proposing that most of this information be filed on the Execution Page of Revised Form 1. Changes to this information would continue to be required to be filed with the Commission within 10 days. The Commission, however, no longer believes it is necessary to also receive an annual amendment summarizing all changes in the past year. The Commission is proposing to eliminate the requirement that information about the exchange's affiliates and subsidiaries filed on Exhibit C to Revised Form 1, and the information about an exchange's officers, governors, or members of standing committees filed on Exhibit J to Revised Form 1, be included as part of an annual amendment. Because exchanges are required to notify the Commission of changes to this information within 10 days, the Commission believes it would be adequate if exchanges file complete Exhibits C and J only every three years.[236]

Finally, the Commission is proposing to reduce the filing burdens on national securities exchanges and exchanges exempt from registration by reason of the limited volume of transactions by allowing such exchanges to comply with certain filing requirements by maintaining the information on an Internet web page and providing the location of such web site to the Commission.[237] The proposed amendments would permit national securities exchanges to also post certain information on an Internet web site and submit that location to the Commission in lieu of filing the information in hard copy.[238]

(iii) Supplemental Material

Paragraph (b) of Rule 6a–3 currently requires registered exchanges, or exchanges exempt from registration based on their limited volume of transactions, to furnish to the Commission copies of all materials issued or made available to members.[239] The proposed changes would continue to require exchanges to provide the Commission with such materials, but as an alternative to filing such information on paper, the Commission is proposing that exchanges be permitted to make the information available on an Internet web site and provide the Commission with the location of the web site.[240]

The Commission is not proposing to change the requirement in paragraph (c) of Rule 6a–3 that registered exchanges file transaction reports within fifteen days after the end of each calendar

[224] Rule 6a–1(a) under the Exchange Act, 17 CFR 240.6a–1(a). Rule 6a–1 also requires an exchange, promptly after discovering that any information in its statement or any exhibit or amendment thereto was inaccurate when filed, to file with the Commission an amendment correcting such inaccuracy. 17 CFR 240.6a–1.

[225] Section 5 of the Exchange Act, 15 U.S.C. 78e.

[226] Proposed Rule 6a–1(a).

[227] Rule 6a–3(a) under the Exchange Act, 17 CFR 240.6a–3(a). An exchange need not file notices within 10 days of any changes to Exhibits E, F, L, and M of Form 1 concerning the exchange's, and its affiliates' and subsidiaries', financial statements, the securities admitted to unlisted trading privileges on the exchange, and the unregistered securities trading on the exchange. *Id*.

[228] Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b).

[229] Proposed Amended Rule 6a–2(a).

[230] Rules 6a–2(a) under the Exchange Act, 17 CFR 240.6A–2(a)

[231] Rule 6a–2(a)(1) under the Exchange Act, 17 CFR 240.6a–2(a)(1).

[232] Rule 6a–2(a)(2) under the Exchange Act, 17 CFR 240.6a–2(a)(2); Form 1, Exhibits E and F, 17 CFR 249.1.

[233] Rule 6a–2(a)(3) under the Exchange Act 17 CFR 240.6a–2(a)(3); Form 1, Exhibits G and H, 17 CFR 249.1.

[234] Rule 6a–2(a)(3) under the Exchange Act, 17 CFR 240.6a–2(a)(3); Form 1, Exhibit J, 17 CFR 249.1.

[235] Rule 6a–2(a)(3) under the Exchange Act, 17 CFR 240.6a–2(a)(3); Form 1, Exhibits L and M, 17 CFR 249.1.

[236] Amended Rule 6a–2(c) under the Exchange Act.

[237] Amended Rule 6a–2(d)(3) under the Exchange Act. Currently, in lieu of filing certain information in paper with the Commission, an exchange is permitted to refer to materials published by, or in cooperation with, the exchange that contain the required information or to make the information available upon request at its office, instead of filing that information in paper. Rules 6a–2(a)(3) and 6a–2(b) under the Exchange Act, 17 CFR 240.6a–2(a)(3) and 6a–2(b). These alternatives would continue to be available to exchanges. Proposed Amended Rule 6a–2(d)(1)–(2).

[238] Proposed Amended Rule 6a–2(d)(3) under the Exchange Act.

[239] 17 CFR 240.6a–3.

[240] Proposed Amended Rule 6a–3(a) under the Exchange Act.

month containing information regarding the volume of stocks, bonds, rights, and warrants sold on the exchange.[241] The Commission, however, solicits comment on whether to permit such information to be filed electronically with the Commission and whether changing the monthly filing requirement to a quarterly filing requirement would appropriately reduce burdens on registered exchanges.

IV. Broker-Dealer Recordkeeping and Reporting Obligations

A. Elimination of Rule 17a–23

Under the proposals in the release, the most significant alternative trading systems would be required to register as exchanges or register as broker-dealers and comply with the requirements under proposed Regulation ATS. These systems are currently subject to recordkeeping and reporting requirements under Rule 17a–23 under the Exchange Act.[242] These alternative trading systems would be subject to recordkeeping and reporting requirements relating to their operations, either as registered exchanges or as broker-dealers under proposed Regulation ATS. The Commission is therefore proposing to eliminate duplicative recordkeeping and reporting obligations for these systems by repealing Rule 17a–23 and moving its recordkeeping requirements (as they apply to broker-dealers that are not also alternative trading systems) to the broker-dealer recordkeeping rules.

B. Amendments to Rules 17a–3 and 17a–4

Certain trading systems that are operated by broker-dealers would not be affected by today's proposals, and therefore would not be required to register as exchanges or comply with Regulation ATS. This residual group of internal broker-dealer systems[243] would continue to be regulated under the traditional broker-dealer regulatory scheme. The Commission is proposing to amend Rules 17a–3 and 17a–4 under the Exchange Act[244] to require broker-dealers to make and keep records regarding the activities of internal broker-dealer systems for non-alternative trading systems. These proposed recordkeeping requirements are similar to the recordkeeping requirements under current Rule 17a–23. The Commission believes that these recordkeeping requirements continue to be valuable for the oversight and inspections of internal broker-dealer systems by the Commission and by the SROs.

These amendments would require broker-dealers to keep records of any of its customers that have access to its internal broker-dealer system, as well as any affiliations between those customers and the broker-dealer. Broker-dealers would also be required to keep daily trading summaries, including information on the types of securities for which transactions have been executed through the internal broker-dealer system, and transaction volume information.[245]

To clarify the application of Rule 17a–3, the Commission also is proposing to add definitions, for the purposes of the rule, for the terms ''internal broker-dealer system,'' [246] ''sponsor,'' [247] and ''system order.'' [248]

The Commission is also proposing to amend Rule 17a–4 under the Exchange Act to require that the records that would be required under the amendments to Rule 17a–3 be preserved for three years, the first two years in an accessible place.[249] The proposed amendment would also require the preservation of all notices regarding an internal broker-dealer system provided to its participants, whether communicated in writing, through the internal broker-dealer system, or by other automated means. Such notices include notices concerning the internal broker-dealer system's hours of operations, malfunctions, procedural changes, maintenance of hardware and software, and instructions for accessing the system.

V. Temporary Exemption of Pilot Trading System Rule Filings

A. Introduction

In contrast to registered exchanges, alternative trading systems are not required to submit rule filings for Commission approval. This difference creates a disadvantage for registered exchanges competing with alternative trading systems. In the Concept Release, the Commission generally sought comment on ways to expedite the rule filing process and specifically sought comment on whether the Commission should exempt new SRO trading systems or mechanisms from rule filing requirements.[250] Several commenters pointed out that under the current regulatory structure, registered exchanges and alternative trading systems compete on a ''playing field that is far from level,'' [251] and attributed it, in part, to exchanges' inability to implement new trading systems before submitting a rule filing and receiving Commission approval.[252] In response to these concerns and to make existing markets more competitive, the Commission is proposing a temporary exemption for SROs that would defer the rule filing requirements of section 19(b) under the Exchange Act [253] for pilot trading systems (''pilot trading system rule'').[254] In formulating the pilot trading system rule, the Commission draws on its experience in the past several years with SROs'

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[241] 17 CFR 240.6a–3(c).

[242] 17 CFR 240.17a–23.

[243] The term ''international broker-dealer system'' would be defined as ''any facility, other than a national securities exchange, an exchange exempt from registration based on limited volume, or an alternative trading system as defined in Regulation ATS * * * that provides a mechanism, automated in full or in part, for collecting, receiving, disseminating, or displaying system orders and facilitating agreement to the basic terms of a purchase or sale of a security between a customer and the sponsor, or between two customers of the sponsor, through use of the internal broker-dealer system or through the broker or dealer sponsor of such system.'' Proposed Rule 17a–3(16)(ii)(A) under the Exchange Act.

[244] 17 CFR 240.17a–3 and 240.1–7a–4.

[245] Proposed Rules 17a–3(16)(i)(B) and (C) under the Exchange Act.

[246] *See supra* note 243.

[247] The term ''sponsor'' would be defined as ''any broker or dealer that organizes, operates, administers, or otherwise directly controls an internal broker-dealer system or, if the operator of the internal broker-dealer system is not a registered broker or dealer, any broker or dealer that, pursuant to contract, affiliation, or other agreement with the system operator, is involved materially on a regular basis with executing transactions in connection with use of the internal broker-dealer system, other than solely for its own account or as a customer with access to the internal broker-dealer system.'' Proposed Rule 17a–3(16)(ii)(B).

[248] The term ''system order'' would be defined as ''any order or other communication or indication submitted by any customer with access to the internal broker-dealer system for entry into a trading system announcing an interest in purchasing or selling a security,'' but will specifically exclude ''inquiries or indications of interest that are not entered into the internal broker-dealer system.'' Proposed Rule 17a–3(16)(ii)(C).

[249] Proposed Rules 17a–4(b)(1) and (10) under the Exchange Act.

[250] *See* Concept Release, *supra* note 2, 62 FR at 30518–19.

[251] The Pacific Exchange stated that the ''restrictions, procedural requirements or pricing restraints to which the exchange is subject[,] * * * [t]he relative burdens and benefits, obligations and opportunities, administrative requirements and entrepreneurial incentives imposed on or available to the traditional exchange versus the [alternative trading systems] are seriously skewed.'' PCK Letter at 11. *See also* CSE Letter at 3; SIA Letter (10/3/97) at 9; OptiMark Letter at 8.

[252] *See* CSE Letter at 3; SIA Letter (10/3/97) at 9; OptiMark Letter at 8.

[253] 15 U.S.C. 78s(b).

[254] Today, the Commission is also proposing to relieve SROs of the requirement to file rule changes with the Commission when an SRO wishes to list or trade new derivative securities products. Under this proposal, the SRO would have to have trading rules, procedures, and listing standards for the product class in which the new derivative securities product is included, and have surveillance procedures for this product class. Securities Exchange Act Release No. 39885, Apr. 20, 1998.

attempts to operate new pilot trading systems for their members.[255]

Currently, SROs are required to submit a rule filing to the Commission and undergo a public notice, comment, and approval process, before they operate a new pilot trading system.[256] The proposed pilot trading system rule would permit SROs that develop ''pilot trading systems,'' [257] to begin operation shortly after submitting new Form PILOT to the Commission. During the operation of the pilot trading system, the sponsoring SRO would have to submit to the Commission quarterly reports, as well as amendments to Form PILOT concerning material changes to the pilot trading system. Before two years have expired, the SRO must submit a rule filing to obtain from the Commission permanent approval of the pilot trading system or cease operation of the trading system.[258]

The Commission believes its proposed pilot trading system rule would address many of the concerns raised by commenters.[259] One of the consequences of SROs filing rule changes before implementation is that the rule filing process informs SROs' competitors about the proposed pilot trading system and provides an avenue for those competitors to copy, delay, or obstruct implementation of a pilot trading system before it can be tested in the marketplace.[260] According to one commenter, the rule filing process hinders innovation because registered exchanges do not realize the full competitive benefits of their efforts.[261]

Inherent in the rule filing process is public disclosure of the SROs' business plans for trading systems prior to their operation. This gives SROs' competitors access to their plans for proposed trading systems. In contrast, alternative trading systems that offer similarly innovative, start-up services do not have the same rule filing obligations and, thus, have a significant advantage in their flexibility to devise, implement, and modify new pilot trading systems. The proposed pilot trading system rule is designed to allow SROs to better compete with alternative trading systems, while continuing to ensure that investors are protected and the pilot trading system is operated in a manner consistent with the Exchange Act.

The Commission recognizes that domestic markets must compete with less regulated foreign markets and broker-dealers and that such competition spurs innovation and benefits the marketplace. The Commission agrees with commenters that excessive regulation of traditional exchanges, alternative trading systems, or other markets hinders these markets' ability to compete and survive in the global arena. The proposed pilot trading system rule responds to SROs' need for a more balanced competitive playing field.

B. Proposed Rule 19b–5

Proposed Rule 19b–5 would provide a temporary exemption for SRO proposed rule changes concerning the operation of pilot trading systems to defer the rule filing requirements of Section 19(b) of the Exchange Act.

1. Proposed Definition of a Pilot Trading System

Under paragraph (a) of proposed Rule 19b–5, a trading system operated by an SRO would be a ''pilot trading system'' if it met one of the definitions. First, a trading system would be a ''pilot trading system'' if the SRO operated it for less than two years, and during at least two of the last four consecutive calendar months, it traded no more than one percent of the U.S. average daily share trading volume of each security traded on the trading system. In addition, the trading system could not have an aggregate share trading volume of more than twenty percent of the average daily share trading volume of all trading systems operated by the SRO.[262] Second, a trading system operated by an SRO for less than two years would also be considered a ''pilot trading system'' if, during at least two of the last four consecutive calendar months it traded no more than five percent of the U.S. average daily share trading volume of each security traded on the trading system, and were independent of any other trading system operated by the same SRO. In addition, under this second definition, the trading system would have to have aggregate share trading no more than twenty percent of the average daily share trading volume of all trading systems operated by the SRO.[263]

The Commission would consider a trading system to be ''independent'' if it satisfies one of the following criteria. First, a pilot trading system would be deemed independent if it trades securities different from securities traded on any trading system operated by the same SRO that has been approved by the Commission. Second, a pilot trading system would be deemed independent if it does not operate during the same trading hours as any other trading system operated by the same SRO that has been approved by the Commission. Finally, a pilot trading system would be deemed independent provided no specialist or market maker on any other trading system operated by the same SRO trades on the pilot trading system securities in which they are a market maker or specialist.[264]

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[255] For example, in November 1990, the NYSE submitted a rule filing proposing an after-hours crossing system to automate the execution of single stock orders and baskets of securities and received Commission approval in May 1991. *See* Securities Act Release Nos. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991); 32368 (May 25, 1993), 58 FR 31565 (June 3, 1993). In August 1993, the CHX submitted a rule filing to operate the Chicago Match system, an electronic matching system that crossed orders entered by the CHX's members and non-members including institutional customers, and obtained Commission approval in November 1994. *See* Securities Exchange Act Release No. 35030 (Nov. 30, 1994), 59 FR 63141 (Dec. 7, 1994). More recently, in May 1997, the PCX submitted a rule filing for approval of the OptiMark System and received Commission approval in September 1997. *See* Securities Exchange Act Release No. 39086 (Sept. 17, 1997), 62 FR 50036 (Sept. 24, 1997).

[256] Section 19(b)(1) of the Exchange Act, 15 U.S.C. 78s(b)(1), requires an SRO to file with the Commission any proposed rule or any proposed rule change (''proposed rule change'') accompanied by a concise general statement of the basis and purpose of the proposal. Once a proposed rule change has been filed, the Commission is required to publish notice of it and provide an opportunity for public comment. The proposed rule change may not take effect unless it is approved by the Commission or is otherwise permitted to become effective under section 19(b) of the Exchange Act. Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), sets forth the standards and time periods for Commission action either to approve a proposed rule change or to institute and conclude a proceeding to determine whether a proposed rule change should be disapproved. The Commission may also approve a proposed rule change on an accelerated basis if the Commission finds good cause for so doing and publishes its reasons for so finding. Section 19(b)(2)(B) of the Exchange Act, 15 U.S.C. 78s(b)(2)(B).

[257] *See* Proposed Rule 19b–5(a) for the proposed definition of ''pilot trading system.''

[258] A pilot trading system that exceeds certain volume limits would have to file for permanent approval before the two-year period expires. Proposed Rule 19b–5(d) and (e). *See also infra* Section V.B.

[259] Several commenters specifically supported the Commission's suggestion that SROs be relieved of the rule filing requirement, in some way, when operating a pilot trading system. *See* Peake Letter (7/14/97) at 27–28; Jamieson Letter at 20; CSE Letter at 1–3 (stating expedited treatment of proposed pilot trading system rules would have the added benefit of reducing the costs of uncertainty and easing regulatory burdens on exchanges and the Commission); Weaver Letter at 18; Letter from Leopold Korins, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, to Jonathan G. Katz, Secretary, SEC, dated Oct. 8, 1997 (''Phlx Letter'') at 5–6; PCX Letter at 37–38 (suggesting minimum requirements for pilot trading systems); SIA Letter (10/3/97) at 9; ABA Letter at 33.

[260] *See* Letter from James F. Duffy, Executive Vice President & General Counsel Legal & Regulatory Policy, American Stock Exchange, to Jonathan G. Katz, Secretary, SEC, dated Nov. 12, 1997 (''Amex Letter'') at 5–6; CSE Letter at 3; SIA Letter (10/3/97) at 9.

[261] Amex Letter at 5.

[262] Proposed Rule 19b–5(a)(2).

[263] Proposed Rule 19b–5(a)(1).

[264] Proposed Rule 19b–5(b).

If a trading system exceeds the volume thresholds set forth in paragraphs (a)(1) or (a)(2) of proposed Rule 19b–5, it would be allowed to continue to operate for 60 more days under this exemption.[265] During this 60 day period, the Commission expects that an SRO would file for permanent approval of the trading system. The Commission requests comment on its proposed definition of a pilot trading system. Specifically, the Commission would like comment on whether the proposed two-year time period, trading volume limits, and independence criteria are too broad or too narrow. Commenters are asked to provide specific reasons for any concerns about the proposed definition and to suggest alternatives.

2. SROs' Continuing Obligations Regarding Pilot Trading Systems

Based upon the Commission's experience with reviewing new pilot trading system proposals submitted by SROs, the Commission believes that to be consistent with the Exchange Act, SROs operating pilot trading systems should satisfy the requirements discussed below. An SRO's failure to comply with these conditions would compromise its ability to rely on the proposed pilot trading system rule. The Commission seeks comment on whether there are any additional conditions with which SROs should be required to comply in order to be temporarily exempt from the rule filing requirements. The Commission also requests comment on whether any of the conditions described below are unnecessary.

a. Notice and filings to the Commission. Under proposed Rule 19b–5, SROs would be required to provide written notice, and information about the operation of a pilot trading system, to the Commission on new Form PILOT. The SRO could commence operation of the pilot trading system 20 days after this filing is complete.[266] If the SRO materially changes its proposed pilot trading system prior to commencing operation, the SRO would be required to file an amendment to Form PILOT and wait 20 days before commencing operation. This 20-day delayed operational date, triggered by the filing date, provides the Commission time to review Form PILOT for compliance by the SRO with the pilot trading system rule. The Commission believes, for example, that an SRO proposing to operate a pilot trading system that provides trading privileges, such as priority of execution, preferential fees or access to trade information to SRO members and not to non-member subscribers, would not be in the public interest nor consistent with the protection of investors. Such proposed rule changes for trading systems, therefore, would not be exempt from section 19(b) of the Exchange Act.[267] The Commission could also determine, after notice to the SRO and opportunity for the SRO to respond, that the operation of a particular pilot trading system would not be necessary or appropriate in the public interest or consistent with the protection of investors without the SRO filing proposed rule changes under section 19(b) of the Exchange Act.

Proposed Form PILOT would require an SRO to provide, as part of the initial operation report, general information about the pilot trading system, including: (1) The date the SRO expects to commence operation of the pilot trading system; (2) a list of securities to be traded; (3) a list of anticipated subscribers to the pilot trading system; and (4) the names of entities assisting in the operation of the pilot trading system. An SRO would also have to file an amendment to Form PILOT at least 20 days before it implements any material change to the operation of the pilot trading system. The Commission would consider a material change to the pilot trading system to include the addition of new types of securities, or a new date for commencing operation of the pilot trading system.

In addition, an SRO would be required to submit a quarterly report on Form PILOT. The quarterly report would include information about the trading volume effected on the pilot trading system during the most recent calendar quarter. Under paragraph (c)(10) of proposed Rule 19b–5, information reported by an SRO on Form PILOT would be deemed confidential.[268] The Commission seeks comment on whether the Commission should deem all information filed on Form PILOT to be confidential. The Commission requests comment on whether additional information should be requested on Form PILOT. The Commission seeks comment on whether an alternative treatment of information filed on Form PILOT, for example, that information on Form PILOT is publicly available unless an SRO specifically requests confidential treatment, would better protect investors.

b. Trading rules and procedures. The SRO would have to adopt and implement trading rules and procedures necessary to operate the pilot trading system in a manner consistent with the Exchange Act. For example, the SRO would have to have appropriate trading rules and procedures to promote the fair and orderly trading of securities on the pilot trading system, including: (1) Position limits and margin requirements; (2) listing standards; (3) sales practice guidelines, such as rules regarding communications with the public; and (4) disclosure requirements. The trading rules and procedures should be appropriate for, and ensure the fair and orderly trading of, each type of security to be traded on the pilot trading system. The SRO, however, would not be required to file these trading rules and procedures with the Commission, provided they applied only to trading conducted on the pilot trading system.

c. Surveillance. The SRO would also have to establish procedures for the effective surveillance of trading activity on the pilot trading system. It is important that the SRO be able to obtain information necessary to detect and deter market manipulation, illegal trading, and other trading abuses. To satisfy this requirement, an SRO would have to develop and implement internal surveillance procedures to monitor transactions effected on the pilot trading system, and obtain surveillance information from other markets, both domestic and foreign.

Specifically, there should be a comprehensive information sharing agreement (''ISA'') in place between the SRO operating a pilot trading system and any other market trading the securities, or trading the underlying securities of derivative securities products, traded on such pilot trading system.[269] Such agreements provide a

[265] Proposed Rule 19b–5(a)(3). *See also infra* Section V.C.

[266] Although the Commission would continue to accept paper versions of these documents, the Commission encourages SROs to submit filings on computer diskette in an appropriate word processing format.

[267] Proposed Rule 19b–5(f).

[268] Proposed Rule 19b–5(c)(10).

[269] The Commission believes that a comprehensive ISA requires that the parties provide to each other, upon request, information about market trading, clearing activity, and the identity of the ultimate purchasers and sellers of securities. *See* Securities Exchange Act Release No. 31529 (Nov. 27, 1992), 57 FR 57248 (Dec. 3, 1992). Similarly, an SRO that operates a pilot trading system that trades securities, or derivatives of securities that are listed or traded on a foreign market, should have a comprehensive ISA with such foreign markets. In addition, the SRO should ensure there are no blocking or secrecy laws in the foreign country that would prevent or interfere with the transfer of information under the comprehensive ISA. If securing a comprehensive ISA is not possible, the SRO should contact the Commission. In such instances, the Commission may determine that it is appropriate instead to rely on a Memorandum of Understanding (''MOU'')

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necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation. An SRO operating a pilot trading system trading U.S. securities, or new derivative securities products overlying U.S. securities, would have to continue to ensure that all exchanges on which the U.S. securities trade are members of the Intermarket Surveillance Group (''ISG'').[270] The ISG was formed to coordinate, among other things, effective surveillance and investigative information sharing arrangements in the stock and options markets.

d. Clearance and settlement. An SRO would have to establish reasonable clearance and settlement procedures for transactions effected on the pilot trading system. The integrity of the trading markets depends on the timely and coordinated clearance and settlement of transactions. For this reason, the Commission believes that an SRO operating a pilot trading system should ensure that the necessary linkages to clearing agencies exist for all pilot trading system users. For example, to ensure that adequate linkages have been formed, part of the user agreement should, at a minimum, request information about the name of the clearing corporation member through which the user will clear its trades.

e. Types of securities. Because a pilot trading system would be operated by an SRO, it would be limited to trading registered or exempted securities.[271] In addition, a pilot trading system would not be eligible for the exemption if it trades derivative securities, such as options, warrants, or hybrid products, the value of which are based, in whole or in part, on the value of or interest in any security traded on another trading system operated by the SRO. The converse would also be true. A pilot trading system would not be eligible for the exemption if it trades any security or instrument, the derivative of which is traded on another trading system operated by the SRO.[272] SROs contemplating trading systems that would trade these types of derivative securities would have to continue to submit rule filings under section 19(b)(2) of the Exchange Act.

f. Procedures to ensure the confidentiality of trading. An SRO operating a pilot trading system would also have to ensure that it has procedures to prevent the misuse of confidential information regarding trading on the pilot trading system. For example, to the extent that the identity of a person trading on the pilot trading system is confidential, the SRO should limit access to the information. In particular, only employees of the SRO who operate the pilot trading system, or are responsible for the SRO's compliance with applicable law, should have access to confidential information about the identity of persons effecting transactions on the pilot trading system and the trading information itself. The SRO also should implement procedures for its employees regarding trading by employees for their own accounts. Finally, the SRO would have to adopt and implement adequate oversight procedures to ensure that the above safeguards concerning confidentiality are followed.

g. Inspections and examinations. The SRO would have to cooperate with any examination or inspection by the Commission of persons effecting transactions on the pilot trading system. The Commission staff would review SRO compliance with the conditions in proposed Rule 19b–5 through its routine inspections. The Commission notes that if an SRO outsources the development, operation, or maintenance of the operation of any aspect of a pilot trading system, such vendor would be considered to be operating a facility of an SRO and therefore would also be subject to Commission examination or inspection.[273]

In order for the Commission staff to determine whether an SRO has properly relied on the proposed exemption under Rule 19b–5, the SRO would have to maintain at its principal place of business all relevant records and information pertaining to the pilot trading system and the basis for which the SRO relied on the proposed exemption from the rule filing requirement.[274]

C. Rule Filing Under Section 19(b)(2) of the Exchange Act Required Within Two Years

Within two years of a pilot trading systems' commencement of operation, an SRO would have to submit a rule filing under section 19(b)(2) of the Exchange Act to obtain approval for the pilot trading system to operate on a permanent basis. After a formal notice and comment period, the Commission would approve the pilot trading system for operation on a permanent basis or institute proceedings to determine whether to disapprove the proposed rule change. Simultaneous with its request for Commission approval under section 19(b)(2) of the Exchange Act, an SRO may request Commission approval pursuant to section 19(b)(3)(A) of the Exchange Act, effective immediate upon filing, to continue to operate the trading system for a period not to exceed six months.[275]

D. Compliance With Other Federal Securities Laws

The Commission notes that Proposed Rule 19b–5 does not relieve SROs from any other obligation under the federal securities laws, except the requirement to file a proposed rule change with the Commission prior to commencing operation of a pilot trading system. For example, an SRO that fails to provide fair access to its pilot trading system would not be operating in a manner consistent with the Exchange Act. In addition, the SRO would have to ensure that securities listed and traded on the pilot trading system comply with, among other things, the registration requirements of the Exchange Act.[276] An SRO would also continue to be required to enforce compliance with its own rules and the federal securities laws, including members' compliance with the Order Handling Rules.[277]

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between the Commission and the foreign regulator. Generally, the Commission has permitted an SRO to rely on an MOU in the absence of a comprehensive ISA only if the SRO receives an assurance from the Commission that such an MOU can be relied on for surveillance purposes and includes, at a minimum, the transaction, clearing, and customer information necessary to conduct an investigation. *See* Securities Exchange Act Release No. 35184 (Dec. 30, 1994), 60 FR 2616 (Jan. 10, 1995). In addition, an SRO should endeavor to develop comprehensive ISAs with foreign exchanges even if the SRO receives prior Commission approval to rely on an MOU in place of a comprehensive ISA.

[270] *See* ISG Agreement, dated July 14, 1983, amended Jan. 29, 1990. The ISG members are: Amex, BSE, CBOE, CHX, NASD, NYSE, PCX, and Phlx. The major stock index futures exchanges joined the ISG as affiliate members in 1990.

[271] Securities traded on a pilot trading system would be limited to those securities listed on the sponsoring SRO, or traded on the SRO pursuant to unlisted trading privileges. In general, section 12 of the Exchange Act requires an exchange to trade only those securities that the exchange lists, except that section 12(f) of the Exchange Act provides UTP under certain circumstances. 15 U.S.C. 78*l*(f). For example, exchanges are permitted to trade certain over-the-counter securities pursuant to a Commission order or rule. *See* Securities Exchange Act Release No. 39505 (Dec. 31, 1997), 63 FR 1515 (Jan. 9, 1998). This ensures that securities traded on the pilot trading system have provided adequate disclosure to investors and that all relevant trading activity in a security is reported to, and surveilled by, the SRO on which the security is listed.

[272] Proposed Rule 19b–5(c)(6).

[273] Proposed Rule 19b–5(c)(8).

[274] Proposed Rule 19b–5(c)(9).

[275] Proposed Rule 19b–5(e).

[276] *See supra* notes 271–272 and accompanying text.

[277] *See* Section 6(b)(2) of the Exchange Act. *See also* Order Handling Rules Adopting Release, *supra* note 88.

E. Request for Comment on Proposed Rule 19b–5

The Commission seeks comments on proposed Rule 19b–5 under the Exchange Act. Comments should address whether the proposed temporary exemption of SRO proposed rule changes relating to the operation of pilot trading systems provides appropriate regulation of such pilot trading systems. The Commission also requests comment on whether this proposed temporary exemption would help to level the competitive playing field between SROs and alternative trading systems.

As an alternative to the temporary exemption proposed today, the Commission requests comment on the benefits or disadvantages of allowing SROs to file proposed rule changes relating to pilot trading systems under the expedited approval process under section 19(b)(3)(A) of the Exchange Act. The Commission could allow an SRO to submit, under section 19(b)(3)(A) of the Exchange Act, the proposed rule changes concerning pilot trading systems. An SRO could then begin operating the pilot trading system immediately after filing. Under this alternate framework, an SRO proposed rule change would be published for comment and could be abrogated by the Commission. Specifically, the Commission asks commenters whether the public disclosure required in the proposed rules filed under section 19(b)(3)(A) of the Exchange Act would achieve the purpose of encouraging SRO pilot trading systems.

VI. The Commission's Interpretation of the "Exchange" Definition

A. The Commission's Interpretation in Delta

Congress drafted the statutory language defining the term exchange to be broad, permitting the Commission to apply the definition flexibly as the securities markets evolve over time.[278] Section 3(a)(1) of the Exchange Act provides that:

> The term "exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place or market facilities maintained by such exchange.[279]

Although the Exchange Act definition of "exchange" is quite broad, in the 1990 *Delta Release*,[280] the Commission interpreted the definition to include only those organizations that are "designed, whether through trading rules, operational procedures or business incentives, to centralize trading and provide buy and sell quotations on a regular or continuous basis so that purchasers and sellers have a reasonable expectation that they can regularly execute their orders at those price quotations." [281] Based on the interpretation upheld by the Seventh Circuit, the Commission staff has given operators of trading systems that do not enhance liquidity in traditional ways through market makers, specialists, or a single price auction structure, assurances that it would not recommend enforcement action if those systems operated without registering as exchanges.[282] The *Delta Release*, nonetheless, emphasized that the means employed for bringing together buyers and sellers "may be varied, ranging from a physical floor or trading system * * * to other means of intermediation (such as a formal market making system or systemic procedures such as a consolidated limit order book or regular single price auction)." [283]

In explaining why the Commission interpreted the exchange definition relatively narrowly, in 1990 the Commission expressed the concern that "including (Delta) within an expansive definition of the term 'exchange' would force a non-member, for-profit, proprietary trading system into a regulatory scheme for which it is ill-suited, thus ignoring the Congressional and judicial mandate to apply flexibly the definition of the term 'exchange' to the economic realm." [284] The Commission indicated, however, that the Exchange Act itself does not preclude a proprietary trading system such as Delta from coming within the exchange definition.[285] Moreover, the Commission recognized, however, that its interpretation of the exchange definition in 1990 could be subject to change as the securities markets continued to change:

> In order to permit the Commission to apply flexibly the [Exchange] Act's definition of the term 'exchange' to innovative trading systems in securities, Congress imbued the (Exchange) Act's definition of the term 'exchange' with a certain 'plasticity'. * * *; "it invites reinterpretation as the way the term * * * 'generally understood' evolves." [286]

The United States Court of Appeals for the Seventh Circuit Court affirmed the Commission's decision that Delta was not an exchange within the meaning of section 3(a)(1) of the Exchange Act. Significantly, the court thought the language of the statute broad enough "to embrace the Delta system," but concluded that the Commission was not compelled to interpret it to do so.[287]

While the Delta interpretation provided an appropriate interpretation at the time, its emphasis on the "expectation" of regular execution of

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[278] It was recognized at the time the Exchange Act was enacted that a regulatory structure for securities exchanges would "be of little value tomorrow if it is not flexible enough to meet new conditions immediately as they arise and demand attention in the public interest." *See* SEC, *Report of the Special Study of the Securities Markets of the Securities and Exchange Commission*, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 1 (1963) ("*Special Study*"), at 6. *See also* S. Rep. No. 792, 73rd Cong., 2d Sess. (1934) at 5 (noting that "exchanges cannot be regulated efficiently under a rigid statutory program," and that "considerable latitude is allowed for the exercise of administrative discretion in the regulation of both exchanges and the over-the-counter market.")

[279] 15 U.S.C. 78c(a)(1).

[280] *Delta Release, supra* note 10.

[281] *See Delta Release, supra* note 10, at 1900. In 1988, the Commission granted Delta temporary registration as a clearing agency to allow it to issue, clear, and settle options executed through a trading system operated by RMJ Securities ("RMJ"). Concurrently, the Commission's Division of Market Regulation issued a letter stating that the Division would not recommend enforcement action against RMJ if its system did not register as a national securities exchange. Subsequently, the Board of Trade of the City of Chicago and the Chicago Mercantile Exchange petitioned the U.S. Court of Appeals for the Seventh Circuit for review of the Commission's actions. Both challenges were premised on the view that RMJ's system unlawfully failed to register as an exchange or obtain an exemption from registration. The Seventh Circuit vacated Delta's temporary registration as a clearing agency, pending publication of a reasoned Commission analysis of whether or not RMJ's system was an exchange within the meaning of the Exchange Act. *Board of Trade of the City of Chicago* v. *Securities and Exchange Commission*, 883 F.2d 525 (7th Cir. 1989) ("*Delta I*"). In 1989, the Commission solicited comment on the issue, and in 1990 published its interpretation of the term "exchange" and its determination that RMJ's system did not meet that interpretation. *See Delta Release, supra* note 10.

[282] For a list of no-action letters issued to system sponsors until the end of 1993 and a short history of the Commission's oversight of such systems, *see* Securities Exchange Act Release No. 33605, 59 FR 8363, 8369–71 (Feb. 18, 1994). *See also* Letters from the Division of Market Regulation to: Tradebook (Dec. 3, 1996); The Institutional Real Estate Clearinghouse System (May 28, 1996); Chicago Board Brokerage, Inc. and Clearing Corporation for Options and Securities (Dec. 13, 1995).

[283] *See Delta Release, supra* note 10, at 1899.

[284] *Id.* at 1899. As discussed below, the Commission's new general exemptive authority has increased the Commission's flexibility in this regard.

[285] *See Delta Release, supra* note 10, at 1900.

[286] *Delta Release, supra* note 10, at 1895 (quoting *Delta I, supra* note 281, at 535).

[287] *Delta II, supra* note 171, at 1273. The court held that, because the statutory provision is ambiguous, the Commission had the discretion to interpret the definition the way it did.

orders at quoted prices may no longer reflect changing market structures. Moreover, the Delta approach has resulted in the anomaly of small volume entities being found to raise an expectation of liquidity and being regulated as exchanges (such as the Arizona Stock Exchange),[288] while larger volume entities that avoid certain design features are found not to raise this expectation and are regulated as broker-dealers (such as Instinet).[289] In addition, the narrow interpretation of the term ''exchange'' in Delta has eroded the effectiveness of the Commission's oversight of markets. For example, as discussed in the Concept Release, it is clear that regulatory concerns may be raised by entities that constitute a market where buyers and sellers interact, but do not necessarily ensure a two-sided market by design.[290] Moreover, the Commission's traditional approach to broker-dealer regulation is not designed to substitute for market regulation. Consequently, these alternative trading systems are not fully integrated into the mechanisms that promote market fairness, efficiency, and transparency. In addition to raising regulatory fairness concerns, this lack of integration into the NMS has had a negative impact on the quality and pricing efficiency of secondary markets.[291]

B. The Growing Significance of Alternative Trading Systems in the National Market System

Within the past six years, the significance of alternative trading systems in the securities markets has increased dramatically. In 1994, the Commission's Division of Market Regulation reported that alternative trading systems accounted for thirteen percent of the volume in Nasdaq securities and 1.4 percent of the trading volume in NYSE-listed securities.[292] In the Concept Release, the Commission estimated that, as of the end of 1996, the trading volume on alternative trading systems amounted to almost twenty percent of the trades in Nasdaq stocks, and almost four percent of orders[293] in securities listed on the NYSE.

In addition to the general increase in the volume of trading occurring on alternative trading systems, the actual number of alternative trading systems has skyrocketed. In 1991, the Commission was aware of only a few such systems. Today, over 40 such systems are currently operating. The viability of this number of alternative trading systems indicates that these systems account for an increasing proportion of trading and that a growing number of investors use these systems. Moreover, the arrival of trading services on the Internet portends an increasing level of retail interest in alternative means for trading.

The securities markets rely on centralized sources of trading opportunities and trading information. Exchange regulation is designed to protect this centralization function and to make the opportunity to obtain trading information and to access trading interest accessible to the general public. As more alternative trading systems develop and offer varying services to diverse customer bases, the availability of trading information and the accessibility of trading opportunities may become increasingly fragmented.

C. The Proposed Reinterpretation of ''Exchange''

For purposes of effectively regulating the securities markets, including alternative trading systems, the Commission believes a revised interpretation of what constitutes an exchange is in order.[294] Although the Commission has considered many characteristics of the modern exchange in revising its interpretation, it believes two elements most accurately reflect the functions and uses of today's exchange markets. Under the interpretation proposed in Rule 3b–12, the first essential element of an exchange would be the consolidation of orders of multiple parties. This reflects the statutory concept of bringing together purchasers and sellers and also reflects the idea of a marketplace where supply and demand originate from a variety of sources, not simply from individual brokers and dealers. The second essential element would be that trading on an exchange is guided by stated non-discretionary rules or procedures. As discussed above, an essential indication of the non-discretionary status of rules and procedures is that those rules and procedures are communicated to the system's users. Thus, participants have an expectation regarding the manner of execution—that is, if an order is entered, it will be executed in accordance with those procedures and not at the discretion of a counterparty or intermediary.[295]

D. Other Practical Reasons for Revising the Current Interpretation

1. Additional Flexibility Provided by the National Securities Markets Improvement Act of 1996

One principal reason the Commission, to date, interpreted the term exchange narrowly has been to avoid the imposition of unnecessary and burdensome regulatory obligations on small and emerging trading systems, which could stifle innovation.[296] The recent enactment of NSMIA,[297] however, alleviates the concern that an expanded interpretation of the term exchange would inhibit innovation.[298]

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[288] *See* Securities Exchange Act Release No. 28899 (Feb. 20, 1991), 56 FR 8377 (Feb. 28, 1991).

[289] *See* Letter from Richard G. Ketchum to Daniel T. Brooks, Cadwalader, Wickersham & Taft (Aug. 8, 1986) (stating the Commission staff would not recommend Instinet for an enforcement action if it did not register with the Commission as a national securities exchange).

[290] *See* Concept Release, *supra* note 2, at Section II.B.2.

[291] For example, the evidence in the Commission's report on the NASD and the Nasdaq market pursuant to section 21(a) of the Exchange Act suggests that widespread use of Instinet by market makers as a private market has had a significant impact on public investors and the operation of the Nasdaq market. *See* NASD 21(A) REPORT, *supra* note 84.

[292] *See* DIVISION OF MARKET REGULATION, MARKET 2000: AN EXAMINATION OF CURRENT EQUITY MARKET DEVELOPMENTS APP IV (1994) (''MARKET 2000 STUDY'').

[293] For purposes of this release, the term ''order'' generally means any firm trading interest, including both limit orders and market maker quotations.

[294] The Exchange Act, coupled with relevant legislative history, appears to provide the Commission with ample authority to revise its interpretation of an exchange, *See, e.g., supra* Section VI.A. Courts have also consistently upheld an agency's discretion to revise earlier interpretations when a revision is reasonably warranted by changed circumstances. *See, e.g., Rust* v. *Sullivan,* 500 U.S. 173, 186 (1991). In *Rust,* the Court stated that ''an initial agency interpretation is not instantly carved in stone, and the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis.'' *Id.* at 186 (*quoting Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837, 844–45 (1984)). The Court also stated that ''an agency is not required to 'establish rules of conduct to last forever,' but rather 'must be given ample latitude to adapt its rules and policies to the demands of changing circumstances.' '' *Id.* at 186–87 (*quoting Motor Vehicles Mfrs. Ass'n of United States* v. *State Farm Mut. Automobile Ins. Co.,* 463 U.S. 29, 42 (1983). *See also Arkansas AFL–CIO* v. *FCC,* 11 F.3rd 1430, 1441 (8th Cir. 1993) (deferring to Federal Communications Commission decision to alter its interpretation of the statutory term ''operated in the public interest'' to meet the changing realities of the broadcast industry).

[295] The elements of the interpretation are discussed in greater detail in Sections II.A. and II.B., *supra.*

[296] For example, at the time of the *Delta Release,* the Commission sought to avoid interpreting the term ''exchange'' in a way that could unintentionally and inappropriately subject many broker-dealers to exchange regulation. One key factor in the Commission's decision not to regulate the Delta system as an exchange was the concern that doing so would subject traditional broker-dealer activities to exchange regulation. *Delta Release, supra* note 10.

[297] Pub. L. 104–290, 110 Stat. 3416 (1996). 15 U.S.C. 78mm.

[298] Throughout the past 60 years, the Commission has attempted to accommodate market innovations within the existing statutory framework to the extent possible in light of investor protection concerns, without imposing regulation that would stifle or threaten the commercial viability of such

Specifically, NSMIA added Section 36(a)(1) to the Exchange Act, which provides that:

> the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of (the Exchange Act) or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[299]

Prior to adoption of NSMIA, the Commission's authority under the Exchange Act to reduce or eliminate certain consequences of exchange registration was limited.[300] Section 36, however, allows the Commission greater flexibility in regulating new trading systems by giving the Commission broad authority to exempt any person from any provision of the Exchange Act. As a result, the Commission now has greater authority to adopt a more consistent regulatory approach to securities markets in general, and particularly for alternative trading systems that do not neatly fit into the existing regulatory framework.[301] The Commission is proposing Rule 3a1–1 under the Exchange Act, which would exempt from the definition of ''exchange'' systems that are registered as broker-dealers and in compliance with Regulation ATS.[302] This exemption, together with the revised interpretation of ''exchange,'' would provide a choice to alternative trading systems to register as national securities exchanges or as broker-dealers.[303]

2. No-Action Approach to Alternative Trading Systems is No Longer Workable

The Commission also believes that the proliferation of new trading systems necessitates the revision of the interpretation of the term ''exchange.'' The no-action review process that the Commission has used to date to address hybrid systems that incorporate features of both exchanges and broker-dealers worked well and was consistent with the protection of investors when relatively few systems applied for no-action treatment. The no-action process allowed the Division to review the system's services and mechanisms and to monitor the impact of such systems on a case-by-case basis. This is no longer practicable. Absent a revised interpretation of ''exchange,'' the Commission would have to continue to respond to an increasing volume of no-action requests from developing alternative trading systems that seek to avoid the burdens associated with registration as a national securities exchange. The Commission's proposal would eliminate the need for this no-action approach. By codifying a regulatory framework that does not rely on Commission staff review of each novel system development, the Commission believes that technological improvements and enhanced services will become available more rapidly.

3. More Rational Treatment of Regulated Entities

The Commission believes that the proposed revised interpretation of the term exchange, in combination with the proposal to allow alternative trading systems to register as broker-dealers in accordance with proposed Regulation ATS,[304] is consistent with other goals and provisions of the Exchange Act. The proposed revised interpretation of ''exchange'' should avoid the need for the Commission to draw arbitrary distinctions between organizations that perform similar functions. This should avoid classifying an alternative trading system in a manner that does not fit the structure of the system, nor squarely addresses the regulatory concerns raised by the system. Another significant advantage of the proposed revised interpretation of ''exchange'' is that it will allow exchanges to be organized as proprietary systems, thereby accommodating recent market developments.[305]

Moreover, the Commission's proposal would help assure consistency with existing broker-dealer regulations. For those alternative trading systems that wish to participate in the markets as exchanges, regulation as a national securities exchange would be available. However, the Commission expects that many alternative trading systems will not elect to register as national securities exchanges. Under the Commission's proposal, these systems would have to maintain a structure more akin to that of traditional broker-dealers and comply with regulatory obligations more appropriately tailored to their chosen business structure. These obligations would include the new requirements for more significant alternative trading systems to address the transparency, fair access, and systems capacity, integrity, and security concerns raised by these particular systems.[306]

VII. Approaches Not Proposed

A. Tiered Exchange Approach

In the Concept Release, the Commission explored the possibility of expanding the interpretation of ''exchange'' to capture the majority of alternative trading systems operating today, and then to adopt differing levels of regulation for three different classes of ''exchanges.'' [307] The classes, or ''tiers,'' would vary depending on the size and significance of the trading systems included in each class. The first tier would have consisted of those that have limited volume or do not establish trading prices. This tier would include most alternative trading systems. The Commission suggested that systems included in this tier could be exempted from most traditional exchange requirements.

The second tier of exchanges under this approach would have consisted of alternative trading systems that resemble traditional exchanges because of their significant volume of trading and active price discovery. The Commission discussed whether these systems should be regulated as national securities exchanges, with some exemptions from traditional exchange regulation to eliminate barriers that would make it difficult for these non-traditional markets to comply with full exchange regulation, such as the membership and access requirements.

Finally, a third tier of exchanges would have encompassed traditional membership exchanges. The Commission suggested that these exchanges continue to be regulated as national securities exchanges, with some accommodations to reduce unnecessary regulatory requirements that make it difficult for currently registered exchanges to remain competitive in a changing business environment. The Commission suggested, for example, further

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innovations. For example, at various times, the Commission considered the implications of evolving market conditions on exchange regulation. *See* Securities Exchange Act Release Nos. 8661 (Aug. 4, 1969), 34 FR 12952 (initially proposing Rule 15c2–10); 11673 (Sept. 23, 1975), 40 FR 45422 (withdrawing then-proposed Rule 15c2–10 and providing for registration of securities information processors); 26708 (Apr. 13, 1989), 54 FR 15429 (reproposing Rule 15c2–10); 33621 (Feb. 14, 1994), 59 FR 8379 (withdrawing proposed Rule 15c2–10).

[299] 15 U.S.C. 78mm(a)(1).

[300] Prior to the addition of section 36 to the Exchange Act, the Commission could only exempt an exchange from the registration provisions of sections 5 and 6 on the basis of an exchange's limited volume of transactions. *See* section 5 of the Exchange Act, 15 U.S.C. 78e.

[301] *See* S. Rep. No. 104–293, 104th Cong. 2d Sess. 15 (1996).

[302] Proposed Rule 3a1–1 would also exempt from the definition of ''exchange,'' any system that is operated by a national securities association. *See supra* Section II.D.

[303] *See supra* Section II.D.

[304] *See supra* Section III.A.

[305] *See supra* Section III.B.3.

[306] *See supra* Section III.A.2.c., d., and e.

[307] *See* Concept Release, *supra* note 2, at Section IV.B.

accelerating rule filing and approval procedures.

While comments varied with respect to the tiered approach, commenters generally opposed this approach, fearing that it would weaken competition by alternative trading systems and discourage growth and innovation. Some commenters noted that the burdens of exchange regulation would be heavy for many alternative trading systems, and that the tiered approach would require the Commission to draw arbitrary lines between different systems, which could result in systems that perform virtually identical functions being subject to different regulatory requirements. Commenters also disagreed on how distinctions should be drawn between the tiers. In this vein, some commenters thought that the tiered approach would inhibit the full development of innovative systems if such growth would cause the system to be regulated under a more burdensome regulatory tier. A few commenters also suggested that it would be inappropriate to relax standards for smaller start-up trading systems because investors may need more protection with respect to these systems than for larger more established systems.

For these reasons, the Commission has decided not to pursue the tiered exchange regulation approach discussed in the Concept Release. The Commission believes that the approach it is proposing is preferable because it will enable trading systems to elect the regulation most appropriate for the services they provide, and takes into account size in applying particular requirements. This approach can foster innovation while concurrently regulating trading systems in a manner more fitting to their respective market roles.

B. SIP Approach

The Division also considered an alternative that would require all or some portion of alternative trading systems to register as securities information processors (''SIPs'') under section 11A of the Exchange Act.[308] The 1975 Amendments create a framework for regulating SIPs, which are defined as persons engaged in the business of:

(i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security * * * or (ii) distributing or publishing * * * on a current and continuous basis, information with respect to such transactions or quotations.[309]

To implement this alternative, the Commission would have to adopt rules designed to address the transparency, capacity, access, and surveillance of the systems classified as SIPs. Like the exchange approach, the Commission has determined that the SIP approach would not be as workable as the approach proposed today. In many respects, the rules the Commission would have to adopt under the SIP approach would parallel exchange regulatory requirements, but would not be able to address all of the concerns regarding alternative trading systems' activities. For example, markets regulated as SIPs would not be required to enforce participants' compliance with the securities laws. In addition, alternative trading systems would continue to be only partially integrated into the NMS because SIPs are not required to join market-wide plans, such as the CQS, CTA, ITS, and OPRA. Finally, because SIPs and exchanges are defined in the Exchange Act as mutually exclusive categories, a market classified as a SIP could not elect to register as an exchange, even if that market's volume exceeded that of registered exchanges.

VIII. Request for Public Comments

The Commission seeks comments on adopting the proposals as described in this release. In addition to the requests for comments throughout the release, the Commission asks commenters to address whether the proposed amendments and rules provide appropriate regulation of alternative trading systems. Commenters should also address whether the proposed amendments and rules provide a feasible regulatory structure for alternative trading systems registered as broker-dealers and national securities exchanges. Commenters may also wish to discuss whether there are any legal or policy reasons why the Commission should consider a different approach. In addition to responding to the specific issues presented in this release, the Commission encourages commenters to provide any information to supplement the information and assumptions contained herein regarding the functioning of secondary markets, the roles of market participants, the advantages and disadvantages of the proposed reforms and the expectations of investors. The Commission also invites commenters to provide views and data as to the costs and benefits associated with the proposed changes discussed above in comparison to the costs and benefits of the statutory framework. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed amendments and rules on the economy on an annual basis. If possible, commenters should provide empirical data to support their views. Comments should be submitted by July 28, 1998.

IX. Costs and Benefits of the Proposed Rules and Amendments

The growing significance of alternative trading systems has caused the Commission to reconsider its oversight of such systems through existing broker-dealer regulation. Even though they perform the functions of a market, alternative trading systems that trade a significant volume of securities currently are not obligated to surveil their markets for manipulative activity, to make all of their quotes public, to treat participants fairly, or to maintain adequate systems capacity to prevent outages. As a result, the existing regulatory approach has resulted in inferior or denied access for investors to the best prices, incomplete audit trails and surveillance of trading on alternative trading systems, and market disruption due to systems outages.

The Commission is proposing to allow alternative trading systems to choose between broker-dealer regulation or exchange regulation. In addition, to enable registered exchanges to better compete with alternative trading systems regulated as broker-dealers, the Commission is proposing that SROs be permitted to operate pilot trading systems for a limited period of time before undergoing the full notice, comment, and approval process required for an SRO rule change. The Commission preliminarily believes that any costs associated with this proposal would be offset by benefits to investors and other market participants such as reducing market fragmentation, enhancing investor access to the best prices, and encouraging market innovation. The Commission has identified below certain costs [310] and benefits associated with its proposed changes and encourages commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs or benefits.

[308] 15 U.S.C. 78k–1.

[309] Section 3(a)(22)(A) of the Exchange Act, 15 U.S.C. 78c(a)(22)(A).

[310] The Commission's cost estimates in Section IX are derived from its experience with similar reporting and recordkeeping requirements as reflected in a number of submissions made pursuant to the paperwork Reduction Act of 1995. 44 U.S.C. 3501 *et seq.*

A. Costs and Benefits of the Proposals Regarding Alternative Trading Systems

1. Benefits

a. Improved surveillance on alternative trading systems. The Commission's proposal would provide benefits to investors by improving the surveillance of trading on alternative trading systems. Adequate surveillance of the trading on alternative trading systems is critical to the continued integrity of our markets. This is particularly the case with regard to alternative trading systems that have a significant percentage of the trading volume in one or many issues of securities. The oversight of trading activities on alternative trading systems that choose to register as broker-dealers would improve because the proposals clarify the relationship between SROs and alternative trading systems.

The proposed notice, reporting, and recordkeeping requirements under Regulation ATS would also contribute to the Commission's and the SROs' ability to effectively oversee alternative trading systems regulated as broker-dealers. The Commission believes that these enhancements to the surveillance and oversight of alternative trading systems regulated as broker-dealers would benefit the public by helping to prevent fraud and manipulation.

The surveillance of trading on alternative trading systems that choose to register as exchanges under the Commission's proposal would also be improved. All registered exchanges are SROs, which have direct obligations to surveil the trading on their own markets. The Commission believes that, through improved surveillance mechanisms, it would be better able to detect fraud and manipulation that could occur on alternative trading systems. For example, alternative trading systems can be used to artificially narrow the national best bid and offer (''NBBO'') spreads for the sole purpose of trading through a broker-dealer's automatic execution system at the artificial prices.[311] The Commission and the SROs would be able to more readily detect such activity through enhanced surveillance. The Commission believes that this more direct oversight of trading activities would therefore benefit investors and the market generally by helping to prevent fraud and manipulation.

b. Improved market transparency. The Commission's proposal would enhance transparency of trading on alternative trading systems. Transparency of orders helps ensure that publicly available prices fully reflect overall supply and demand and helps reduce the negative consequences of market fragmentation (*e.g.,* the chance that an order for a security in one market will be executed at a price inferior to that available at the same time in another market). The Commission has been particularly concerned that the development of so-called ''hidden markets,'' in which a market participant privately publishes quotations at prices superior to the quotation information it disseminates publicly, impedes NMS objectives. Some systems that permit this activity have become significant markets in their own right, but are not currently required to integrate their orders into the public quote because they are not registered as national securities exchanges or national securities associations.

For alternative trading systems choosing to register as broker-dealers, the Commission is proposing to improve the transparency of orders in systems that account for a significant portion of the trading volume in any security. The proposed rules would help to incorporate alternative trading system quotes into the NMS, thus reducing fragmentation, improving liquidity, facilitating price discovery, and narrowing the quoted spread. In particular, the Commission believes that the current proposal would extend the transparency improvements achieved through the implementation of the Order Handling Rules. Since the adoption of the Order Handling Rules in January 1997, quoted spreads have decreased by an average of 41%, ECNs were alone at the inside quote approximately 11% of the time, and the average daily number of quote updates attributable to ECNs was about 68% of the number of quote updates attributable to market makers, with ECNs accounting for 272,427 quote updates as compared to 403,233 for market makers.[312] The success of the Order Handling Rules indicates that the Commission's current proposal, which would achieve similar transparency for a greater number of orders in alternative trading systems, could further enhance liquidity and price improvement opportunities. Because non-market maker broker-dealers and institutions at times enter the best priced orders in an alternative trading system, the Commission expects that display of these orders in the public quote would improve the NBBO. For example, of all orders by non-market maker broker-dealers and institutions that could improve the NBBO if included in the public quote stream, only 6% of those orders were actually entered into the public quote stream. Consequently, about 94% of those orders that could have improved the NBBO were not included in the public quote stream and thus did not improve the NBBO. The Commission requests comment on how often the display of non-market maker broker-dealer and institutional orders could improve the NBBO.

The transparency of trading on alternative trading systems that choose to register as exchanges would also improve. All registered exchanges are expected to participate in the NMS plans, such as the CTA, CQS, and ITS. These plans form an integral part of the NMS, and contribute greatly to the operation of linked, transparent, efficient, and fair markets. In addition to improving transparency, alternative trading system participation in these market-wide mechanisms would benefit investors by reducing inefficiency and trading fragmentation.

c. Fair access. The Commission believes that its proposal to require alternative trading systems with significant volume to notify investors denied access of their right to appeal that denial, and to provide regulatory redress for unfair denials of access, would help ensure that market participants are provided a fair opportunity to participate in alternative trading systems. Fair treatment of potential and current subscribers by alternative trading systems is important, especially when an alternative trading system captures a large percentage of trading volume in a security. Although an alternative trading system with significant volume would be required to provide access to orders that it is required to display in the public quote stream, there are other benefits to participation on an alternative trading system that the Commission believes an alternative trading system should not unfairly discriminate in granting access. In particular, participation on an alternative trading system allows an investor to enter its own orders, view contingent orders not publicly displayed (such as all or none orders) and use special features of an alternative trading system, such as a negotiation feature or reserve size feature.

Under the current regulatory approach, there is no regulatory redress for unfair denials or limitations of access by alternative trading systems. The availability of redress for such actions may not be critical when market participants are able to substitute the services of one alternative trading

[311] *See e.g. At Deadline: New Age Bandits,* Traders Magazine, February, 1997, at 6.

[312] *See* Market Quality Monitoring: Overview of 1997 Market Changes, NASD Economic Research, at 2.

system with those of another. However, when an alternative trading system has a significantly large percentage of the volume of trading, discriminatory actions hurt investors lacking access to the system. The proposals would prevent discriminatory denials of access and ensure that market participants are not prevented from gaining access to significant sources of liquidity.

d. Systems capacity, integrity, and security. The Commission believes that its proposal regarding systems capacity, integrity, and security of alternative trading systems would provide several benefits to the marketplace and to investors. Marketplaces are increasingly reliant on technology and most of their functions are becoming highly automated. Alternative trading systems are subject only to business incentives to avoid system breakdowns that may disrupt the market. In the past, alternative trading system failures have affected the public market particularly during periods of high trading volume. Some alternative trading systems have had prolonged shut-downs during the busiest trading sessions due to systems problems. For example, during the past year, Instinet, Island, Bloomberg, and Archipelago (operated by Terra Nova) have all experienced systems outages due to problems with their automated systems. On a number of occasions, ECNs have had to stop disseminating market maker quotations in order to keep from closing altogether, including during the market decline of October 1997 when one significant ECN withdrew its quotes from Nasdaq because of lack of capacity. Similarly, a major interdealer broker in non-exempt securities experienced serious capacity problems in processing the large number of transactions in October 1997 and had to close down temporarily.

The Commission's proposals would require alternative trading systems that handle a significant volume of trades to establish reasonable capacity estimates, conduct stress tests, implement procedures to monitor system development, review systems vulnerability, and establish adequate contingency plans. Investors would benefit from the proposals because significant systems would be less likely to shut down as a result of systems failures and would be better equipped to handle market demand and provide liquidity during periods of market stress. The ability of alternative trading systems to provide more reliable and consistent service in the market would benefit investors and the public markets generally. The Commission also believes that by ensuring that significant alternative trading systems maintain sufficient security measures from unauthorized access, investors would benefit from robust system security.

All currently registered exchanges participate in the Commission's automated review program. Alternative trading systems that choose to register as exchanges would similarly be expected to participate in this program. Under the automation review program, exchanges are expected to maintain sufficient systems capacity to meet current and anticipated volume levels. The benefits to investors and the public generally, as with significant alternative trading systems, would be the assurance that systems are reasonably equipped to handle market demand and provide liquidity during periods of market stress.

2. Costs

The alternative trading system proposals have been tailored to minimize their burden on alternative trading systems and especially small systems. Many of the provisions in the proposed rules are triggered by a volume threshold. The Commission expects that small alternative trading systems would not have sufficient volume to trigger those thresholds and would therefore not have to comply with those provisions. The recordkeeping and reporting requirements with which smaller, lower volume alternative trading systems would have to comply under proposed Regulation ATS are substantially similar to those with which alternative trading systems currently comply. Consequently the costs for smaller alternative trading systems should remain unchanged.

a. Notice, reporting, and recordkeeping. All alternative trading systems that would be subject to notice, reporting, and recordkeeping requirements under the Commission's proposal are currently subject to similar requirements under Rule 17a–23. The requirements proposed today under Regulation ATS would, however, require some additional information that is not currently required under Rule 17a–23.

Under proposed Regulation ATS, alternative trading systems would file an initial operation report, notices of material systems changes, and quarterly reports. The proposals also include new Forms ATS and ATS–R to standardize reporting of such information and make it more useful for the Commission. The proposed rules would require information that is not currently required under Rule 17a–23, such as greater detail about the system operations, the volume and types of securities traded, criteria for granting access to subscribers, procedures governing order execution, reporting, clearance and settlement, procedures for reviewing systems capacity and contingency procedures, and the identity of any other entities involved in operating the system.

Proposed Regulation ATS would require staff time to comply with the initial notice and amendment requirements. While the Commission has designed the requirements in an effort to balance the costs of filing with the benefits to be gained from the information, some effort would be necessary to gather and file this information. Most of the information, however, already exists. Alternative trading systems would only be required to gather this information and supply it in the required format to the Commission. The periodic updating requirements would also require staff time over the life of the alternative trading system to comply with the proposed rules.

The Commission estimates that there are currently about 43 alternative trading systems that would be required to register as exchanges or register as broker-dealers and comply with Regulation ATS.[313] The Commission also estimates that, over time, there would be approximately 3 new alternative trading systems each year that choose to register as broker-dealers and comply with Regulation ATS.[314] The Commission also estimates that, over time, there would be approximately 3 alternative trading systems that file cessation of operations reports each year. Thus, the Commission anticipates that, over time, if all 43 current alternative trading systems choose to register as broker-dealers and comply with Regulation ATS, there would be approximately 43 alternative trading systems operating each year.

The Commission estimates that the average burden per respondent to file the initial operations report on Form ATS would be 20 hours. This burden is computed by estimating that completing the report would require an average of 13 hours of professional work and 7 hours of clerical work.[315] The

[313] This estimate is based on filings made with the Commission under Rule 17a–23.

[314] Based on the Commission's experience over the last 3 years with Rule 17a–23, it appears that there are more than 3 new alternative trading systems per year. However, we expect that in the steady state over time, there would be approximately 3 new alternative trading systems per year. The rapid growth experienced over the last several years is unlikely to continue at such a high rate in perpetuity.

[315] This estimate for burden hours of filing Form ATS is based on burdens associated with filing

Commission estimates that the average cost per response would be $1,019 representing the 20 hours and cost of supplies.[316] If all 43 alternative trading systems opted to register as broker-dealers and comply with Regulation ATS, the total, one time cost to comply with the proposed requirements to file initial operation reports is estimated to be $43,817.[317] The Commission also estimates that, over time, approximately 3 new alternative trading systems will register as broker-dealers per year, incurring an annual aggregate burden of 60 hours for an average total cost of $3,057 after the first year following adoption of Regulation ATS.[318]

In addition, the proposed rules would require alternative trading systems to amend their initial operations report to notify the Commission of material systems changes and other changes to the information contained in the initial operations report. The Commission estimates that each respondent would file 6 such amendments per year.[319] The Commission estimates that each respondent would incur an average burden of 2 hours per response and incur an average cost of $111.50 for each amendment to the initial operation report that it submits.[320] If all 43 alternative trading systems opted to comply with Regulation ATS rather than to register as exchanges, the total aggregate cost per year to comply with the proposed requirement to file amendments to the initial operation reports is estimated to be $28,767.[321]

Alternative trading systems registering as broker-dealers would also be required to file quarterly reports on Form ATS–R, reporting participating system subscribers, the securities traded on the system, and aggregate volume information. The Commission estimates that the quarterly reports would cause each respondent to incur an average burden of 4 hours per response and incur an average cost of $223 for each Form ATS–R that it submits.[322] The annual burden per respondent would be $892.[323] If all 43 alternative trading systems opted to register as broker-dealers and comply with Regulation ATS, the total cost per year to comply with the proposed requirement to file quarterly reports is estimated to be $38,356.[324]

Finally, alternative trading systems registered as broker-dealers would be required to submit a notice and a report on Form ATS when they cease operations. The Commission anticipates a total of 3 such filings per year. The Commission estimates that individual respondents would incur a burden of 2 hours to file the cessation notice. The Commission estimates that individual respondents would incur a cost of $111.50 to file the cessation of operations report on Form ATS.[325] The annual aggregate burden for 3 alternative trading systems to file cessation of operations reports is estimated to be $334.50.[326]

The proposed recordkeeping requirements under Regulation ATS would require alternative trading systems registered as broker-dealers to keep and make available to the Commission and the appropriate SRO, upon request, records of: (1) The identities of subscribers to the system; (2) daily summaries of trading in the system; (3) time-sequenced records of specified order information in the system; (4) all notices provided to subscribers; and (5) all documents relating to the system's compliance with the capacity, security, and integrity standards set forth in Proposed Rule 301(b)(6) under Regulation ATS.[327] The Commission estimates that each alternative trading system that chooses to register as a broker-dealer would be required to expend an average of 40 hours per year, at an estimated average cost of $1,923.20, to comply with these proposed recordkeeping requirements.[328] If all 43 alternative trading systems opted to register as broker-dealers, rather than as exchanges, the total cost for both recordkeeping and record preservation is estimated to be $82,697.60 per year.[329] The Commission notes that it is soliciting comment on the feasibility of permitting alternative trading systems to file all reports electronically, which could ease the burdens on alternative trading systems.

b. Public display of orders and equal execution access. Proposed Regulation ATS would require some market participants to modify their current quotation dissemination systems. Because alternative trading systems would be required to display the best bid and offer regardless of the party entering the order, additional burdens could possibly be imposed on institutions choosing to use different order entry methods to avoid display. Accordingly, the possibility exists that alternative trading systems could suffer decreased liquidity if institutional customers reduced their reliance on alternative trading systems for trading activities. The Commission believes that its proposals reduce the likelihood of this occurrence. Moreover, the Commission preliminarily believes that any costs would be offset by the benefits enjoyed by the public market as a whole in the form of less fragmentation, increased liquidity, and the equal opportunity to obtain the best bids and

Form 1, adjusted for differences between Form 1 and Form ATS. The division between professional and clerical time is based on estimates of the proportions used in the estimates of burdens for filing Form 1.

[316] The estimated average cost per response of $1,019 is composed of $650 for in-house professional work (13 hours at $50 per hour), $105 for clerical work (7 hours at $15 per hour) and $264 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973).

[317] This estimated cost of $43,817 is derived from 43 alternative trading systems filing at a cost of $1,019 each.

[318] This estimated cost of $3,057 is derived from 3 new alternative trading systems filing at a cost of $1,019 each.

[319] This estimate is based on the Commission's experience with collection of similar information under Rule 17a–23.

[320] The estimated average cost per response of $111.50 is composed of $75 for in-house professional work (1.5 hours at $50 per hour), $7.50 for clerical work (0.5 hours at $15 per hour), and $29 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973).

[321] This estimated cost of $28,767 is composed of $111.50 cost per amendment for 43 alternative trading systems filing 6 times per year.

[322] The estimated cost of $223 per response is composed of $150 for in-house professional work (3 hours at $50 per hour), $15 for clerical work (1 hour at $15 per hour) and $58 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973).

[323] The estimated annual cost of $892 to file Form ATS–R is derived from 4 quarterly reports at an estimated annual cost of $223 per filing.

[324] This estimated cost of $38,356 is derived from 43 alternative trading systems with an estimated annual filing cost for each of $892.

[325] The estimated cost of $111.50 per response is composed of $75 for in-house professional work (1.5 hours at $50 per hour), $7.50 for clerical work (0.5 hours at $15 per hour), and $29 for printing, supplies, copying and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973).

[326] The estimated cost of $334.50 is derived from an average of 3 alternative trading systems filing 1 cessation of operations report per year on Form ATS at an estimated cost of $111.50 each.

[327] Proposed Rules 301(b)(8), 302, and 303(a)(1).

[328] The estimated cost of $1,923.20 is derived from an average of 40 hours of compliance time at $48.04 per hour. The value of compliance time is estimated as follows: an employee of a broker-dealer charged to ensure compliance with Commission regulations receives estimated annual compensation of $100,000. This compensation is the equivalent of $48.08 per hour ($100,000 divided by 2,080 payroll hours per year). The estimate of 40 hours encompasses an estimated 36 burden hours for recordkeeping requirements under proposed Rule 302 and an estimated 4 burden hours for record preservation requirements under proposed Rule 303.

[329] This estimated cost of $82,697.60 is derived from 43 alternative trading systems incurring an annual cost of $1,923.20 each.

offers in the market. The Commission estimates that 3 alternative trading systems would be required to comply with the display provisions of proposed Regulation ATS due to their significant volume.

c. Fair access. The proposal would require alternative trading systems to provide fair access and to notify investors denied access that they can appeal this denial to the Commission and that investors are able to appeal denials to the Commission. These requirements would likely impose little additional cost on most alternative trading systems. First, only alternative trading systems with significant volume would be subject to this requirement. Second, as long as a significant alternative trading system establishes legitimate criteria for participation and applies those criteria consistently, there would be few, if any fair access complaints. Nevertheless, in the event investors are denied access, there may be some additional costs to alternative trading systems associated with notifying investors of their right to appeal this action to the Commission, and potentially from defending appeals. The Commission, however, preliminarily believes that the benefits of fair access outweigh the potential costs. The Commission believes that without redress for denials of access, alternative trading systems could deny access unfairly.

Under proposed Regulation ATS, alternative trading systems with significant volume would be required to establish and maintain standards for granting access to their system and keep records of such standards. The Commission estimates that each respondent obligated to establish and maintain such records would incur a burden of 5 hours per year to make and keep standards for granting access for a total cost of $337.50.[330]

Based on the Commission's experience with denials of access to markets, the Commission estimates that alternative trading systems would, on average, deny or limit access 27 times annually. The Commission estimates that respondents would incur a burden of 1 hour for each required notice to investors for an estimated annual cost to each respondent of $546.75.[331] The Commission estimates that approximately 2 alternative trading systems would be required to comply with the fair access requirements due to their significant volume. The estimated aggregate burden for these alternative trading systems to comply with the fair access requirements under Regulation ATS would be 64 hours for a total average aggregate cost of $1,768.50.[332] The Commission requests comment on the costs described above with respect to the fair access provision of proposed Regulation ATS.

d. Systems capacity, integrity, and security. The Commission does not believe that its proposals to require alternative trading systems to meet certain systems related standards would impose significant costs. The standards the Commission is proposing are general standards that are consistent with good business practices. In addition, smaller alternative trading systems would not be subject to the proposed requirements. For those alternative trading systems that would not, for business reasons alone, ensure adequate capacity, integrity, and security of their systems, there would be costs associated with complying with the proposed requirements. The costs associated with upgrading systems to an adequate level may include, for example, investing in computer hardware and software. In addition, alternative trading systems would incur costs associated with the independent review of their systems on an annual basis. The review must be performed by independent reviewers, but those reviewers may be employees of the alternative trading system, or third party reviewers. The review must be conducted according to established procedures and standards. The costs involved may vary widely depending on the business of the alternative trading system. Accordingly, the Commission is requesting comment on the costs that may be associated with both internal and external reviews. Alternative trading systems would also be subject to recordkeeping requirements to document the steps taken to comply with proposed Regulation ATS. These requirements would be necessary for the Commission and the appropriate SROs to ensure compliance with systems related requirements. In addition, keeping such records would permit alternative trading systems to effectively analyze systems problems that occur. While alternative trading systems are not required to file such documentation with the Commission on a regular basis, the Commission recognizes that generating and maintaining such documentation would impose some additional costs.

The notification requirement for material systems outages should impose relatively little additional costs on alternative trading systems. Moreover, the Commission believes that this small burden is justified by the need to keep Commission staff abreast of systems' developments and problems.

The Commission estimates that each respondent would incur an average annual burden of 15 hours to comply with the recordkeeping requirements associated with the systems capacity, integrity, and security provisions of proposed Regulation ATS. The Commission estimates that each respondent would make an average of 5 system outage notices per year, for an estimated average burden of 1.25 hours per year.[333] The Commission estimates that the total estimated average cost of compliance for each respondent would be $85 per year.[334] Such alternative trading systems would also be required to keep records relating to the steps taken to comply with systems capacity, integrity, and security requirements under Regulation ATS. The Commission estimates that each respondent would incur a burden of 10 hours per year to comply with such recordkeeping requirements for a total cost of $675 per year.[335] The Commission estimates that 2 alternative trading systems would be required to comply with the systems

[330] The estimated cost of $337.50 to establish and maintain standards for granting access is composed of $250 for in-house professional work (5 hours at $50 per hour) and $87.50 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973).

[331] The estimated cost of $20.25 per response is composed of $15 for clerical work (1 hour at $15 per hour) and $5.25 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973). The estimated annual cost of $546.75 is derived from 27 notices at $20.25 per notice.

[332] The estimated aggregate burden of 64 hours is derived from 32 hours per respondent. The burden of 32 hours per respondent is composed of 5 hours for recordkeeping and 27 hours for notice requirements. The estimated aggregate cost of $1,768.50 is derived from 2 alternative trading systems each incurring an estimated annual burden of $884.25 ($546.75 for notice requirements and $337.50 for recordkeeping requirements).

[333] The Commission notes that compliance with the notice provision can be achieved by a telephone call, so the burden for each notice is minimal. The Commission estimates only 0.25 hours per notice would be required.

[334] The estimated average cost per response of $17 is composed of $12.50 for in-house professional work (0.25 hours at $50 per hour) and $4.50 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973). The estimated annual cost of $85 is derived from 5 notices at $17 per notice.

[335] The total estimated cost of $675 is composed of $500 for in-house professional work (10 hours at $50 per hour) and $175 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973).

capacity, integrity, and security provisions of proposed Regulation ATS due to their significant volume. The estimated aggregate cost for these alternative trading systems chose to comply with the systems capacity, integrity, and security requirements would be $1,520.[336] The Commission requests comment on the costs and benefits associated with systems capacity, integrity, and security.

e. Costs of exchange registration. The proposed framework for alternative trading systems is designed to allow such systems the option of registering as national securities exchanges. If an alternative trading system chooses to register as an exchange, corresponding regulatory obligations could impose costs on such systems; however, these costs would be assumed voluntarily.

For example, exchange-registered alternative trading systems would have to be organized to, and have the capacity to be able to, carry out the purposes of the Exchange Act, including their own compliance and the ability to enforce member compliance with the securities laws. Consequently, any newly registered exchange would have to establish appropriate surveillance and disciplinary mechanisms. In addition, newly registered exchanges would incur certain start-up costs associated with this obligation, such as writing rule manuals. This is the same standard that currently registered exchanges meet. Because the costs associated with these requirements may vary dramatically, the Commission is seeking comment on the estimated costs for compliance with these requirements.

The costs of exchange registration would also include filing a Form 1 pursuant to Rule 6a-1 under the Exchange Act[337] and complying with other filing obligations under Rules 6a-2[338] and 6a-3 under the Exchange Act.[339] In addition, national securities exchanges incur costs in the preparation of proposed rule changes for submission to the Commission for approval.[340] Section 19(b) of the Exchange Act requires an SRO to file with the Commission proposed amendments to its constitution, articles of incorporation, by-laws, rules, and other similar instruments or interpretations of these instruments. Registered exchanges are also required to maintain certain records pursuant to Rule 17a–1 under the Exchange Act.[341]

As registered exchanges, alternative trading systems would also be subject to more frequent inspection by the Commission. As broker-dealers, alternative trading systems would be inspected on a regular basis by any SRO of which they are a member, and by the Commission only on an intermittent basis. As registered exchanges, these systems would be inspected more regularly by Commission staff, but would—of course—no longer be subject to examinations by SROs.

The Commission inspects different SRO programs on independent review cycles. For example, separate inspections are conducted for an SRO's surveillance, arbitration, listings, and financial soundness programs. Where appropriate, SROs would be examined for other programs they may operate, such as index programs. Each type of examination would be performed at regular intervals, which are typically two to three years. An SRO, however, may expect several examinations throughout a particular year, each in a different program. Each examination typically involves three to four attorneys and/or accountants from the Commission, who spend one week at the SRO, or up to two weeks for particularly large programs, to examine records and interview SRO personnel. In order to comply with section 17(b) under the Exchange Act, an SRO must expend resources to provide copies of relevant documents to, and answer questions from, the Commission staff. The cost to an SRO of each examination varies greatly depending on the scope of the examination and the size or complexity of the SRO's particular program. Therefore, the Commission is not able to quantify a meaningful average cost to the SROs for compliance with the Commission examination program, and requests comment on the specific costs that may be involved.

In addition, there would also be costs associated in meeting the obligations set forth in section 11A of the Exchange Act and the rules thereunder. These costs would include the costs of joining, or creating new, market-wide plans, such as the CQS, CTA, ITS, and OTC–UTP, although some of these costs would be offset by the right to share in the revenues generated by these plans. For example, to join the CTA plan, applicants would be asked to pay, as a condition to entry into the plan, an amount that reflects the value of the tangible and intangible assets created by

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[336] The estimated aggregate cost of $1,520 is derived from 2 alternative trading systems incurring an estimated annual cost of $760 each ($85 for providing systems outage notices and $675 for recordkeeping requirements).

[337] Rule 6a-1 currently requires that Form 1 be filed with the Commission upon registration with the Commission as a national securities exchange or upon applying for an exemption from registration. This is the only time a Form 1 is filed. The estimated average cost per response of $3,719 is composed of $2,000 for professional work (20 hours at $100 per hour), $500 for in-house professional work (10 hours at $50 per hour), $255 for clerical work (17 hours at $15 per hour) and $964 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973).

[338] As proposed to be amended, Rule 6a-2 would require that an exchange, whether registered as a national securities exchange or exempted from registration, file with the Commission a new Form 1 to reflect amendments to those items contained in the previously filed Form 1. The Commission believes that the proposed amendments to Rule 6a-2 would reduce the filing obligations for all respondents. *See supra* Section III.B.3.b. The Commission estimates that the average cost per response, as reduced by the proposed amendments to Rule 6a–2, would be $1,215. This estimate is composed of $750 for in-house professional work (15 hours at $50 per hour), $150 for clerical work (10 hours at $15 per hour) and $315 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973).

[339] Rule 6a-3 currently requires that an exchange, whether registered as a national securities exchange or exempted from registration, file with the Commission information regarding any material issued or made generally available to members of, or participants or subscribers to, the exchange, and a monthly report detailing the number of shares of stocks, bonds, rights, and warrants traded on the exchange's facilities and the aggregate dollar amount of such securities. The Commission is proposing to amend Rule 6a-3, but only to simplify the language of the rule. The proposed amendments would not change the material terms of the rule. *See supra* Section III.B.3.b. The Commission receives approximately 25 filings pursuant to Rule 6a-3 per year from 9 respondents, for a total of 225 responses. The estimated average cost per response of $9.50 is composed of $7.50 for clerical work (0.5 hours at $15 per hour) and $2 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973). The total annual average cost for 225 responses is estimated to be $2,137.50.

[340] *See also* Rule 19b–4 under the Exchange Act and Form 19b–4. The Commission currently receives approximately 600 rule filings per year from approximately 25 respondents. The estimated average cost per response of $1,890 is composed of $1,250 for in-house professional work (25 hours at $50 per hour), $150 for clerical work (10 hours at $15 per hour), and $490 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973). Major rule filings can cost substantially more than $1,890, but account for less than approximately one percent of the total annual rule filings. The Commission estimated that these rule filings can cost up to approximately $10,000 to $15,000 per filing.

[341] The estimated average cost per respondent is $2,500, which is composed of 50 hours of in-house professional work per year at $50 per hour. There are currently 8 registered national securities exchanges and 1 national securities association that are subject to Rule 17a–1, for an annual estimated 450 burden hours and a cost of $22,500. Other entities, such as registered clearing agencies and the Municipal Securities Rulemaking Board are also subject to the rule, but have not been reflected in this estimate because the changes proposed in this release would not affect those entities.

the CTA plan that would be available to the applicant.[342] Similarly, new participants in ITS would have to pay a share of the development costs, which will reflect a share of the initial development costs, which were $721,631, and a share of costs incurred after June 30, 1978.[343] These costs would also include the costs of complying with Rule 11Ac1–1(b) under the Exchange Act,[344] which requires national securities exchanges and national securities associations to make the best bid, best offer, and aggregate quotation size for each security traded on its facilities available to quotation vendors for public dissemination.[345] These costs will vary depending on the nature and size of the systems involved, and the Commission requests comment on the costs involved.

The Commission notes that the remaining costs would at least partially be offset because the alternative trading systems assuming the costs of exchange registration would no longer be regulated as broker-dealers. Consequently, they would no longer be obligated to comply with the broker-dealer requirements, such as filing and updating Form BD, maintaining books and records in accordance with Rules 17a–3 and 17a–4 under the Exchange Act, and paying fees for membership in an SRO. In addition, because exchange-registered alternative trading systems would share the responsibilities of self-regulation, the regulatory burden carried by currently registered exchanges should be reduced. Other benefits include the freedom from oversight by a competing SRO, the right to establish trading and conduct rules, the right to establish fee schedules, the ability to directly participate in the NMS mechanisms, and the right to share in the profits and benefits produced by the NMS mechanisms such as the CQS, CTA, ITS and OTC–UTP plans.[346]

B. Proposed Amendments to Application and Related Rules for Registration as an Exchange

The Commission is proposing amendments to Rules 6a–1, 6a–2, and 6a–3 under the Exchange Act,[347] which require exchanges that elect to register to file Form 1 and comply with certain information updating and monthly reporting requirements. The proposed amendments would describe the filing requirements for national securities exchanges in a more clear and concise manner.

1. Benefits

The Commission believes that the proposed amendments would provide benefits to organizations that are currently registered, or in the future apply for registration, as a national securities exchange. First, the proposed amendments to Rules 6a–1, 6a–2, and 6a–3 would ease compliance burdens by simplifying the rule. By simplifying the rule language itself, the Commission anticipates that parties attempting to comply with Rules 6a–1, 6a–2 and 6a–3 would be better able to understand the rules' requirements and comply with them. Much of the information required on Form 1 would not change, but the revised form would recast the questions and exhibits in a different format that would ease compliance and make the responses more relevant to investors and the Commission. While national securities exchanges have traditionally been membership-owned, Form 1 would also be revised to accommodate proprietary national securities exchanges.

Second, the proposed amendments would give national securities exchanges the option of complying with certain ongoing filing requirements by posting information on an Internet web site and supplying the location to the Commission, instead of filing a complete paper copy with the Commission. The Commission anticipates that exchanges would choose to use the Internet to comply with Rules 6a–2 and 6a–3 rather than filing many exhibits on paper. The availability of such information on the Internet would also provide the public with easier and less expensive access to the information than requesting paper copies from the Commission or the national securities exchanges as currently required. In addition, permitting exchanges to use the Internet as a means of compliance would reduce expenses associated with clerical time, postage, and copying.

The proposed amended rules would also reduce the frequency of certain ongoing filings to update the information in Form 1, directly reducing the compliance burden on national securities exchanges while still meeting investors' and the Commission's need for reasonably current information. Specifically, the proposed amendments would eliminate exchanges' requirement to submit changes to their constitution, their rules, or the securities listed on the exchange within 10 days. The proposed amendments would also permit exchanges to file certain information regarding subsidiaries and affiliates every three years rather than annually. These proposed amendments would conserve registered exchanges' staff time to comply with the rules.

The Commission estimates that the proposals would specifically reduce the annual burdens that each respondent would incur to comply with Rule 6a–2 by approximately 5 hours. Thus, the Commission anticipates that respondents would spend an average of 25 hours on an annual basis to comply with amended Rule 6a–2.[348] The estimated average benefit to each individual respondent is $75 per year.[349] These estimates represent a decrease of the estimated burden that currently exists, so exchanges would benefit from reduced filing burdens.

2. Costs

The proposed rules are intended to simplify the filing requirements and reduce the compliance burdens for national securities exchanges and would likely impose few additional costs on

[342] *CTA Plan: Second Restatement of Plan Submitted to the Securities and Exchange Commission Pursuant to Rule 11Aa3–1 under the Securities Exchange Act of 1934*, May, 1974 and restated March 1980 and December 1995, at 8–9. The amount to be paid to the CTA plan will vary on a case-by-case basis and may reflect a current independent valuation of the CTA facilities, prior valuations, an assessment of costs contributed to the plan by existing members, the estimated usage of the plan facilities by the applicant, costs for anticipated system modifications to accommodate the applicant, and other relevant factors as determined by the current participants. The terms of the CQ Plan are substantially similar with respect to the assessment of a payment upon entry into the system. *CQ Plan: Restatement of Plan Submitted to the Securities and Exchange Commission Pursuant to Rule 11Ac1–1 under the Securities Exchange Act of 1934*, July 1978, as restated December 1995, at 8–9.

[343] *Plan for the Purpose of Creating and Operating an Intermarket Communication Linkage Pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934, Composite: Amendments through May 30, 1997*, at 78–79.

[344] 17 CFR 240.11Ac1–1.

[345] The Commission estimates that each national securities exchange or national securities association will submit information to vendors approximately 24,266,000 times per year, which reporting is generally done through automated facilities that conduct the reporting on a continuous basis. Due to the continuous nature of the information feeds, the Commission does not believe that it is feasible to estimate the average cost per response or annual burdens hours involved in complying with Rule 11Ac1-1(b). 17 CFR 240.11Ac1–1(b).

[346] *See supra* Section III.B.1.

[347] 17 CFR 240.6a–1; 17 CFR 240.6a–2; 17 CFR 240.6a–3.

[348] These estimates are based on the Commission's experience with Rule 6a–2 and Form 1–A filings. The Commission expects the current filing burdens of 30 hours to be lessened under the proposed rules, thus the estimated burden of hours required has been adjusted downward. The Commission notes that the proposed rules will eliminate Form 1–A and incorporate the updating obligations into the revised Form 1.

[349] The estimated average annual benefit for each respondent of $75 is composed of the savings of 5 hours of clerical work at $15 per hour.

national securities exchanges. Initially, there may be some additional personnel costs required to review the proposed rules and revised Form 1, but the Commission believes that the proposed simplified requirements would reduce overall compliance burdens and costs over time. Reducing the frequency of filings for some requirements may result in some information being less current. The Commission, however, believes that much of this type of information does not change frequently. Moreover, the option of posting such information on an Internet web site should encourage more frequent updating of current information.

The Commission notes that it is soliciting comment on the feasibility of permitting the filings required under the proposed amendments to be filed electronically, which would further reduce the compliance burdens and costs.

The Commission estimates that each respondent would incur an average burden of 47 hours to comply with Rule 6a–1 and file an initial application for registration on Form 1. This represents a 2 hour increase from the current average burden due to the estimated additional burden of the added exhibits. The Commission estimates that the average additional cost per response would be approximately $30.[350] Because the Commission receives applications for registration as exchanges on Form 1 from time to time, it cannot estimate the annual aggregate costs and burden hours associated with such filings. The Commission therefore requests comment on such costs and burden hours.

The Commission anticipates that the proposals would not change the burdens associated with complying with Rule 6a–3. The Commission estimates that the average burden for each respondent to comply with Rule 6a–3 is one-half hour per response because compliance only requires photocopying existing documents. The Commission also estimates that each respondent would file supplemental information under Rule 6a–3 approximately 25 times per year. The estimated average cost per response for each individual respondent is $9.50, resulting in an estimated annual average burden for each respondent of $237.50.[351]

C. Costs and Benefits of the Proposed Repeal of Rule 17a–23 and the Proposed Amendments to Rules 17a–3 and 17a–4

Rule 17a–23 currently imposes certain recordkeeping and reporting requirements on broker-dealer trading systems. In conjunction with its other proposals, the Commission is proposing to repeal Rule 17a–23 and amend Rules 17a–3 and 17a–4 under the Exchange Act[352] to eliminate all reporting requirements under Rule 17a–23 and to transfer certain recordkeeping requirements from Rule 17a–23 to Rules 17a–3(a)(16) and 17a–4(b)(10).

The new recordkeeping requirements under Rules 17a–3(a)(16) and 17a–4(b)(10) would apply solely to a limited group of broker-dealer systems, defined in the proposed amendment to Rule 17a–3 as ''internal broker-dealer systems.'' These are systems that would not be encompassed under proposed Rule 3b–12 under the Exchange Act. Systems that would be alternative trading systems under the Commission's proposals in this release would not be subject to the recordkeeping requirements under amended Rules 17a–3 and 17a–4. Moreover, the reporting obligations currently under Rule 17a–23 would be eliminated entirely.

1. Benefits

Approximately 43 of the broker-dealer trading systems currently filing reports under Rule 17a–23 would be alternative trading systems under the proposals in this release. These trading systems would not fall within the proposed definition of ''internal broker-dealer system,'' and would, therefore, not be required to maintain records under the new provisions of Rules 17a–3(a)(16) and 17a–4(b)(10). Accordingly, the Commission estimates that the annual aggregate costs and annual aggregate burden for the recordkeeping obligations under Rule 17a–23 would be reduced by $19,350 and 1,290 hours, respectively.[353] In addition, all reporting requirements under Rule 17a–23 would be eliminated. The Commission estimates that the annual aggregate costs and annual aggregate burden for the reporting obligations under Rule 17a–23 of $15,764 and 2,252 hours, respectively, would, therefore, be eliminated.[354] The Commission notes, however, that alternative trading systems would be subject to recordkeeping requirements under proposed Regulation ATS.[355]

2. Costs

No additional recordkeeping burdens would be imposed on internal broker-dealer systems under the proposed amendments to Rules 17a–3 and 17a–4. The proposed amendments would apply only to systems that are presently subject to the recordkeeping requirements of Rule 17a–23. Because the Commission is proposing to repeal Rule 17a–23 and amend Rules 17a–3 and 17a–4 by transferring the recordkeeping requirements from Rule 17a–23, the Commission does not anticipate any new recordkeeping costs or burdens for respondents.

Based on Commission experience with the burdens associated with Rule 17a–23, the Commission has estimated the burdens that would be associated with proposed Rule 17a–3(a)(16) and 17a–4(b)(10). The Commission estimates that there would be approximately 94 broker-dealers operating 123 internal broker-dealer systems that would have to keep the records described in proposed Rules 17a–3(a)(16) and 17a–4(b)(10). The Commission estimates that each respondent would spend approximately 27 hours keeping the required records under Rule 17a–3(a)(16). The Commission also estimates that each respondent would spend approximately 3 hours to preserve the required records under Rule 17a–4(b)(10). Thus, the Commission estimates that each respondent would incur a burden of 30 hours per year complying with Rules 17a–3(a)(16) and

[350] The estimated average additional cost per response of $30 is derived from 2 additional hours of clerical work at $15 per hour.

[351] The estimated average cost per response of $9.50 is composed of $7.50 for clerical work (0.5 hours at $15 per hour) and $2 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973). The estimated average annual cost of $237.50 is derived from 25 annual filings at a cost of $9.50 per filing.

[352] 17 CFR 240.17a–3; 17 CFR 240.17a–4.

[353] The estimated average benefit for alternative trading systems of $19,350 is composed of 43 alternative trading systems saving 30 hours of clerical work at $15 per hour. The estimated average benefit for alternative trading systems of 1,290 hours is composed of 43 alternative trading systems saving 30 hours each. The cost per hour and per filing is derived from the Commission's review of the Form 17A–23 supplied by the broker-dealers currently subject to Rule 17a–23.

The Commission notes, however, that alternative trading systems would be subject to recordkeeping requirements under Proposed Regulation ATS. *See supra* Section IX.A.2.a.

[354] The estimated aggregate burden of 2,252 is composed of 528 hours for initial reports (22 initial reports at 24 hours each), 1,716 hours for quarterly reports (143 quarterly reports at 12 hours per year—4 quarters at 3 hours each) and 8 hours for cessation reports (4 cessation reports at 2 hours each). The estimated total cost of $33,780 is composed of 2,252 hours of clerical work at $15 per hour. The Commission notes, however, that alternative trading systems would be subject to reporting requirements under proposed Regulation ATS. *See supra* Section IX.A.2.a.

[355] The costs and benefits associated with these recordkeeping requirements are discussed in Section IX.A.2.a. *supra.*

17a–4(b)(10) and an annual cost of $1,442.40.[356]

D. SRO Pilot Trading System

Under proposed Rule 19b–5, SRO rule changes to operate pilot trading systems would be temporarily exempt from the rule filing requirement of section 19(b) of the Exchange Act.[357]

1. Benefits

By permitting SROs to begin operating eligible pilot trading systems immediately and to continue operating for two years under a flexible regulatory scheme, the Commission preliminarily believes that proposed Rule 19b–5 would benefit SROs and investors. As proposed, Rule 19b–5 would enhance competition in the trading markets without imposing significant SRO compliance burdens.[358] Proposed Rule 19b–5 would permit the timely implementation of pilot trading systems without the widespread dissemination of critical business information. Therefore, the proposal should reduce SRO costs associated with the Commission approval process and improve the competitive balance between SROs and alternative trading systems that are regulated as broker-dealers.[359] Moreover, the Commission believes that proposed Rule 19b–5 would foster innovation and create a streamlined procedure for SROs to operate pilot trading systems and would reduce filing costs for SROs pilot trading systems.

2. Costs

The Commission anticipates receiving approximately 6 notices per year regarding pilot trading systems on proposed Form PILOT.[360] An SRO would be required to submit a Form PILOT providing detailed operational data and update this information quarterly. The Commission estimates that an SRO would expend 24 hours to file an initial operation report and 3 hours to file a quarterly report and a systems change notice.[361] The Commission also estimates that an SRO would file 2 amendments per year to report changes to the system.[362] The Commission estimates that an SRO would expend $1,242 per initial Form PILOT filing and $155 for each quarterly Form PILOT and system change notice filed.[363] Thus, the total estimated annual burden for SROs to comply with proposed Rule 19b–5 by filing an initial notice on Form PILOT is estimated to be 144 hours for a total average cost of $7,452.[364] The total estimated annual burden for SROs to file systems change notices and quarterly reports on Form PILOT is estimated to be 108 hours for a total average cost of $5,580.[365]

E. Request for Comment

The Commission requests data to quantify the costs and the value of the benefits described above. The Commission seeks estimates of these costs and benefits, as well as any costs and benefits not already defined, that may result from the adoption of these proposed amendments and rules.

The Commission requests comment on the estimate of the number of alternative trading systems that would be permitted to register as broker-dealers and comply with Regulation ATS, the number of new alternative trading systems that would choose to register as broker-dealers and comply with Regulation ATS each year in the future, and the number of alternative trading systems registered as broker-dealers that file cessation of operations reports each year.

In addition, the Commission requests comment on the costs and benefits associated with the Commission's proposals with respect to notice, reporting, and recordkeeping for alternative trading systems choosing to register as broker-dealers. The Commission specifically requests comment on the costs and benefits for all market participants associated with the filing requirements on Form ATS and ATS–R and the feasibility of permitting such forms to be filed electronically.

The Commission also requests comment on the costs and benefits associated with the Commission's proposals to improve surveillance on alternative trading systems. The Commission specifically requests comment on the benefits for all market participants associated with preventing fraud and manipulation on alternative trading systems.

The Commission requests comment on the costs associated with the Commission's proposals to improve market transparency and equal execution access, and the benefits associated with improving transparency, reducing market fragmentation, and meeting NMS goals.

The Commission requests comment on the costs associated with the Commission's proposals to ensure fair access to alternative trading systems registered as broker-dealers, as well as the benefits associated with preventing discriminatory denials of access and providing the avenue of appeal to the Commission for investors denied access to such systems.

The Commission requests comment on the costs and benefits associated

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[356] The Commission estimates that an employee of a broker-dealer charged to ensure compliance with Commission regulations receives annual compensation of $100,000. This compensation is the equivalent of $48.08 per hour ($100,000 divided by 2,080 payroll hours per year). The estimated annual cost of $1,442.40 is derived from 30 burden hours per respondent at $48.08 per hour.

[357] *See also supra* note 340.

[358] The Commission estimates that the current preparation and filing of proposed rule changes pursuant to section 19(b)(2) of the Exchange Act to operate a pilot trading system constitute major market impact filings requiring approximately 100 hours and $10,000 to $15,000 of SRO time and money, respectively, for each proposal. This does not include the cost of the SRO of any delay in obtaining Commission approval or in disclosing business information; nor does this include the benefit to an SRO of bringing its new pilot trading system to market in a shorter amount of time. The cost per hour and per filing is derived from information supplied by the SROs. For the purposes of our estimates, we have valued related overhead at 35% of the value of legal work. *See GAS Guide to Estimating Reporting Costs* (1973).

[359] The Commission estimates that under current procedures, a proposed rule filing for a new pilot trading system takes 90 days, on average, from the date of the original submission to be approved. In contrast, the proposed expedited treatment of SRO rule changes for pilot trading systems permits SROs to operate a pilot trading system 20 days after submitting an initial operation report on proposed Form PILOT, so long as such product complies with proposed Rule 19b–5 under the Exchange Act.

[360] This estimate is based on a review of past SRO filings under Section 19(b) of the Exchange Act. The Commission estimates that approximately 6 rule filings per year in the past could have been filed under the proposed Rule 19b–5.

[361] The estimates for burden hours involved with filing Form PILOT are based on the Commission's experience with similar reporting requirements under Rule 17a–23.

[362] This estimate is based on the Commission's experience with collection of similar information under Rule 17a–23.

[363] The estimated average cost of $1,242 to file an initial Form PILOT is composed of $800 for in-house professional work (16 hours at $50 per hour), $120 for clerical work (8 hours at $15 per hour) and $322 for printing, supplies, copying, and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973).

The estimated average cost of $155 to file quarterly reports and system change notices on Form PILOT is composed of $100 for in-house professional work (2 hours at $50 per hour), $15 for clerical work (1 hour at $15 per hour) and $40 for printing, supplies, copying and postage (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973).

[364] The estimated average burden of 144 hours is derived from 6 SRO respondents incurring an average burden of 24 hours per filing. The estimated average cost of $7,452 is derived from 6 SRO respondents making 6 initial Form PILOT filings at $1,242 per filing.

[365] The estimated average burden of 108 hours is derived from 6 SRO respondents filing 4 quarterly reports and 2 systems change notices at 3 burden hours per filing. The estimated average cost of $5,580 is derived from 6 SRO respondents filing 4 quarterly reports and 2 systems change notices at $155 per filing.

with the Commission's proposals to improve systems capacity, integrity, and security. The Commission specifically requests comment on the costs associated with maintaining adequate systems related procedures, safeguards, and documentation.

The Commission requests comment on the costs and benefits associated with exchange registration. The Commission specifically requests comment on the costs and benefits associated with providing alternative trading systems with the option to register as national securities exchanges under sections 5 and 6 of the Exchange Act.

The Commission requests comment on the costs and benefits associated with the Commission's proposed amendments to Rules 17a–3, 17a–4, and repeal of Rule 17a–23. The Commission specifically requests comment on the costs to internal broker-dealer systems of continuing to maintain records under Rules 17a–3(a)(16) and 17a–4(b)(10), and the benefits of eliminating the reporting requirements.

The Commission requests comment on the costs and benefits associated with the Commission's proposal to temporarily exempt SRO pilot trading systems from section 19(b) rule filing requirements. The Commission specifically requests comment on the costs and benefits for all market participants associated with such a temporary exemption from rule filing and the associated filing requirements on Form PILOT.

The Commission generally requests comment on the competitive benefits or anticompetitive effects that may impact any market participants if the proposals are adopted as proposed. The Commission also requests comment on what impact the proposals, if adopted, would have on efficiency and capital formation. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposal.

X. Effects on Efficiency, Competition, and Capital Formation

Section 23(a) of the Exchange Act [366] requires that the Commission, when promulgating rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in furtherance of the purposes of the Act. Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking, to consider or determine whether an action is necessary or appropriate in the public interest, and whether the action would promote efficiency, competition, and capital formation.[367] The Commission has considered the proposed rules and amendments in light of these standards and preliminarily believes that they would not impose any significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The rules and amendments are intended to provide a choice between registering as a broker-dealer and registering as an exchange for markets operated as alternative trading systems. By using volume thresholds to trigger fair access, market transparency, and coordination, and systems capacity, integrity, and security requirements, the Commission's proposals would not unduly burden small, start-up alternative trading systems, and would therefore foster competition. The proposals would also improve surveillance and recordkeeping for all alternative trading systems, which would improve investor confidence in such systems and help maintain fair and orderly markets. Moreover, the proposals offer SROs the opportunity to develop and operate pilot trading systems with less cost and time delay. This would help to foster innovation and create benefits for investors. Nonetheless, the Commission solicits comments on the impact of the proposed rules and amendments on competition. Specifically, the Commission requests commenters to address how the proposed rules and amendments would affect competition between and among alternative trading systems, broker-dealers, exchanges, investors, and other market participants. Finally, commenters should consider the proposed amendments' and rules' effect on efficiency and capital formation.

XI. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with the Regulatory Flexibility Act (''RFA'') [368] regarding proposed new Rules 3a1–1, 3b–12, 19b–5, Regulation ATS, new Forms ATS, ATS–R and PILOT, and amended Rules 6a–1, 6a–2, 6a–3, 17a–3, 17a–4, the Commission's Rules of Practice, amendments to Form 1 and the repeal of Rule 17a–23. The following summarizes the IRFA.

As set forth in greater detail in the IRFA, the proposed rules create the option for an alternative trading system to register as a national securities exchange or as a broker-dealer and comply with additional requirements depending on their activities and trading volume. The IRFA also states that proposed amendments will exclude pilot trading systems operated by national securities exchanges or national securities associations from rule filing requirements.

The IRFA sets forth the statutory authority for the proposed rules. The IRFA also discusses the effect of the proposed rules on small entities.[369] The IRFA states that the proposed rules would not affect small entities, as the Commission expects that alternative trading systems will generally be broker-dealers with total capital of at least $500,000. The Commission estimates that there are approximately forty-three total alternative trading systems presently in existence, with 5 of those estimated to be small entities.

The IRFA recognizes that, in order to provide a reasonable option to registration as a national securities exchange, any Commission proposals must strike a balance between fostering innovation and providing real investor protections. In order to assure that alternative trading systems are adequately organized and fairly operated, the Commission believes it is necessary and reasonable to require any alternative trading system to supply basic, descriptive information before it starts operating and periodically to supply aggregate transaction data to the Commission. The Commission expects relatively few small entities to start such enterprises, but believes that the regulatory burdens established in the proposed rules are reasonable.

In addition, by utilizing volume thresholds to trigger additional requirements the Commission anticipates that starting and developing alternative trading systems would not be unduly burdened by the proposed filing requirements. Once an alternative trading system achieves significant market influence, it is reasonable to expect those systems to comply with fair access, order display, and systems

[366] 15 U.S.C. 78w(a)(2).

[367] 15 U.S.C. 78c(f).

[368] 5 U.S.C. 603.

[369] Small entities are considered broker-dealers with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act, 17 CFR 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. 17 CFR 240.0–10(c).

capacity, integrity, and security requirements in order to protect investors and assure a fair secondary market.

The proposed rules would require all alternative trading systems to file an initial notice on Form ATS. Alternative trading systems would have periodic reporting requirements to amend Form ATS as the information changes over time. The IRFA further notes that alternative trading systems would be required to make quarterly transaction reports on Form ATS–R. The IRFA states that alternative trading systems would also be required to maintain records relating to trading activities and, if meeting certain volume thresholds, records relating to systems capacity, integrity and security, fair access and order display. The Commission believes that these filing requirements are offset by the benefits to investors, the market as a whole and the Commission's ability to keep up with market developments and changes.

The initial notice requirement on Form ATS is a one-time filing and the transaction reports required on Form ATS–R are only required four times per year. The proposed rules will require alternative trading systems to file some information not currently required under Rule 17a–23. This information will include quarterly reports describing the securities traded through the system and subscribers to the system. Additionally, the proposed rules will require alternative trading systems to file more detailed information concerning the characteristics of the system than is currently required. The Commission believes that the additional burdens created by these requirements will be offset by eliminating the filing requirements under Rule 17a–23. Small entities are unlikely to meet the volume thresholds that would require additional recordkeeping and filing requirements for fair access and systems capacity, integrity and security.

The proposed rules would exempt pilot trading systems operated by national securities exchanges and national securities associations from rule filing requirements. The IRFA further states that the proposed rule changes will reduce the filing burdens associated with filing an initial Form 1 and the required subsequent amendments. The Commission believes that these changes reduce the filing burdens on national securities exchanges and exchanges exempt from registration under section 5 based on the limited volume of transactions effected on such exchanges. All national securities exchanges are too large to be considered small entities. For exchanges exempt from registration under section 5 pursuant to the limited volume of transactions effected on such exchanges, the proposed rules will help to reduce the filing burdens by clarifying current filing requirements and supplying additional means of compliance.

As explained further in the IRFA, the Commission has considered other alternatives to the proposed rules. The Commission believes that it would be inconsistent with the purposes of the Act to exempt small entities from the proposed rules.

The IRFA includes information concerning the solicitation of comments with respect to the IRFA generally, and in particular, the number of small entities that would be affected by the proposed rules. Cost-benefit information reflected in the ''Costs and Benefits of the Proposed Rules and Amendments'' and ''Effects on Efficiency, Competition and Capital Formation'' sections of this Release is also reflected in the IRFA. A copy of the IRFA may be obtained by contacting Kevin Ehrlich, Division of Market Regulation, Securities Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

XII. Paperwork Reduction Act

Certain provisions of the proposed rules and rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collections of information are: ''Form 1, Rules 6a–1 and 6a–2'' ''Rule 6a–3,'' ''Rule 17a–3(a)(16),'' ''Rule 17a–4(b)(10),'' ''Rule 19b–5 and Form PILOT,'' ''Rule 301, Form ATS and Form ATS–R,'' ''Rule 302,'' ''Rule 303,'' all under the Exchange Act. ''Form 1, Rules 6a–1 and 6a–2'' and ''Rule 6a–3,'' which the Commission is proposing to amend, contain currently approved collections of information under OMB control numbers 3235–0017 and 3235–0021. The proposed rules and rule amendments are necessary to respond to the impact of technological developments in the securities markets and permit the Commission to more effectively oversee the growing number of alternative trading systems. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

A. Form 1, Rules 6a–1 and 6a–2

Rule 6a–1 and Form 1 currently require any organization seeking to operate as a national securities exchange, or as an exchange exempt from registration based on limited volume to file a Form 1. Form 1 requires the organization to describe its operation. The amendments to Rule 6a–1 would simplify and clarify the requirements to make them easier to understand. The revised Form 1 introduces a fill-in-the-blank format, reconfigures the exhibits for clarity, and updates the requests for information to accommodate new organizational models of exchanges. The collection of information would be necessary to permit the Commission to determine that an exchange applying for registration complies with the provisions of the Exchange Act governing exchange registration and statutory requirements for registration. The Commission requires such information to protect investors and the public interest. There are no other means of obtaining this information and it is not available in consolidated form in any other location. The respondents to this information collection are those entities wishing to become registered as an exchange. Applications for registration on Form 1 are made on a one-time basis. The Commission receives Form 1 filings from time to time. For purposes of the Paperwork Reduction Act, the staff assumes that a maximum of one filing per year would be made, imposing a burden of 47 hours per response and a cost of $2,000.

The Commission also proposes to amend Rule 6a–2 which contains requirements for exchanges to file amendments updating the information initially filed on Form 1. Proposed Rule 6a–2 revises the filing requirements to ease the frequency of filing certain exhibits and offer the choice of making certain information publicly available on the Internet in lieu of making paper filings. The collection of information would be necessary to permit the Commission to determine whether the exchanges are complying with the Exchange Act and keeping such information consolidated and current. The information is also made available to members of the public who may wish to comment on the information provided. The likely respondents to this information collection are those entities registered as an exchange or exempt from registration under section 5 based on the limited volume of transactions effected on those exchanges. Currently, eight exchanges and one exempt exchange make such filings. The

Commission estimates that revised Rule 6a–2 would decrease the filing burden for each respondent by 5 hours for an average burden for each respondent of 25 hours per filing. The Commission estimates that each exchange would respond 1 time per year and incur an average burden of 25 hours. The Commission estimates that the aggregate burden for all exchanges to comply with Rule 6a–2 would be 225 hours. The Commission bases its projections on its prior experience with exchange filings pursuant to Rules 6a–1 and 6a–2. The total estimated burden for Form 1 would be 272 hours (47 hours for one initial filing and 225 hours for nine amendments).

For exchanges that choose to register and operate as a national securities exchange, the provisions of Rules 6a–1 and 6a–2 as well as the requirements of Form 1 are mandatory. All filings made with the Commission pursuant to Rules 6a–1 and 6a–2 on Form 1 are not confidential and are available to the public. National securities exchanges would still be obligated by Rule 17a–1 to preserve records for 5 years, the first 2 years in an easily accessible place. The Commission notes that it is imposing no additional recordkeeping requirements under proposed Rules 6a–1 or 6a–2, but is only reiterating currently existing obligations.

B. Rule 6a–3

Rule 6a–3 currently requires that registered exchanges file with the Commission copies of information made available to the members, subscribers, or participants. The collection of information is necessary to permit the Commission to determine whether exchanges are complying with the Exchange Act and to enable the Commission to carry out its statutory obligations and protect investors. The proposed rule changes would help simplify the rule language and provide registered exchanges with the option of making the information available on the Internet in lieu of paper filings. Further, the proposed rule also recognizes that modern exchanges may have participants or subscribers rather than members. The respondents are exchanges or exchanges exempt from registration based on limited volume. Currently, eight exchanges and one exchange exempt from registration based on limited volume are required to comply with the rule. The Commission expects no additional filing burdens as a result of this proposed rule change. The estimated burden for each exchange is 0.5 hours for each submission pursuant to Rule 6a–3. The Commission anticipates that each respondent would file 25 amendments per year for a total burden of 12.5 hours per year for each respondent. The Commission anticipates that the total estimated aggregate annual burden for 9 respondents would be 112.5 hours. The Commission does not anticipate that the burdens associated with Rule 6a–3 would change in a material manner.

For exchanges that choose to register and operate as a national securities exchange, the provisions of Rule 6a–3 are mandatory. All filings made with the Commission pursuant to Rule 6a–3 are not confidential and are available to the public. National securities exchanges would still be obligated by Rule 17a–1 to preserve records for 5 years, the first 2 in an easily accessible place.

C. Rule 17a–3(a)(16)

The proposed amendments to Rule 17a–3 would require a broker-dealer that operates an internal broker-dealer system to make certain records regarding the daily trading activity of that system. The collection of information would be necessary to permit the Commission and SROs to determine whether broker-dealers are complying with the Commission's financial responsibility programs, antifraud and antimanipulation rules, as well as other Commission and SRO rules. The Commission cannot obtain such information by any other means because broker-dealers are the only entities that produce, and have access to, such information. Broker-dealers currently comply with substantially similar recordkeeping requirements under current Rule 17a–23, so there would be no net additional burden on broker-dealer respondents. The Commission estimates that there would be 94 respondents affected. Based on the Commission's prior experience with the burdens associated with Rule 17a–23, for the purposes of the proposed amendments to Rule 17a–3, the Commission estimates that each respondent would incur a burden of 27 hours to comply with the recordkeeping requirements. Thus, the total aggregate burden for broker-dealers operating internal broker-dealer systems to comply with the proposed recordkeeping requirements under amended Rule 17a–3 would be 2,538 hours.

For alternative trading systems that choose to register as a broker-dealer, the proposed amendments to Rule 17a–3 are mandatory. The records required to be made are considered confidential and are not available to the public. All records required under the proposed amendment to Rule 17a–3 would be preserved for not less than 3 years, the first 2 in an easily accessible place.

D. Rule 17a–4(b)(10)

The proposed amendments to Rule 17a–4 would require a broker-dealer that operates an internal broker-dealer system to keep records it makes pursuant to under Rule 17a–3(a)(16). The proposed amendments would also require broker-dealers to keep information that is supplied to subscribers, such as system notices. The Commission estimates that there are 94 broker-dealers that would be affected. Based on the Commission's prior experience with the burdens associated with Rule 17a–23, for purposes of the proposed amendments to Rule 17a–4, the Commission estimates that each respondent would incur an annual burden of 3 hours to comply with the record preservation requirements. Thus, the total aggregate burden for broker-dealers operating internal broker-dealer systems to comply with the record preservation requirements under amended Rule 17a–4(b)(10) would be 282 hours.

For alternative trading systems that choose to register as a broker-dealer, the proposed amendments to Rule 17a–4 are mandatory. The records required to be preserved are considered confidential and are not available to the public. All records required under the proposed amendments to Rule 17a–4 would be preserved for not less than 3 years, the first 2 years in an easily accessible place.

E. Rule 19b–5 and Form PILOT

Proposed Rule 19b–5 contains a requirement that SROs file a Form PILOT to notify the Commission of their intent to operate a pilot trading system. Proposed Rule 19b–5 also requires that SROs keep records containing the rules and procedures relating to each pilot trading system. SROs would be temporarily exempt from the rule filing requirements under section 19(b) of the Exchange Act for any rule changes associated with the pilot trading system. Because such systems can have an impact on the market, this collection of information would be necessary to inform the Commission of the existence and manner of operation of such pilot trading systems. The Commission has proposed that the SROs also must meet certain criteria in order to operate a pilot trading system. Notice to the Commission on Form PILOT is necessary to determine whether the SROs are meeting those criteria. Additionally, the recordkeeping requirement is necessary because the Commission would need to review this

information during an examination to determine compliance by the SRO with the federal securities laws. By permitting SROs to merely keep such information on hand instead of affirmatively filing it, the Commission believes it balances the need for access to the information with minimizing burdens on SROs. The respondents to this information collection would be SROs who wish to develop and introduce pilot trading systems.

Respondents would be required to file one initial Form PILOT before commencing operation of each pilot trading system. Respondents would also be required to file quarterly reports and systems change notices on Form PILOT. Based on the Commission's experience with section 19(b) rule filings, the Commission estimates that there would be 6 such respondents per year. Under Rule 19b–5, each respondent would file one initial Form PILOT filing before commencing operation of the pilot trading system and 4 quarterly reports on Form PILOT. In addition, the Commission anticipates that each respondent would file 2 systems change notices each year on Form PILOT. Based on the Commission's experience with similar section 19(b) rule filings, the Commission estimates that each respondent would incur a burden of 24 hours to file an initial operation report and an annual burden of 12 hours to file quarterly reports on Form PILOT. The Commission also estimates that each respondent would incur an annual burden of 6 hours to file 2 systems change notices on Form PILOT. Thus, the aggregate burden for respondents to file initial reports on Form PILOT would be 144 hours and the annual aggregate burden for respondents to file quarterly reports and systems change notices on Form PILOT would be 108 hours. Thus, the Commission estimates that the total aggregate burden for respondents under proposed Rule 19b–5 would be 252 hours.

For SROs that choose to operate pilot trading systems and avail themselves to the provisions of Rule 19b–5, compliance with Rule 19b–5 and the filings required on Form PILOT are mandatory. Proposed Rule 19b–5 reiterates SROs' existing recordkeeping obligations under Rule 17a–1, which requires that such records be kept for not less than 5 years, the first 2 years in an easily accessible place.

F. Rule 301, Form ATS and Form ATS–R

Proposed Rule 301 requires alternative trading systems that do not register as national securities exchanges to meet certain requirements. Specifically, alternative trading systems would be required to file an initial notice prior to operating, supply notices of material changes to the system operation prior to implementing those changes, file quarterly amendments notifying the Commission of changes to the system that have not been reflected in an earlier amendment and when it ceases operations as an alternative trading system. Alternative trading systems would also be required to file quarterly transaction reports on Form ATS–R detailing the type and volume of securities traded through the alternative trading system. An alternative trading system that meets certain volume thresholds would be required to notify investors denied or permitted only limited access to the system that they have a right to appeal the alternative trading systems' action to the Commission. In addition, the proposed rule would require alternative trading systems that meet certain volume thresholds to notify the Commission of systems outages and keep any records made in the process of complying with the systems capacity, integrity and security requirements under Rule 301.

The Commission estimates that there would be 43 alternative trading systems that would be respondents under the proposed rule. The Commission also estimates that, over time, approximately 3 new alternative trading systems would choose to register as a broker-dealer and comply with Regulation ATS each year and that 3 alternative trading systems would file cessation of operations reports on Form ATS and cease operating. Thus, the Commission anticipates that approximately 43 alternative trading systems will incur burdens each year under proposed Regulation ATS. Each would file a one-time notice of initial operation report on Form ATS. The Commission estimates that alternative trading systems would file 2 amendments per year to reflect material changes to information on Form ATS and 4 quarterly amendments to reflect other changes. In addition, alternative trading systems would be required to file 4 reports per year on Form ATS–R. The Commission also estimates that 3 alternative trading systems would file cessation of operations reports on Form ATS on an annual basis.

The Commission estimates that 2 alternative trading systems would meet the volume thresholds that trigger fair access obligations and would, therefore, be required to maintain records of its access standards and provide notice to investors denied or limited access to the system of their right to appear a denial or limitation of access to the Commission. Based on the Commission's experience with denials of access to markets, the Commission estimates that such systems would have to send 27 denial or limitation of access notices per year. The Commission also believes that 2 alternative trading systems would meet the trading volume thresholds that trigger the systems capacity, integrity and security requirements and would, therefore, be required to maintain records relating to these requirements and notify the Commission of system outages. Based on the Commission's experience with systems' outages in the markets, the Commission anticipates that such systems would provide 5 systems' outage notices per year.

The Commission's estimates for burden hours associated with filing Form ATS are based on the Commission's experience with filings made pursuant to Rules 6a–1, 6a–2, 6a–3 and 17a–23. While the burden estimates have been based on prior Commission experience, they have been adjusted to reflect the specific nature of each requirement.

The Commission estimates that each respondent filing an initial operation report on Form ATS would incur an average burden of 20 hours. Thus, the aggregate burden for 3 alternative trading systems to file initial operations reports on Form ATS would be 60 hours.

The Commission estimates that each respondent filing an amendment on Form ATS would incur an average annual burden of 12 hours. Thus, the average annual aggregate burden for 43 alternative trading systems to file 6 amendments each to the initial operation report on Form ATS would be 1,032 hours.

The Commission estimates that each respondent filing quarterly reports on Form ATS–R would incur an average annual burden of 16 hours. Thus, the average annual aggregate burden for 43 alternative trading systems to file quarterly reports on Form ATS–R would be 688 hours.

The Commission estimates that each respondent filing a cessation of operation report on Form ATS would incur an average burden of 2 hours. Thus, the average annual aggregate burden for 3 alternative trading systems to file cessation of operations reports on Form ATS would be 6 hours.

The Commission estimates that each respondent obligated to establish and keep standards for granting access to its system would incur a burden of 5 hours. Thus, the average annual aggregate burden for 2 alternative trading systems to establish and keep standards for

granting access to its system to comply with such standards would be 10 hours.

The Commission estimates that each respondent obligated to provide notices to investors denied or limited access to such system would incur a burden of 1 hour per notice, or 27 hours per year. Thus, the annual aggregate burden for 2 alternative trading systems to provide investors notice of a denial or limitation decision and their right of appeal to the Commission would be 54 hours.

The Commission estimates that each respondent obligated to comply with the systems capacity, integrity and security requirements would incur an average burden of 10 hours. Thus, the annual aggregate burden for 2 alternative trading systems to make records relating to steps taken to comply with the systems capacity, integrity and security requirements would be 20 hours.

The Commission estimates that each respondent obligated to provide systems' outage notices to the Commission would provide 5 such notices per year and that such systems would incur a burden of 0.25 hours per notice, or 1.25 hours per year. Thus, the annual aggregate burden for 2 alternative trading systems to provide investors notice of a denial or limitation decision and their right of appeal to the Commission would be 2.5 hours.

For alternative trading systems that choose to register as a broker-dealer, the requirements of Rule 301, Form ATS and Form ATS–R are mandatory. All filings required under Rule 301, Form ATS and Form ATS–R are considered confidential and are not available to the public. All records required to be made under the proposed Rule would be preserved for 3 years, the first 2 years in an easily accessible place.

G. Rule 302

Proposed Rule 302 would require alternative trading systems to make certain records with respect to trading activity through the alternative trading systems. This collection of information would permit the Commission to detect and investigate potential market irregularities and to ensure investor protection. Such information is not available in any other form from any other sources. The Commission estimates 43 alternative trading systems would be required to comply with this proposed rule. The Commission believes that most alternative trading systems will keep such information in the course of business, so the additional burdens of compliance would be minimal. Based on the Commission's experience with the burdens associated with recordkeeping requirements under Rule 17a–23, the Commission estimates that the annual burden for each respondent to comply with the recordkeeping requirements under proposed Rule 302 would be 36 hours and that the annual aggregate burden for 43 alternative trading systems to comply with Rule 302 would be 1,548 hours.

For alternative trading systems that choose to register as a broker-dealer, the requirements of Rule 302 are mandatory. All records required to be made under Rule 302 are considered confidential and are not available to the public. All records required to be made under the proposed Rule would be preserved for 3 years, the first 2 years in an easily accessible place.

H. Rule 303

Proposed Rule 303 requires alternative trading systems registered as broker-dealers to preserve certain records produced under Rule 302, as well as standards for granting access to the system and records generated in complying with the systems capacity, integrity and security requirements for alternative trading systems with significant trading volume. Alternative trading systems registered as broker-dealers would not be required to file such information, but merely retain it in an organized manner and make it available to the Commission upon request. The Commission believes that most alternative trading systems will keep such information in the course of business, so the additional burdens of compliance would be minimal. The Commission estimates that 43 such alternative trading systems would be required to comply with Rule 303. Based on the Commission's experience with the burdens associated with record preservation requirements under Rule 17a–23, the Commission estimates that the annual burden for each respondent to comply with the recordkeeping requirements under proposed Rule 303 would be 4 hours and that the annual aggregate cost for 43 alternative trading systems to comply with Rule 303 would be 1,172 hours.

For alternative trading systems that choose to register as a broker-dealer, the requirements of Rule 303 are mandatory. All records required to be made under Rule 303 are considered confidential and are not available to the public. All records required to be made under the proposed Rule would be preserved for 3 years, the first 2 years in an easily accessible place.

I. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected;

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 with reference to File No. S7–12–98. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

XIII. Statutory Authority

The proposed rules and rule amendments in this release are being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(b), 5, 6, 11A, 15, 17(a), 17(b), 19(b), 23(a), and 36 of the Exchange Act, 15 U.S.C. 78c, 78e, 78f, 78k–1, 78*o*, 78q(a), 78q(b), 78s(b), 78w(a), and 78mm.

List of Subjects

17 CFR Part 201

Administrative practice and procedure, Equal access to justice, Securities.

17 CFR Part 240

Brokers-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 242

Securities.

17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 201—RULES OF PRACTICE

1. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12 unless otherwise noted.

2. Paragraph (a)(9) of § 201.101 is revised to read as follows:

§ 201.101 Definitions.

(a) * * *

(9) *Proceeding* means any agency process initiated by an order instituting proceedings; or by the filing, pursuant to § 201.410, of a petition for review of an initial decision by a hearing officer; or by the filing, pursuant to § 201.420, of an application for review of a self-regulatory organization or an alternative trading system determination; or by the filing pursuant to § 201.430, of a notice of intention to file a petition for review of a determination made pursuant to delegated authority;

* * * * *

3. The introductory text of paragraph (a) of § 201.202 is revised to read as follows:

§ 201.202 Specifications of procedures by parties in certain proceedings.

(a) *Motion to specify procedures.* In any proceeding other than an enforcement or disciplinary proceeding or a proceeding to review a determination by a self-regulatory organization or an alternative trading system pursuant to §§ 201.420 and 201.421, a party may, at any time up to 20 days prior to the start of a hearing, make a motion to specify the procedures necessary or appropriate for the proceeding, with particular reference to:

* * * * *

4. Paragraph (a)(1) of § 201.210 is revised to read as follows:

§ 201.210 Parties, limited participants and amici curiae.

(a) *Parties in an enforcement or disciplinary proceeding or a proceeding to review a self-regulatory organization or an alternative trading system determination.* (1) *Generally.* No person shall be granted leave to become a party or a non-party participant on a limited basis in an enforcement or disciplinary proceeding or a proceeding to review a determination by a self-regulatory organization or an alternative trading system pursuant to §§ 201.420 and 201.421.

* * * * *

5. Paragraph (d)(1) of § 201.401 is revised to read as follows:

§ 201.401 Issuance of stays.

* * * * *

(d) * * * (1) *Availability.* A motion for a stay of an action by a self-regulatory organization for which the Commission is the appropriate regulatory agency or a limitation or prohibition of access by an alternative trading system, for which action review may be sought pursuant to § 201.420, may be made by any person aggrieved thereby.

* * * * *

6. Section 201.420 is revised to read as follows:

§ 201.420 Appeal of determinations by self-regulatory organizations and alternative trading systems.

(a) *Application for review; when available.* (1) An application for review by the Commission may be filed by any person who is aggrieved by a self-regulatory organization determination as to which a notice is required to be filed with the Commission pursuant to section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1). Such determinations include any:

(i) Final disciplinary sanction;

(ii) Denial or conditioning of membership or participation;

(iii) Prohibition or limitation in respect to access to services offered by that self-regulatory organization or a member thereof; or

(iv) Bar from association.

(2) An application for review by the Commission may be filed by any person who is aggrieved by an alternative trading system determination as to which a notice is required to be filed with the Commission pursuant to paragraph (a)(5) of § 242.301 of this chapter (Regulation ATS). Such determination includes any prohibition or limitation in respect to access to services offered by the alternative trading system.

(b) *Procedure.* An application for review may be filed with the Commission pursuant to § 201.151 within 30 days after notice of the determination was filed with the Commission pursuant to sections 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1) or paragraph (a)(5) of § 242.301 of this chapter (Regulation ATS), and received by the aggrieved person applying for review. The application shall be served by the applicant on the self-regulatory organization or the alternative trading system, whichever is applicable. The application shall identify the determination complained of, set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor and state an address where the applicant can be served with the record index. The application shall be accompanied by the notice of appearance required by § 201.102(d).

(c) *Determination not stayed.* Filing an application for review with the Commission pursuant to paragraph (b) of this section shall not operate as a stay of the complained of determination made by the self-regulatory organization or the alternative trading system unless the Commission otherwise orders either pursuant to a motion filed in accordance with § 201.401 or on its own motion.

(d) *Certification of the record; service of the index.* Fourteen days after receipt of an application for review or a Commission order for review, the self-regulatory organization or the alternative trading system shall certify and file with the Commission one copy of the record upon which the action complained of was taken, and shall file with the Commission three copies of an index to such record, and shall serve upon each party one copy of the index.

7. The section heading and paragraph (a) of § 201.421 are revised to read as follows:

§ 201.421 Commission consideration of determinations by self-regulatory organizations and alternative trading systems.

(a) *Commission review other than pursuant to a petition for review.* The Commission may, on its own initiative, order review of any determination by a self-regulatory organization or an alternative trading system that could be subject to an application for review pursuant to § 201.420(a) within 40 days after notice thereof was filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1) or paragraph (a)(5) of § 242.301 of this chapter (Regulation ATS).

* * * * *

8. Paragraph (a)(2)(ii) of § 201.450 is revised to read as follows:

§ 201.450 Briefs filed with the Commission.

(a) * * *

(2) * * *

(ii) Receipt by the Commission of an index to the record of a determination of a self-regulatory organization or an alternative trading system filed pursuant to § 201.420(d);

* * * * *

9. Paragraph (a)(2)(i) of § 201.460 is revised to read as follows:

§ 201.460 Record before the Commission.

* * * * *

(a) * * *

(2) * * *

(i) The record certified pursuant to § 201.420(d) by the self-regulatory

organization or the alternative trading system;

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–*1*, 78l, 78m, 78n, 78*o*, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

11. Section 240.3a1–1 is added before the undesignated center heading ''Definition of 'Equity Security' as Used in Sections 12(g) and 16'' to read as follows:

§ 240.3a1–1 Exemption from the definition of ''Exchange'' under Section 3(a)(1) of the Act.

(a) An organization, association, or group of persons shall be exempt from the definition of the term ''exchange'' under section 3(a)(1) of the Act (15 U.S.C. 78c(a)(1)), if such organization, association, or group of persons:

(1) Is operated by a national securities association; or

(2) Is an alternative trading system and is in compliance with Regulation ATS, 17 CFR 242.300 through 242.303.

(b) Notwithstanding paragraph (a) of this section, an organization, association, or group of persons shall not be exempt under this section from the definition of ''exchange,'' if:

(1) The Commission determines, after notice to the alternative trading system and an opportunity for the alternative trading system to respond, that such an exemption would not be necessary or appropriate in the public interest or consistent with the protection of investors; or

(2) The organization, association, or group of persons is registered as an exchange under section 6 of the Act (15 U.S.C. 78f).

(c) Alternative trading system has the same meaning as under § 242.300(a) of this chapter.

12. Section 240.3b–12 is added before the undesignated center heading ''Registration and Exemption of Exchanges'' to read as follows:

§ 240.3b–12 Definitions of terms used in Section 3(a)(1) of the Act.

(a) An organization, association, or group of persons shall be considered to constitute, maintain, or provide ''a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,'' as those terms are used in section 3(a)(1) of the Act (15 U.S.C. 78c(a)(1)), if such organization, association, or group of persons:

(1) Consolidates orders of multiple parties; and

(2) Sets non-discretionary material conditions (whether by providing a trading facility or by setting rules) under which the parties entering such orders agree to the terms of a trade.

(b) An organization, association, or group of persons shall not be considered to constitute, maintain, or provide ''a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,'' solely because such organization, association, or group of persons:

(1) Routes orders to a national securities exchange, a market operated by a national securities association, or a broker-dealer;

(2) Displays the quotes of a single dealer and allows persons to enter orders for execution against such dealer's quotes; or

(3) Provides the means for a single broker-dealer to internally manage customers' orders, including crossing or matching such orders with each other, *provided however* that:

(i) Customers' orders are not displayed to any person, other than the broker-dealer and its employees; and

(ii) Customers' orders are not executed according to a predetermined procedure that is communicated to such customers.

(c) For purposes of this section the term *order* means any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order.

13. Section 240.6a–1 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 240.6a–1 Application for registration as a national securities exchange or exemption from registration based on limited volume.

(a) An application for registration as a national securities exchange, or for exemption from such registration based on limited volume, shall be filed on Form 1 (§ 249.1 of this chapter), in accordance with the instructions contained therein.

(b) Promptly after the discovery that any information filed on Form 1 was inaccurate when filed, the exchange shall file with the Commission an amendment correcting such inaccuracy.

* * * * *

14. Section 240.6a–2 is revised to read as follows:

§ 240.6a–2 Amendments to application.

(a) A national securities exchange, or an exchange exempted from such registration based on limited volume, shall file an amendment, which shall set forth the nature and effective date of the action taken and shall provide any new information and correct any information rendered inaccurate, on Form 1, 17 CFR 240.249.1, within 10 days after any action is taken that renders inaccurate, or that causes to be incomplete, any of the following:

(1) Information filed on the Execution Page of Form 1, or amendment thereto; or

(2) Information filed as part of Exhibit C, F, G, I, J, K or M, or any amendments thereto.

(b) On or before June 30 of each year, a national securities exchange, or an exchange exempted from such registration based on limited volume, shall file, as an amendment to Form 1, the following:

(1) Exhibits D and H, as of the end of the latest fiscal year of the exchange; and

(2) Exhibits J, K, and M and, which shall be up to date as of the latest date practicable within 3 months of the date the amendment is filed.

(c) On or before June 30, 2001 and every 3 years thereafter, a national securities exchange, or an exchange exempted from such registration based on limited volume, shall file, as an amendment to Form 1, complete Exhibits A, B, C and H. The information filed under this paragraph (c) shall be current as of the latest practicable date, but shall, at a minimum, be up to date within 3 months as of the date the amendment is filed.

(d)(1) If an exchange, on an annual or more frequent basis, publishes, or cooperates in the publication of, any of the information required to be filed by paragraphs (b)(2) and (c) of this section, in lieu of filing such information, an exchange may:

(i) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price of such publication; and

(ii) Certify to the accuracy of such information as of its publication date.

(2) If an exchange keeps the information required under paragraphs (b)(2) and (c) of this section up to date and makes it available to the

Commission and the public upon request, in lieu of filing such information, an exchange may certify that the information is kept up to date and is available to the Commission and the public upon request.

(3) If the information required to be filed under paragraphs (b)(2) and (c) of this section is available continuously on an Internet web site controlled by an exchange, in lieu of filing such information with the Commission, such exchange may:

(i) Indicate the location of the Internet web site where such information may be found; and

(ii) Certify that the information available at such location is accurate as of its date.

(e) The Commission may exempt a national securities exchange, or an exchange exempted from such registration based on limited volume, from filing the amendment required by this section for any affiliate or subsidiary listed in Exhibit C of the exchange's application for registration, as amended, that either:

(1) Is listed in Exhibit C of the application for registration, as amended, of one or more other national securities exchanges; or

(2) Was an inactive subsidiary throughout the subsidiary's latest fiscal year. Any such exemption may be granted upon terms and conditions the Commission deems necessary or appropriate in the public interest or for the protection of investors, provided however, that at least one national securities exchange shall be required to file the amendments required by this section for an affiliate or subsidiary described in paragraph (e)(1) of this section.

15. Section 240.6a–3 is revised to read as follows:

§ 240.6a–3 Supplemental material to be filed by exchanges.

(a)(1) A national securities exchange, or an exchange exempted from such registration based on limited volume, shall file with the Commission any material (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. Such material shall be filed with the Commission within 10 days after issuing or making such material available to members, participants or subscribers.

(2) If the information required to be filed under paragraph (a)(1) of this section is available continuously on an Internet web site controlled by an exchange, in lieu of filing such information with the Commission, such exchange may:

(i) Indicate the location of the Internet web site where such information may be found; and

(ii) Certify that the information available at such location is accurate as of its date.

(b) Within 15 days after the end of each calendar month, a national securities exchange or an exchange exempted from such registration based on limited volume, shall file a report concerning the securities sold on such exchange during the calendar month. Such report shall set forth:

(1) The number of shares of stock sold and the aggregate dollar amount of such stock sold;

(2) The principal amount of bonds sold and the aggregate dollar amount of such bonds sold; and

(3) The number of rights and warrants sold and the aggregate dollar amount of such rights and warrants sold.

16. Section 240.11Ac1–1 is amended by redesignating paragraph (c)(5)(ii)(A) as paragraph (c)(5)(ii)(A)(*1*), paragraph (c)(5)(ii)(B) as paragraph (c)(5)(ii)(A)(*2*), paragraph (c)(5)(ii)(B)(*1*) as paragraph (c)(5)(ii)(A)(*2*)(*i*), paragraph (c)(5)(ii)(B)(*2*) as paragraph (c)(5)(ii)(A)(*2*)(*ii*), in newly designated paragraph (c)(5)(ii)(A)(*2*)(*ii*) removing the period and adding in its place ''; or'', and adding paragraph (c)(5)(ii)(B) to read as follows:

§ 240.11Ac1–1 Dissemination of quotations.

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(A)(*1*) * * *

(B) Is an alternative trading system that:

(*1*) Displays orders and provides the ability to effect transactions with such orders under § 242.301(b)(3) of this chapter; and

(*2*) Otherwise is in compliance with Regulation ATS, § 242.300 through 242.303.

* * * * *

17. Section 240.17a–3 is amended by adding paragraph (a)(16) to read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

(a) * * *

(16)(i) The following records regarding any internal broker-dealer system of which such a broker or dealer is the sponsor:

(A) A record of the broker's or dealer's customers that have access to an internal broker-dealer system sponsored by such broker or dealer (identifying any affiliations between such customers and the broker or dealer);

(B) Daily summaries of trading in the internal broker-dealer system, including:

(*1*) Securities for which transactions have been executed through use of such system; and

(*2*) Transaction volume (separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation):

(*i*) With respect to equity securities, in number of trades, number of shares, and total U.S. dollar value;

(*ii*) With respect to debt securities, in total U.S. dollar value; and

(*iii*) With respect to other securities, in number of trades, number of units of securities, and in dollar value, or other appropriate commonly used measure of value of such securities; and

(C) Time-sequenced records of each transaction effected through the internal broker-dealer system, including date and time executed, price, size, security traded, counterparty identification information, and method of execution (if internal broker-dealer system allows alternative means or locations for execution, such as routing to another market, matching with limit orders, or executing against the quotations of the broker or dealer sponsoring the system).

(ii) For purposes of this paragraph the term:

(A) *Internal broker-dealer system* shall mean any facility, other than a national securities exchange, an exchange exempt from registration based on limited volume, or an alternative trading system as defined in Regulation ATS, §§ 242.300 through 242.303 of this chapter, that provides a mechanism, automated in full or in part, for collecting, receiving, disseminating, or displaying system orders and facilitating agreement to the basic terms of a purchase or sale of a security between a customer and the sponsor, or between two customers of the sponsor, through use of the internal broker-dealer system or through the broker or dealer sponsor of such system;

(B) *Sponsor* shall mean any broker or dealer that organizes, operates, administers, or otherwise directly controls an internal broker-dealer trading system or, if the operator of the internal broker-dealer system is not a registered broker or dealer, any broker or dealer that, pursuant to contract, affiliation, or other agreement with the system operator, is involved on a regular basis with executing transactions in connection with use of the internal broker-dealer system, other than solely

for its own account or as a customer with access to the internal broker-dealer system; and

(C) *System order* means any order or other communication or indication submitted by any customer with access to the internal broker-dealer system for entry into a trading system announcing an interest in purchasing or selling a security. The term ''system order'' does not include inquiries or indications of interest that are not entered into the internal broker-dealer system.

18. Section 240.17a–4 is amended by revising paragraph (b)(1) and adding paragraph (b)(10) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(1) All records required to be made pursuant to paragraphs (a) (4), (6), (7), (8), (9), and (10) of § 240.17a–3.

* * * * *

(10) All notices relating to an internal broker-dealer system provided to the customers of the broker or dealer that sponsors such internal broker-dealer system, as defined in paragraph (a)(16)(ii)(A) of § 240.17a–3. Notices, whether written or communicated through the internal broker-dealer trading system or other automated means, shall be preserved under this paragraph (b)(10) if they are provided to all customers with access to an internal broker-dealer system, or to one or more classes of customers. Examples of notices to be preserved under this paragraph (b)(10) include, but are not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, and instructions pertaining to access to the internal broker-dealer system.

* * * * *

§ 240.17a–23 [Removed and reserved]

19. Section 240.17a–23 is removed and reserved.

20. Section 240.19b–5 is added to read as follows:

§ 240.19b–5 Temporary exemption from the filing requirements of Section 19(b) of the Act.

Preliminary Notes

1. The following section provides for a temporary exemption from the rule filing requirement for self-regulatory organizations that file proposed rule changes concerning the operation of a pilot trading system pursuant to section 19(b) of the Act (15 U.S.C. 78s(b), as amended). All other requirements under the Act that are applicable to self-regulatory organizations continue to apply.

2. The disclosures made pursuant to the provisions of this section are in addition to any other applicable disclosure requirements under the federal securities laws.

(a) For purposes of this section, the term *pilot trading system* shall mean a trading system operated by a self-regulatory organization that is not substantially similar to any pilot trading system operated by such self-regulatory organization at any time during the preceding year, and that:

(1)(i) Has been in operation for less than two years;

(ii) Is independent of any other trading system operated by such self-regulatory organization that has been approved by the Commission pursuant to section 19(b) of the Act, (15 U.S.C. 78s(b));

(iii) With respect to each security traded on such pilot trading system, during at least two of the last four consecutive calendar months, has traded no more than 5% of the average daily share trading volume of such security in the United States; and

(iv) With respect to all securities traded on such pilot trading system, during at least two of the last four consecutive calendar months, has traded no more than 20% of the average daily share trading volume of all trading systems operated by such self-regulatory organization; or

(2)(i) Has been in operation for less than two years;

(ii) With respect to each security traded on such pilot trading system, during at least two of the last four consecutive calendar months, has traded no more than 1% of the average daily share trading volume of such security in the United States; and

(iii) With respect to all securities traded on such pilot trading system, during at least two of the last four consecutive calendar months, has traded no more than 20% of the average daily share trading volume of all trading systems operated by such self-regulatory organization; or

(3)(i) Has been in operation for less than two years; and

(ii)(A) Satisfied the definition of *pilot trading system* under paragraph (a)(1) of this section no more than 60 days ago, and continues to be independent of any other trading system operated by such self-regulatory organization that has been approved by the Commission pursuant to section 19(b) of the Act, (15 U.S.C. 78s(b)); or

(B) Satisfied the definition of *pilot trading system* under paragraph (a)(2) of this section no more than 60 days ago.

(b) A pilot trading system shall be deemed *independent* of any other trading system operated by a self-regulatory organization if:

(1) Such pilot trading system trades securities other than the issues of securities that trade on any other trading system operated by such self-regulatory organization that has been approved by the Commission pursuant to section 19(b) of the Act, (15 U.S.C. 78s(b)); or

(2) Such pilot trading system does not operate during the same trading hours as any other trading system operated by such self-regulatory organization that has been approved by the Commission pursuant to section 19(b) of the Act, (15 U.S.C. 78s(b)); or

(3) No specialist or market maker on any other trading system operated by such self-regulatory organization that has been approved by the Commission pursuant to section 19(b) of the Act, (15 U.S.C. 78s(b)), is permitted to effect transactions on the pilot trading system in securities in which they are a specialist or market maker.

(c) A self-regulatory organization shall be exempt temporarily from the requirement under section 19(b) of the Act, (15 U.S.C. 78s(b)), to submit a proposed rule change on Form 19b–4, 17 CFR 249.819, if the self-regulatory organization complies with the requirements in this paragraph (c).

(1) *Scope of exemption.* Such proposed rule change relates to the operation of a pilot trading system.

(2) *Form PILOT.* The self-regulatory organization:

(i) Files Part I of Form PILOT, 17 CFR 249.821, in accordance with the instructions therein, at least 20 days prior to commencing operation of the pilot trading system;

(ii) Files an amendment on Part I of Form PILOT at least 20 days prior to implementing a material change to the operation of the pilot trading system; and

(iii) Files a quarterly report on Part II of Form PILOT within 30 calendar days after the end of each calendar quarter in which the market has operated after the effective date of this section.

(3) *Trading rules and procedures and listing standards.* The self-regulatory organization has in place trading rules and procedures and listing standards necessary to operate the pilot trading system.

(4) *Surveillance.* The self-regulatory organization establishes internal procedures for the effective surveillance of trading activity on the self-regulatory organization's pilot trading system.

(5) *Clearance and settlement.* The self-regulatory organization establishes reasonable clearance and settlement procedures for transactions effected on

the self-regulatory organization's pilot trading system.

(6) *Types of securities.* The self-regulatory organization:

(i) Permits to trade on the pilot trading system only securities listed on a national securities exchange or to which unlisted trading privileges have been extended pursuant to a rule, regulation, or order of the Commission under section 12(f) of the Act, (15 U.S.C. 78*l*(f));

(ii) Does not permit to trade on the pilot trading system any security or instrument, such as an option, warrant or hybrid product, the value of which is based, in whole or in part, upon the performance of any security that is traded on another trading system operated by such self-regulatory organization that has been approved by the Commission pursuant to section 19(b) of the Act, (15 U.S.C. 78s(b)); and

(iii) Does not permit to trade on the pilot trading system any security or instrument, such as an equity security, the derivative of which is traded on another trading system operated by such self-regulatory organization that has been approved by the Commission pursuant to section 19(b) of the Act, (15 U.S.C. 78s(b)).

(7) *Procedures to ensure the confidential treatment of trading information.* The self-regulatory organization has in place adequate safeguards and procedures relating to the treatment of trading information. Such safeguards and procedures shall include:

(i) Limiting access to the confidential information regarding the identity of members, and other persons, effecting transactions on the pilot trading system, as well as such members' and other persons' confidential trading information, to those employees of the self-regulatory organization who are operating the pilot trading system or are responsible for such pilot trading system's compliance with these or any other applicable rules;

(ii) Implementing standards controlling the self-regulatory organization employees' trading for their own accounts; and

(iii) Adopting and implementing adequate oversight procedures to ensure that the safeguards and procedures outlined in paragraphs (c)(7)(i) and (ii) of this section are followed.

(8) *Examinations, inspections, and investigations of subscribers.* The self-regulatory organization and its members cooperate with the examination, inspection, or investigation by the Commission of transactions effected on the pilot trading system.

(9) *Recordkeeping.* The self-regulatory organization shall retain at its principal place of business and make available to Commission staff for inspection, all the rules and procedures relating to each pilot trading system operating pursuant to this section for a period of not less than five years, the first two years in an easily accessible place, as prescribed in § 240.17a–1.

(10) Every notice or amendment filed pursuant to this paragraph (c) shall constitute a ''report'' within the meaning of sections 11A, 17(a), 18(a), and 32(a), (15 U.S.C. 78k–1, 78q(a), 78r(a), and 78ff(a)), and any other applicable provisions of the Act. All notices or report filed pursuant to this paragraph (c) shall be deemed to be confidential.

(d) A self-regulatory organization shall request Commission approval, pursuant to section 19(b)(2) of the Act, (15 U.S.C. 78s(b)), for any rule change relating to the operation of a pilot trading system by submitting Form 19b–4, 17 CFR 249.819, no later than two years after the commencement of operation of such pilot trading system, or shall cease operation of the pilot trading system.

(e) Simultaneous with a request for Commission approval pursuant to section 19(b)(2) of the Act, (15 U.S.C. 78s(b)(2)), a self-regulatory organization may request Commission approval pursuant to section 19(b)(3)(A) of the Act, (15 U.S.C. 78s(b)(3)(A)), for any rule change relating to the operation of a pilot trading system by submitting Form 19b–4, 17 CFR 249.819, effective immediate upon filing, to continue operations of such trading system for a period not to exceed six months.

(f) Notwithstanding paragraph (c) of this section, rule changes with respect to pilot trading systems operated by a self-regulatory organization shall not be exempt from the rule filing requirements of section 19(b) of the Act, (15 U.S.C. 78s(b)(2)), if the Commission determines, after notice to the SRO and opportunity for the SRO to respond, that exemption of such changes would not be necessary or appropriate in the public interest or consistent with the protection of investors.

PART 242—REGULATIONS M AND ATS

21. The authority citation for part 242 is revised to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78 mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 80a–23, 80a–29, and 80a–37.

22. The part heading for part 242 is revised as set forth above.

23. Part 242 is amended by adding Regulation ATS, §§ 242.300 through 242.303 to read as follows:

Regulation ATS—Alternative Trading Systems

Sec.

242.300 Definitions.
242.301 Requirements for alternative trading systems that are not national securities exchanges.
242.302 Recordkeeping requirements for alternative trading systems.
242.303 Record preservation requirements for alternative trading systems.

Regulation ATS—Alternative Trading Systems

Preliminary Notes

1. An alternative trading system is required to comply with the requirements in this Regulation ATS, unless such alternative trading system:

(a) Is registered as a national securities exchange;

(b) Is exempt from registration as a national securities exchange based on the limited volume of transactions effected on the alternative trading system; or

(c) Trades only government securities and certain other related instruments.

All alternative trading systems must comply with the antifraud, antimanipulation, and other applicable provisions of the federal securities laws.

2. The requirements imposed upon an alternative trading system by Regulation ATS are in addition to any requirements applicable to broker-dealers registered under Section 15 of the Act, (15 U.S.C. 78o).

3. An alternative trading system must comply with any applicable state law relating to the offer or sale of securities or the registration or regulation of persons or entities effecting transactions in securities.

4. The disclosures made pursuant to the provisions of this section are in addition to any other disclosure requirements under the federal securities laws.

§ 242.300 Definitions.

For purposes of this section, the following definitions shall apply:

(a) *Alternative trading system* means any organization, association, person, group of persons, or system:

(1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of § 240.3b–12 of this chapter; and

(2) That does not:

(i) Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system, or

(ii) Discipline subscribers other than by exclusion from trading.

(b) *Subscriber* means any person that has entered into a contractual agreement with an alternative trading system to access such alternative trading system for the purpose of effecting transactions in securities or submitting, disseminating, or displaying orders on such alternative trading system, including a customer, member, user, or participant in an alternative trading system. A subscriber, however, shall not include a national securities exchange or national securities association.

(c) *Affiliate of a subscriber* means any person that, directly or indirectly, controls, is under common control with, or is controlled by, the subscriber, including any employee.

(d) *Debt security* shall mean any security other than an equity security, as defined in § 240.3a11–1 of this chapter, as well as non-participatory preferred stock.

(e) *Order* means any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order.

(f) *Control* means the power, directly or indirectly, to direct the management or policies of an alternative trading system, whether through ownership of securities, by contract, or otherwise. A person is presumed to *control* an alternative trading system, if that person:

(1) Is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions);

(2) Directly or indirectly has the right to vote 25% or more of a class of voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities of the alternative trading system; or

(3) In the case of a partnership, has contributed, or has the right to receive upon dissolution, 25% or more of the capital of the alternative trading system.

(g) *Covered security* shall have the meaning provided in § 240.11Ac1–1(a)(6) of this chapter, *provided, however,* that a debt or convertible debt security shall not be deemed a covered security for purposes of Regulation ATS.

(h) *Effective transaction reporting plan* shall have the meaning provided in § 240.11Aa3–1(a)(3) of this chapter.

(i) *Exchange market maker* shall have the meaning provided in § 240.11Ac1–1(a)(9) of this chapter.

(j) *OTC market maker* shall have the meaning provided in § 240.11Ac1–1(a)(13) of this chapter.

(k) *Corporate debt security* shall mean any security, other than an exempted security, that evidences a liability of the issuer and that has a maturity date that is at least one year following the date of issuance.

§ 242.301 Requirements for alternative trading systems that are not national securities exchanges.

(a) *Scope of section.* An alternative trading system shall comply with the requirements in paragraph (b) of this section, unless such alternative trading system is:

(1) Registered as an exchange under section 6 of the Act, (15 U.S.C. 78f);

(2) Exempt from registration as an exchange based on the limited volume of transactions effected;

(3) Operated by a national securities association; or

(4) Registered as a broker-dealer under sections 15(b), or 15C of the Act, (15 U.S.C. 78o(b), and 78o–5), and trades only the following types of securities:

(i) Government securities, as defined in section 3(a)(42) of the Act, (15 U.S.C. 78c(a)(42));

(ii) Debt securities that:

(A) Are issued pursuant to the Brady Plan debt-restructuring program; and

(B) Have all of their principal payments guaranteed by the issuance of government securities; and

(iii) Repurchase and reverse repurchase agreements solely involving securities included within paragraphs (a)(4)(i) and (a)(4)(ii) of this section.

(b) *Requirements.* Every alternative trading system subject to this Regulation ATS, pursuant to paragraph (a) of this section, shall comply with the requirements in this paragraph (b).

(1) *Broker-dealer registration.* The alternative trading system shall register as a broker-dealer under section 15 of the Act, (15 U.S.C. 78o).

(2) *Notice.* (i) The alternative trading system shall file an initial operation report on Form ATS, § 249.637 of this chapter, in accordance with the instructions therein, at least 20 days prior to commencing operation as an alternative trading system, or if the alternative trading system is operating as of (*effective* date of rule), no later than (60 days following effective date).

(ii) The alternative trading system shall file an amendment on Form ATS at least 20 calendar days prior to implementing a material change to the operation of the alternative trading system.

(iii) If any information contained in the initial operation report filed under paragraph (b)(2)(i) of this section becomes inaccurate for any reason and has not been previously reported to the Commission as an amendment on Form ATS, the alternative trading system shall file an amendment on Form ATS correcting such information within 30 calendar days after the end of each calendar quarter in which the alternative trading system has operated.

(iv) The alternative trading system shall promptly file an amendment on Form ATS correcting information previously reported on Form ATS after discovery that any information filed under paragraphs (b)(2)(i), (ii) or (iii) of this section was inaccurate when filed.

(v) The alternative trading system shall promptly file a cessation of operations report on Form ATS in accordance with the instructions therein upon ceasing to operate as an alternative trading system.

(vi) Every notice or amendment filed pursuant to this paragraph (b)(2) shall constitute a ''report'' within the meaning of sections 11A, 17(a), 18(a), and 32(a), (15 U.S.C. 78k–1, 78q(a), 78r(a), and 78ff(a)), and any other applicable provisions of the Act.

(vii) The reports provided for in paragraph (b)(2) of this section shall be considered filed upon receipt at the Commission's principal office in Washington, DC. Duplicate originals of the reports provided for in paragraphs (b)(2)(i) through (v) of this section must be filed with surveillance personnel designated as such by any self-regulatory organization of which the alternative trading system is a member simultaneously with filing with the Commission. Duplicates of the reports required by paragraph (b)(9) of this section shall be provided to surveillance personnel of such self-regulatory authority upon request. All reports filed pursuant to this paragraph (b)(2) and paragraph (b)(9) of this section shall be deemed confidential when filed.

(3) *Order display and execution access.* (i) An alternative trading system shall comply with the requirements set forth in paragraph (b)(3)(ii) of this section if, with respect to any covered security in which the alternative trading system:

(A) Displays subscriber orders to any person (other than alternative trading system employees); and

(B) During at least 4 of the preceding 6 calendar months, had an average daily trading volume greater than 10% of the aggregate average daily share volume for such covered security as reported by an effective transaction reporting plan or disseminated through an automated quotation system as described in section 3(a)(51)(A)(ii) of the Act, (15 U.S.C. 78c(a)(51)(A)(ii)).

(ii) Such alternative trading system shall:

(A) Provide to a national securities exchange or national securities association (or an exclusive processor acting on behalf of one or more national

securities exchanges or national securities associations) the prices and sizes of the orders at the highest buy price and the lowest sell price for such covered security displayed to more than one person in the alternative trading system and ensure that such prices and sizes are included in the quotation data made available by the exchange, association or exclusive processor to quotation vendors pursuant to § 240.11Ac1–1 of this chapter; and

(B) Provide to any broker-dealer that has access to a national securities exchange or national securities association, to which the alternative trading system provides the prices and sizes of displayed orders pursuant to paragraph (b)(3)(ii)(A) of this section, the ability to effect a transaction with such orders that is:

(*1*) Equivalent to the ability of such member to effect a transaction with other orders displayed on the exchange or by the association; and

(*2*) At the price of the highest priced buy order or lowest priced sell order displayed for the lesser of the cumulative size of such priced orders entered therein at such price, or the size of the execution sought by the member.

(4) *Fees.* The alternative trading system shall not charge any fee to members of a national securities exchange or national securities association for access to the alternative trading system required by paragraph (b)(3)(ii)(B) of this section that is:

(i) In excess of the highest fee the alternative trading system charges a substantial proportion of its broker-dealer subscribers for access made available to subscribers by the alternative trading system; or

(ii) Prohibited by rules of the national securities exchange or national securities association, to which the alternative trading system provides the prices and sizes of orders under paragraph (b)(3)(ii)(B) of this section, that are designed to assure consistency with standards for access to quotations displayed on the market operated by such national securities exchange or national securities association.

(5) *Fair access.* (i) An alternative trading system shall comply with the requirements in paragraph (b)(5)(ii) of this section, if during at least 4 of the preceding 6 calendar months, such alternative trading system had:

(A) With respect to any covered security, greater than 20% of the average daily share volume in that security reported by the effective transaction reporting plan or disseminated through an automated quotation system as described in section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii));

(B) With respect to an equity security that is not a covered security and for which transactions are reported to a self-regulatory organization, greater than 20% of the average daily share volume in that security as calculated by the self-regulatory organization to which such transactions are reported; or

(C) With respect to any category of debt security, including corporate debt securities, greater than 20% of the average daily volume traded in the United States.

(ii) An alternative trading system shall:

(A) Establish standards for granting access to trading on its system;

(B) Not unreasonably prohibit or limit any person in respect to access to services offered by such alternative trading system; and

(C) Within 24 hours of prohibiting or limiting, directly or indirectly, any person's access to any services offered by an alternative trading system, such alternative trading system shall send notice to such person stating that such person has the right to appeal to the Commission the action taken by such alternative trading system.

(iii) If any alternative trading system meeting the standards in paragraph (b)(5)(i) of this section, directly or indirectly, prohibits or limits access to the services offered, any person aggrieved thereby may file with the Commission a written motion for a stay of such prohibition or limitation pursuant to § 201.401 of this chapter.

(iv) Applications to the Commission for review of any prohibition or limitation of access to services offered by an alternative trading system shall be made pursuant to § 201.420 of this chapter.

(v) Every notice filed pursuant to this paragraph (b)(5) shall constitute a ''report'' within the meaning of sections 11A, 17(a), 18(a), and 32(a) (15 U.S.C. 78q(a), 78r(a), and 78ff(a)), and any other applicable provisions, of the Act.

(vi) All reports filed pursuant to this paragraph (b)(5) shall be deemed confidential when filed.

(6) *Capacity, integrity, and security of automated systems.* (i) The alternative trading system shall comply with the requirements in paragraph (b)(6)(ii) of this section, if during at least 4 of the preceding 6 calendar months, such alternative trading system had an average daily share volume:

(A) With respect any covered security, greater than 20% of the average daily share volume reported by the effective transaction reporting plan or disseminated through an automated quotation system as described in section 3(a)(51)(A)(ii) of the Act, (15 U.S.C. 78c(a)(51)(A)(ii));

(B) With respect to equity securities that are not covered securities and for which transactions are reported to a self-regulatory organization, greater than 20% of the average daily share volume as calculated by the self-regulatory organization to which such transactions are reported; or

(C) With respect to category of debt security, including corporate debt securities, greater than 20% of the average daily volume traded in the United States.

(ii) With respect to those systems that support order entry, order routing, execution, transaction reporting, and trade comparison, the alternative trading system shall:

(A) Establish reasonable current and future capacity estimates;

(B) Conduct periodic capacity stress tests of critical systems to determine such system's ability to process transactions in an accurate, timely, and efficient manner;

(C) Develop and implement reasonable procedures to review and keep current its system development and testing methodology;

(D) Review vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters;

(E) Establish adequate contingency and disaster recovery plans;

(F) On an annual basis, perform an independent review, in accordance with established audit procedures and standards, of such alternative trading system's controls for ensuring that paragraphs (b)(6)(ii)(A) through (E) of this section are met, and conduct a review by senior management of a report containing the recommendations and conclusions of the independent review; and

(G) Promptly notify the Commission staff of material systems outages and significant systems changes.

(7) *Examinations, inspections, and investigations of subscribers.* The alternative trading system shall permit the examination and inspection, of its premises, systems, and records, and cooperate with the examination, inspection, or investigation of subscribers, whether such examination is being conducted by the Commission or by a self-regulatory organization of which such subscriber is a member.

(8) *Recordkeeping.* The alternative trading system shall:

(i) Make and keep current the records specified in § 242.302; and

(ii) Preserve the records specified in § 242.303.

(9) *Reporting.* The alternative trading system shall:

(i) File the information described in Form ATS–R (§ 249.638 of this chapter) within 30 calendar days after the end of each calendar quarter in which the market has operated after the effective date of this section; and

(ii) File the information described in Form ATS–R within 10 calendar days after an alternative trading system ceases to operate.

(10) *Procedures to ensure the confidential treatment of trading information.* The alternative trading system shall have in place adequate safeguards and procedures to protect subscribers' confidential trading information. Such safeguards and procedures shall include:

(i) Limiting access to the confidential trading information of subscribers to those employees of the alternative trading system who are operating the system or responsible for its compliance with these or any other applicable rules;

(ii) Implementing standards controlling employees of the alternative trading system trading for their own accounts; and

(iii) Adopting and implementing adequate oversight procedures to ensure that the safeguards and procedures outlined in paragraphs (b)(6)(ii)(A), (B) and (C) of this section are followed.

(11) *Name.* The alternative trading system shall not use in its name the word ''exchange,'' or derivations of the word ''exchange.''

§ 242.302 Recordkeeping requirements for alternative trading systems.

To comply with the condition set forth in paragraph (b)(8) of § 242.301, an alternative trading system shall make and keep current the following records:

(a) A record of subscribers to such alternative trading system (identifying any affiliations between the alternative trading system and subscribers to the alternative trading system);

(b) Daily summaries of trading in the alternative trading system including:

(1) Securities for which transactions have been executed;

(2) Transaction volume, expressed with respect to equity securities in:

(i) Number of trades;

(ii) Number of shares traded; and

(iii) Total U.S. dollar value; and

(3) Transaction volume, expressed with respect to debt securities in:

(i) Number of trades; and

(ii) Total U.S. dollar value; and

(c) Time-sequenced records of order information in the alternative trading system, including:

(1) Date and time (expressed in terms of hours, minutes, and seconds) that the order was received;

(2) Identity of the security;

(3) The number of shares or bonds to which the order applies;

(4) An identification of the order related to a program trade or an index arbitrage trade as defined in New York Stock Exchange Rule 80A;

(5) The designation of the order as a buy or sell order;

(6) The designation of the order as a short sale order;

(7) The designation of the order as a market order, limit order, stop order, stop limit order, or other type or order;

(8) Any limit or stop price prescribed by the order;

(9) The date on which the order expires and, if the time in force is less than one day, the time when the order expires;

(10) The time limit during which the order is in force;

(11) Any instructions to modify or cancel the order;

(12) Date and time (expressed in terms of hours, minutes, and seconds) that the order was executed;

(13) Price at which the order was executed;

(14) Size of the order executed (expressed in number of shares or units or principal amount);

(15) The type of account, *i.e.*, retail, wholesale, employee, proprietary, or any other type of account designated by the alternative trading system, for which the order is submitted; and

(16) Identity of the parties to the transaction.

§ 242.303 Record preservation requirements for alternative trading systems.

(a) To comply with the condition set forth in paragraph (b)(9) of § 242.301, an alternative trading system shall preserve the following records:

(1) For a period of not less than three years, the first two years in an easily accessible place, an alternative trading system shall preserve:

(i) All records required to be made pursuant to § 242.302;

(ii) All notices provided by such alternative trading system to subscribers generally, whether written or communicated through automated means, including, but not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the market and denials of, or limitations on, access to the alternative trading system;

(iii) If subject to paragraph (b)(5)(ii) of § 242.301, at least one copy of such alternative trading system's standards for access to trading; and

(iv) At least one copy of all documents made or received by the alternative trading system in the course of complying with paragraph (b)(6) of § 242.301, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records.

(2) During the life of the enterprise and of any successor enterprise, an alternative trading system shall preserve:

(i) All partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books; and

(ii) Copies of reports filed pursuant to paragraphs (b)(2) and (b)(5) of § 242.301.

(b) The records required to be maintained and preserved pursuant to paragraph (a) of this section must be produced, reproduced, and maintained in paper form or in any of the forms permitted under § 240.17a–4(f) of this chapter.

(c) Alternative trading systems must comply with any other applicable recordkeeping or reporting requirement in the Act, and the rules and regulations thereunder. If the information in a record required to be made pursuant to § 242.303 is preserved in a record made pursuant to § 240.17a–3 or § 240.17a–4 of this chapter, or otherwise preserved by the alternative trading system (whether in summary or some other form), § 242.303 shall not require the sponsor to maintain such information in a separate file, provided that the sponsor can promptly sort and retrieve the information as if it had been kept in a separate file as a record made pursuant to this section, and preserves the information in accordance with the time periods specified in paragraph (a)(1) of § 242.303.

(d) The records required to be maintained and preserved pursuant to § 242.303 may be prepared or maintained by a service bureau, depository, or other recordkeeping service on behalf of the alternative trading system. An agreement with a service bureau, depository, or other recordkeeping service shall not relieve the alternative trading system from the responsibility to prepare and maintain records as specified in this section. The service bureau, depository, or other recordkeeping service shall file with the Commission a written undertaking in a form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the alternative trading system required to maintain and preserve such records and will be surrendered promptly on request of the

alternative trading system and including the following provision:

With respect to any books and records maintained or preserved on behalf of [name of alternative trading system], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to the Commission or its designee a true, correct, complete and current hard copy of any or all or any part of such books and records.

(e) Every alternative trading system shall furnish to any representative of the Commission promptly upon request, legible, true, and complete copies of those records that are required to be preserved under this section.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

24. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

25. Section 249.1 and Form 1 are revised to read as follows:

§ 249.1 Form 1, for application for, and amendments to applications for, registration as a national securities exchange or exemption from registration pursuant to Section 5 of the Exchange Act.

The form shall be used for application for, and amendments to applications for, registration as a national securities exchange or exemption from registration pursuant to section 5 of the Exchange Act, (15 U.S.C. 78e).

BILLING CODE 8010–01–P

Form 1

OMB APPROVAL
OMB Number: 3235-0017
Expires:
Estimated Average
burden hours per form:

APPLICATION FOR, AND AMENDMENTS TO APPLICATION FOR, REGISTRATION AS A NATIONAL SECURITIES EXCHANGE OR EXEMPTION FROM REGISTRATION PURSUANT TO SECTION 5 OF THE EXCHANGE ACT

FORM 1 INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Form 1 is the application for registration as a national securities exchange or an exchange exempt from registration pursuant to Section 5 of the Securities Exchange Act of 1934 ("Exchange Act").

2. **UPDATING** - A registered exchange or exchange exempt from registration pursuant to Section 5 of the Exchange Act must file amendments to Form 1 in accordance with Exchange Act Rule 6a-2.

3. **CONTACT EMPLOYEE** - The individual listed on the Execution Page (Page 1) of Form 1 as the contact employee must be authorized to receive all contact information, communications and mailings and is responsible for disseminating such information within the applicant's organization.

4. **FORMAT**
- Attach an Execution Page (Page 1) with original manual signatures.
- Form 1 and accompanying exhibits shall be filed in duplicate.
- Please type all information.
- Use only the current version of Form 1 or a reproduction.

5. If the information called for by any Exhibit is available in printed form, the printed material may be filed provided it does not exceed 8 1/2 X 11 inches in size.

6. If any Exhibit required is inapplicable, a statement to that effect shall be furnished in lieu of such Exhibit.

7. An exchange that is filing Form 1 as an application may not satisfy the requirements to provide certain information by means of an Internet web page. All materials must be filed with the Commission in paper.

8. **PAPERWORK REDUCTION ACT DISCLOSURE**
- Form 1 requires an exchange seeking to register as a national securities exchange or seeking an exemption from registration as a national securities exchange pursuant to Section 5 of the Exchange Act to provide the Securities and Exchange Commission ("SEC" or "Commission") with certain information regarding the operation of the exchange. Form 1 also requires national securities exchanges or exchanges exempt from registration based on limited volume to update certain information on a periodic basis.

- An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 3(a)(1), 5, 6(a) and 23(a) authorize the Commission to collect information on this Form 1 from exchanges. *See* 15 U.S.C. §§78c(a)(1), 78e, 78f(a) and 78w(a).

- Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on the facing page of Form 1 and any suggestions for reducing this burden.

- Form 1 is designed to enable the Commission to determine whether an exchange applying for registration is in compliance with the provisions of Sections 6 and 19 of the Exchange Act. Form 1 is also designed to enable the Commission to determine whether a national securities exchange or exchange exempt from registration based on limited volume is operating in compliance with the Exchange Act.

- It is estimated that an exchange will spend approximately 47 hours completing the initial application on Form 1 pursuant to Rule 6a-1. It is also estimated that each exchange will spend approximately 25 hours to prepare each amendment to Form 1 pursuant to Rule 6a-2.

- Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

- It is mandatory that an exchange seeking to operate as a national securities exchange or as an exchange exempt from registration based on limited volume file a Form 1 with the Commission. It is also mandatory that national securities exchanges or exchanges exempt from registration based on limited volume file amendments to Form 1 under Rule 6a-2.

- No assurance of confidentiality is given by the Commission with respect to the responses made in Form 1. The public has access to the information contained in Form 1.

- This collection of information has been reviewed by the Office of Management and Budget ("OMB") in accordance with the clearance requirements of 44 U.S.C. §3507. The applicable Privacy Act system of records is SEC-2 and the routine uses of the records at set forth at 40 FR 39255 (August 27, 1975) and 41 FR 5318 (February 5, 1976).

FORM 1 INSTRUCTIONS

B. EXPLANATION OF TERMS

APPLICANT - The entity or organization filing an application for registration, or an exemption for registration, or amending any such application on this Form 1.

AFFILIATE - Any person that, directly or indirectly, controls, is under common control with, or is controlled by, the national securities exchange or exchange exempt from registration based on the limited volume of transactions effected on such exchange, including any employees.

CONTROL - The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that entity.

DIRECT OWNERS - Any person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the applicant. For purposes of this Form 1, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

MEMBER - Shall have the same meaning as assigned in Exchange Act Section 3(a)(3).

NATIONAL SECURITIES EXCHANGE - Shall mean any exchange registered pursuant to Section 6 of the Exchange Act.

PERSON ASSOCIATED WITH A MEMBER - Shall have the same meaning as assigned in Section 3(a)(21) of the Exchange Act.

Form 1 Page 1 Execution Page	**U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 APPLICATION FOR, AND AMENDMENTS TO APPLICATION FOR REGISTRATION AS A NATIONAL SECURITIES EXCHANGE OR EXEMPTION FROM REGISTRATION PURSUANT TO SECTION 5 OF THE EXCHANGE ACT**	Date filed (MM/DD/YY):	OFFICIAL USE ONLY

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of alternative trading systems would violate the federal securities laws and may result in disciplinary, administrative or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

❑ APPLICATION ❑ AMENDMENT

1. State the name of the applicant: _____

2. Provide the applicant's primary street address (Do not use a P.O. Box):

_____

_____

3. Provide the applicant's mailing address (if different):

_____

_____

4. Provide the business telephone and facsimile number:

_____

(Telephone) (Facsimile)

5. Provide the name, title and telephone number of a contact employee:

_____

(Name) (Title) (Telephone Number)

6. Provide the name and address of counsel for the applicant:

_____

_____

_____

7. Provide the date that applicant's fiscal year ends: _____

8. Indicate legal status of applicant: ☐ Corporation ☐ Sole Proprietorship ☐ Partnership

☐ Limited Liability Company ☐ Other (specify): _____

If other than a sole proprietor, indicate the date and place where applicant obtained its legal status (e.g. state where incorporated, place where partnership agreement was filed or where applicant entity was formed):

(a) Date (MM/DD/YY): _____ (b) State/Country of formation: _____

(c) Statute under which applicant was organized: _____

EXECUTION:

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission in connection with the applicant's activities may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Items 2 and 3. The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true and complete.

Date: _____ _____

(MM/DD/YY) (Name of applicant)

By: _____ _____

(Signature) (Printed Name and Title)

Subscribed and sworn before me this _____ day of _____, _____ by _____

(Month) (Year) (Notary Public)

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.
Affix notary stamp or seal where applicable.

DO NOT WRITE BELOW THIS LINE - FOR OFFICIAL USE ONLY

Form 1 Page 2	**U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 APPLICATION FOR, AND AMENDMENTS TO APPLICATION FOR, REGISTRATION AS A NATIONAL SECURITIES EXCHANGE OR EXEMPTION FROM REGISTRATION PURSUANT TO SECTION 5 OF THE EXCHANGE ACT**	OFFICIAL USE	OFFICIAL USE ONLY

EXHIBITS

File all Exhibits with: an application for registration as a national securities exchange, or exemption from registration pursuant to Section 5 of the Exchange Act and Rule 6a-1, or amendments to such applications pursuant to Rule 6a-2. For each exhibit, include the name of the applicant, the date upon which the exhibit was filed and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished in lieu of such Exhibit.

Exhibit A — A copy of the constitution, articles of incorporation or association with all subsequent amendments, and of existing by-laws or corresponding rules or instruments, whatever the name, of the applicant.

Exhibit B — A copy of all written rulings, settled practices having the effect of rules, and interpretations of the Governing Board or other committee of the applicant in respect of any provisions of the constitution, by-laws, rules, or trading practices of the applicant which are not included in Exhibit A.

Exhibit C — For each subsidiary or affiliate of the applicant, and for any entity with whom the applicant has a contractual or other agreement relating to the operation of an electronic trading system to be used to effect transactions on the exchange ("System"), provide the following information:

1. Name and address of organization.
2. Form of organization (e.g., association, corporation, partnership, etc.).
3. Name of state and statute citation under which organized. Date of incorporation in present form.
4. Brief description of nature and extent of affiliation.
5. Brief description of business or functions. Description should include responsibilities with respect to operation of the System and/or execution, reporting, clearance, or settlement of transactions in connection with operation of the System.
6. A copy of the constitution.
7. A copy of the articles of incorporation or association including all amendments.
8. A copy of existing by-laws or corresponding rules or instruments.
9. The name and title of the present officers, governors, members of all standing committees or persons performing similar functions.
10. An indication of whether such business or organization ceased to be associated with the applicant during the previous year, and a brief statement of the reasons for termination of the association.

Exhibit D — For each subsidiary or affiliate of the exchange, provide unconsolidated financial statements for the latest fiscal year. Such financial statements shall consist, at a minimum, of a balance sheet and an income statement with such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading. If any affiliate or subsidiary is required by another Commission rule to submit annual financial statements, a statement to that effect, with a citation to the other Commission rule, may be provided in lieu of the financial statements required here.

Form 1 Page 3	U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 APPLICATION FOR, AND AMENDMENTS TO APPLICATION FOR, REGISTRATION AS A NATIONAL SECURITIES EXCHANGE OR EXEMPTION FROM REGISTRATION PURSUANT TO SECTION 5 OF THE EXCHANGE ACT	OFFICIAL USE	OFFICIAL USE ONLY

EXHIBITS

Exhibit E — Describe the manner of operation of the System. This description should include the following:

1. The means of access to the System.
2. Procedures governing entry and display of quotations and orders in the System.
3. Procedures governing the execution, reporting, clearance and settlement of transactions in connection with the System.
4. Proposed fees.
5. Procedures for ensuring compliance with System usage guidelines.
6. The hours of operation of the System, and the date on which applicant intends to commence operation of the System.
7. Attach a copy of the users' manual.
8. If applicant proposes to hold funds or securities on a regular basis, describe the controls that will be implemented to ensure safety of those funds or securities.

Exhibit F — A complete set of all forms pertaining to:

1. Application for membership, participation or subscription to the entity.
2. Application for approval as a person associated with a member, participant or subscriber of the entity.
3. Any other similar materials.

Exhibit G — A complete set of all forms of financial statements, reports or questionnaires required of members, participants, subscribers or any other users relating to financial responsibility or minimum capital requirements for such members, participants or any other users. Provide a table of contents listing the forms included in this Exhibit G.

Exhibit H — A complete set of documents comprising the applicant's listing applications, including any agreements required to be executed in connection with listing and a schedule of listing fees. If the applicant does not list securities, provide a brief description of the criteria used to determine what securities may be traded on the exchange. Provide a table of contents listing the forms included in this Exhibit H.

Exhibit I — For the latest fiscal year of the applicant, audited financial statements which are prepared in accordance with, or in the case of a foreign applicant, reconciled with, United States generally accepted accounting principles, and are covered by a report prepared by an independent public accountant. If an applicant has no consolidated subsidiaries, it shall file audited financial statements under Exhibit I alone and need not file a separate unaudited financial statement for the applicant under Exhibit D.

Exhibit J — A list of the officers, governors, members of all standing committees, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each:

1. Name.
2. Title.
3. Dates of commencement and termination of term of office or position.
4. Type of business in which each is primarily engaged (e.g. floor broker, specialist, odd lot dealer, etc.).

Form 1 Page 4	**U.S. SECURITIES AND EXCHANGE COMMISSION** **WASHINGTON, D.C. 20549** **APPLICATION FOR, AND AMENDMENTS TO APPLICATION FOR, REGISTRATION AS A NATIONAL SECURITIES EXCHANGE OR EXEMPTION FROM REGISTRATION PURSUANT TO SECTION 5 OF THE EXCHANGE ACT**	OFFICIAL USE	OFFICIAL USE ONLY

EXHIBITS

Exhibit K — If the exchange is a corporation, please provide a list of each shareholder that directly owns 5% or more of a class of a voting security of the applicant. If the exchange is a partnership, please provide a list of all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital. If the exchange is a trust, please provide the name of the trust and the trustee(s). For each of the persons listed in the Exhibit J, please provide the following:

1. Full legal name;
2. Title or Status;
3. Date title or status was acquired;
4. Approximate ownership interest; and
5. Whether the person has control, a term that is defined in the instructions to this Form.

Exhibit L — Describe the exchange's criteria for membership in the exchange. Describe conditions under which members may be subject to suspension or termination with regard to access to the exchange. Describe any procedures that will be involved in the suspension or termination of a member.

Exhibit M — Provide an alphabetical list of all members, participants, subscribers or other users, including the following information:

1. Name;
2. Date of election to membership or acceptance as a participant, subscriber or other user;
3. Principal business address and telephone number;
4. If member, participant, subscriber or other user is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity (e.g. partner, officer, director, director, employee, etc.);
5. Describe the type of activities primarily engaged in by the member, participant, subscriber, or other user (e.g. floor broker, specialist, odd lot dealer, other market maker, proprietary trader, non-broker dealer, inactive or other functions). A person shall be "primarily engaged" in an activity or function for purposes of this item when that activity or function is the one in which that person is engaged for the majority of their time. When more than one type of person at an entity engages in any of the six types of activities or functions enumerated in this item, identify each type (e.g. proprietary trader, Registered Competitive Trader and Registered Competitive Market Maker) and state the number of members, participants, subscribers, or other users in each; and
6. The class of membership, participation or subscription or other access.

Exhibit N — Provide a schedule for each of the following:

1. The securities listed in the exchange, indicating for each the name of the issuer and a description of the security;
2. The securities admitted to unlisted trading privileges, indicating for each the name of the issuer and a description of the security;
3. The unregistered securities admitted to trading on the exchange which are exempt from registration under Section 12(a) of the Act. For each security listed, provide the name of the issuer and a description of the security, and the statutory exemption claimed (e.g. Rule 12a-6); and
4. Other securities traded on the exchange, including for each the name of the issuer and a description of the security.

§ 249.1a and Form 1–A [Removed]

26. Section 249.1a and Form 1-A are removed.

§ 249.636 and Form ATS [Removed and reserved]

27. Section 249.636 and Form 17A–23 are removed and reserved.

28. Section 249.637 and Form ATS are added to read as follows:

§ 249.637 Form ATS, information required of alternative trading systems pursuant to § 242.301(b)(2) of this chapter.

This form shall be used by every alternative trading system to file required notices, reports and amendments under § 242.301(b)(2) of this chapter.

Form ATS

OMB APPROVAL
OMB Number: 3235-
Expires:
Estimated Average
burden hours per form:

INITIAL OPERATION REPORT, AMENDMENT TO INITIAL OPERATION REPORT AND CESSATION OF OPERATIONS REPORT FOR ALTERNATIVE TRADING SYSTEMS

FORM ATS INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Form ATS is the form an alternative trading system must file to notify the Securities and Exchange Commission ("SEC" or "Commission") of its activities pursuant to Regulation ATS, § 242.300 et seq.

2. **UPDATING** - The alternative trading system must update Form ATS information by submitting amendments to the initial operation report at least 20 calendar days prior to implementing a material change to the operation of the alternative trading system as described on Form ATS or any amendment thereto. Additionally, the alternative trading system must update Form ATS information by submitting amendments to the initial operation report on Form ATS within 30 calendar days after the end of each calendar quarter in which the alternative trading system has operated, correcting any information contained in any initial operation report or any amendment thereto that has been rendered inaccurate and which has not been reported to the SEC as a material change to the operation of the alternative trading system.

3. **CONTACT EMPLOYEE** - The individual listed on page 1 as the contact employee must be authorized to receive all contact information, communications and mailings and be responsible for disseminating that information within the alternative trading system's organization.

4. **FORMAT**
- Attach an Execution Page (Page 1) with original manual signatures.
- Please type all information.
- Provide the name of the alternative trading system, the CRD number, and the filing date on each page.
- Use only the current version of Form ATS or a reproduction.

5. **RECORDKEEPING** - A copy of this Form ATS, as well as the forms filed with the SEC, must be retained by the alternative trading system and made available for inspection upon request of the SEC.

6. **PAPERWORK REDUCTION ACT DISCLOSURE**
- Form ATS requires an alternative trading system subject to Regulation ATS to provide the Commission with certain information regarding the operation of the alternative trading system, material and other changes to the operation of the alternative trading system, and notice upon ceasing operation of the alternative trading system.

- An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 3(b), 11A(a), 11A(c), 15(c), 17(a), 23(a) and 36(a) authorize the Commission to collect information on this Form ATS from alternative trading systems that are subject to Regulation ATS. *See* 15 U.S.C. §§78c(b), 78k-1(a), 78k-1(c), 78*o*(c), 78q(a), 78w(a) and 78mm(a).

- Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on the facing page of Form ATS and any suggestions for reducing this burden.

- Form ATS is designed to enable the Commission to determine whether an alternative trading system subject to Regulation ATS is in compliance with Regulation ATS and other federal securities laws.

- It is estimated that an alternative trading system will spend approximately 20 hours completing the initial operation report on Form ATS, approximately 4 hours preparing each amendment to Form ATS, and approximately 2 hours preparing a cessation of operations report on Form ATS.

- Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

- It is mandatory that an alternative trading system subject to Regulation ATS file an initial operation report on Form ATS, file an amendment to Form ATS prior to making a material change, and file quarterly amendments to Form ATS to reflect changes not previously reported.

- All reports provided to the Commission on Form ATS are deemed confidential and will be available only to the examination of Commission staff, state securities authorities and the self-regulatory organizations. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA") and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

- This collection of information has been reviewed by the Office of Management and Budget ("OMB") in accordance with the clearance requirements of 44 U.S.C. §3507. The applicable Privacy Act system of records is SEC-2 and the routine uses of the records at set forth at 40 FR 39255 (August 27, 1975) and 41 FR 5318 (February 5, 1976).

FORM ATS INSTRUCTIONS

B. EXPLANATION OF TERMS

ALTERNATIVE TRADING SYSTEM - Shall mean any organization, association, person, group of persons, or system: (1) that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of Rule 3b-12 under the Exchange Act; and (2) that does not (A) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system, or (B) discipline subscribers other than by exclusion from trading.

SUBSCRIBER - Shall mean any person that has entered into a contractual agreement with an alternative trading system to access such alternative trading system for the purpose of effecting transactions in securities or for submitting, disseminating, or displaying orders on such alternative trading system, including a customer, member, user, or participant in an alternative trading system. A subscriber, however, shall not include a national securities exchange or national securities association.

ORDER - Shall mean any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order or other priced order.

Form ATS Page 1 Execution Page	**U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 INITIAL OPERATION REPORT, AMENDMENT TO INITIAL OPERATION REPORT AND CESSATION OF OPERATIONS REPORT FOR ALTERNATIVE TRADING SYSTEMS**	Date filed (MM/DD/YY):	OFFICIAL USE ONLY

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of alternative trading systems would violate the federal securities laws and may result in disciplinary, administrative or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

❑ INITIAL OPERATION REPORT ❑ AMENDMENT TO INITIAL OPERATION REPORT ❑ CESSATION OF OPERATIONS REPORT

1. Exact name, principal business address, mailing address, if different, and telephone number of alternative trading system:

   A. Full name of alternative trading system (if sole proprietor, last, first and middle name): _____

   B. CRD Number: _____

   C. Name(s) under which business is conducted, if different from Item 1A. _____

   D. If this filing makes a name change on behalf of the alternative trading system, enter the previous name and specify whether the name change is of the _____ alternative trading system name (1A), or _____ business name (1C):

   Previous name: _____

   E. Alternative trading system's main street address (Do not use a P.O. Box): _____

   _____

   F. Mailing address (if different): _____

   _____

   G. Business telephone and facsimile number: _____

   (Telephone) (Facsimile)

   H. Contact employee: _____

   (Name and Title) (Telephone Number) (Facsimile)

EXECUTION:

The alternative trading system consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or SRO in connection with the alternative trading system's activities may be given by registered or certified mail or confirmed telegram to the alternative trading system's contact employee at the main address, or mailing address if different, given in Items 1E and 1F. The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said alternative trading system. The undersigned and alternative trading system represent that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true and complete

Date: _____ _____

(MM/DD/YY) (Name of alternative trading system)

By: _____ _____

(Signature) (Printed Name and Title)

Subscribed and sworn before me this _____ day of _____, _____ by _____

(Month) (Year) (Notary Public)

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.

Affix notary stamp or seal where applicable.

DO NOT WRITE BELOW THIS LINE - FOR OFFICIAL USE ONLY

Form ATS Page 2	U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 INITIAL OPERATION REPORT, AMENDMENT TO INITIAL OPERATION REPORT AND CESSATION OF OPERATIONS REPORT FOR ALTERNATIVE TRADING SYSTEMS	OFFICIAL USE	OFFICIAL USE ONLY

Alternative trading system name: _____ CRD Number: _____

Filing date: _____

2. If this is an initial operation report, the date the alternative trading system expects to commence operation: _____

3. Attach as Exhibit A, a description of classes of subscribers (for example, broker-dealer, institution, or retail). Also describe any differences in access to the services offered by the alternative trading system.

4. Attach as Exhibit B:

   a. A list of the types of securities the alternative trading system trades (for example, debt, equity, listed, Nasdaq NM), or if this is an initial operation report, the types of securities it expects to trade. Note whether any types of securities are not registered under Section 12(a) of the Exchange Act of 1934 ("Exchange Act").

   b. A list of the securities the alternative trading system trades, or if this is an initial operation report, the securities it expects to trade. Note whether any securities are not registered under Section 12(a) of the Exchange Act.

5. Attach as Exhibit C, the name, address, and telephone number of counsel for the alternative trading system.

6. Attach as Exhibit D, a copy of the constitution, articles of incorporation or association with all subsequent amendments, and of existing by-laws or corresponding rules or instruments, whatever the name, of the alternative trading system. If this information is publicly available on a continuous basis on an Internet site controlled by the alternative trading system, the alternative trading system may indicate the location of the Internet web site where such information may be found in lieu of filing such information with the Commission.

7. Attach as Exhibit E, the name of any entity, other than the alternative trading system, that will be involved in operation of the alternative trading system, including the execution, trading, clearing and settling of transactions on behalf of the alternative trading system. Provide a description of the role and responsibilities of each entity.

8. Attach as Exhibit F, the following information:

   a. The manner of operation of the alternative trading system;

   b. Procedures governing entry of orders into the alternative trading system;

   c. The means of access to the alternative trading system;

   d. The procedures governing execution, reporting, clearance and settlement of transactions effected through the alternative trading system;

   e. Procedures for ensuring subscriber compliance with system guidelines; and

   f. A copy of the alternative trading system's subscriber manual and any other materials provided to subscribers.

9. Attach as Exhibit G, a brief description of the alternative trading system's procedures for reviewing system capacity, security and contingency planning procedures.

10. If any other entity, other than the alternative trading system, will hold or safeguard subscriber funds or securities on a regular basis, attach as Exhibit H the name of such entity and a brief description of the controls that will be implemented to ensure the safety of such funds and securities.

11. Attach as Exhibit I, a list providing the full legal name of those direct owners reported on Schedule A of Form BD.

29. Section 249.638 and Form ATS–R are added to read as follows:

§ 249.638 Form ATS–R, information required of alternative trading systems pursuant to § 242.301(b)(8) of this chapter.

This form shall be used by every alternative trading system to file required reports under § 242.301(b)(8) of this chapter.

Form ATS-R

OMB APPROVAL
OMB Number: 3235-
Expires:
Estimated Average
burden hours per form:

QUARTERLY REPORT OF ALTERNATIVE TRADING SYSTEM ACTIVITIES

FORM ATS-R INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Form ATS-R must be filed by alternative trading systems subject to Regulation ATS within 30 days after the end of each calendar quarter, or more frequently upon request of the Securities and Exchange Commission ("SEC" or "Commission"). This Form should be prepared as of the last day of each calendar quarter.

2. **FORMAT**
- Attach the Execution Page (Page 1) with every filing of Form ATS-R.
- Please type all information.
- Be sure to note the alternative trading system name, CRD number and report period dates on each page.
- Use only the current version of Form ATS-R or a reproduction.

3. **WHEN TO FILE A FORM ATS-R** - File Form ATS-R within 30 calendar days after the end of each calendar quarter in which the alternative trading system has operated after the effective date of Regulation ATS. Also file Form ATS-R within 10 calendar days after an alternative trading system ceases to operate.

4. **CONTACT EMPLOYEE** - The individual listed on page 1 as the contact employee must be authorized to receive all contact information, communications and mailings and be responsible for disseminating that information within the alternative trading system's organization.

5. **RECORDKEEPING** - A copy of this Form ATS-R, as well as the forms filed with the SEC, must be retained by the alternative trading system and made available for inspection upon request of the SEC.

6. **PAPERWORK REDUCTION ACT DISCLOSURE**
- Form ATS-R requires an alternative trading system subject to Regulation ATS to provide the Commission with quarterly reports regarding trading activities.
- An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 3(b), 11A(a), 11A(c), 15(c), 17(a), 23(a) and 36(a) authorize the Commission to collect information on this Form ATS from alternative trading systems. *See* 15 U.S.C. §§78c(b), 78k-1(a), 78k-1(c), 78*o*(c), 78q(a), 78w(a) and 78mm(a).
- Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on the facing page of Form ATS-R and any suggestions for reducing this burden
- Form ATS-R is designed to enable the Commission to more effectively track the growth and development of alternative trading systems, as well as to more effectively comply with its statutory obligations with respect to alternative trading systems and improve investor protection.
- It is estimated that an alternative trading system will spend approximately 4 hours completing Form ATS-R.
- Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.
- It is mandatory that an alternative trading system subject to Regulation ATS file quarterly reports on Form ATS-R with the Commission.
- All reports provided to the Commission on Form ATS-R are deemed confidential and will be available only to the examination of Commission staff, state securities authorities and the self-regulatory organizations. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA") and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.
- This collection of information has been reviewed by the Office of Management and Budget ("OMB") in accordance with the clearance requirements of 44 U.S.C. §3507. The applicable Privacy Act system of records is SEC-2 and the routine uses of the records at set forth at 40 FR 39255 (August 27, 1975) and 41 FR 5318 (February 5, 1976).

FORM ATS-R INSTRUCTIONS

B. EXPLANATION OF TERMS

ALTERNATIVE TRADING SYSTEM - Shall mean any organization, association, person, group of persons, or system (1) that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of Rule 3b-12 under the Exchange Act; and (2) that does not (A) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system, or (B) discipline subscribers other than by exclusion from trading.

CORPORATE DEBT SECURITIES - Shall mean any security, other than an exempted security, that evidences a liability of the issuer and that has a maturity date that is at least one year following the date of issuance.

DEBT SECURITIES - Shall mean any security other than an equity security, as defined in §240.3a11-1.

EQUITY SECURITIES - Shall have the same meaning as in §240.3a11-1.

GOVERNMENT SECURITIES - Shall have the same meaning as in Exchange Act Section 3(a)(42).

LISTED EQUITY SECURITIES - Shall mean any equity securities that are listed and registered, or admitted to unlisted trading privileges, on a national securities exchange.

LISTED OPTIONS - Shall mean any options traded on a registered national securities exchange or automated facility of a registered national securities association.

MORTGAGE RELATED SECURITIES - Shall have the same meaning as in Exchange Act Section 3(a)(41).

MUNICIPAL SECURITIES - Shall have the same meaning as in Exchange Act Section 3(a)(29).

NASDAQ NATIONAL MARKET SECURITIES - Shall mean any securities designated as Nasdaq National Market Securities by The Nasdaq Stock Market.

NASDAQ SMALLCAP MARKET SECURITIES - Shall mean any securities designated as Nasdaq SmallCap Market Securities by The Nasdaq Stock Market.

PENNY STOCK - Shall have the same meaning as in Exchange Act Section 3(a)(51).

SUBSCRIBER - Shall mean any person that has entered into a contractual agreement with an alternative trading system to access such alternative trading system for the purpose of effecting transactions in securities or to submit, disseminate, or display orders on such alternative trading system, including a customer, member, user, or participant in an alternative trading system. A subscriber, however, shall not include a national securities exchange or national securities association.

UNLISTED OPTIONS - Shall mean any options other than those traded on a registered national securities exchange or automated facility of a registered national securities association.

Form ATS-R Page 1 Execution Page	**U.S. SECURITIES AND EXCHANGE COMMISSION** **WASHINGTON, D.C. 20549** **QUARTERLY REPORT OF ALTERNATIVE TRADING SYSTEM ACTIVITIES**	OFFICIAL USE	OFFICIAL USE ONLY

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

Alternative Trading System Name: _____

Period covered by this report: _____ to _____

1. Exact name, principal business address, mailing address, if different, and telephone number of alternative trading system:

   A. Full name of alternative trading system (if sole proprietor, last, first and middle name): _____ B. CRD Number: _____

   C. Name(s) under which business is conducted, if different from Item 1A. _____

   D. If this filing makes a name change on behalf of the alternative trading system, enter the previous name and specify whether the name change is of the _____ alternative trading system name (1A), or _____ business name (1C):

   Previous name: _____

   E. Alternative trading system's main street address (Do not use a P.O. Box): _____

   F. Mailing address (if different): _____

   G. Business telephone and facsimile number: _____
   (Telephone) (Facsimile)

   H. Contact employee: _____
   (Name and Title) (Telephone) (Facsimile)

2. Attach as Exhibit A, a list of all subscribers that were participants of the alternative trading system at any time during the period covered by this report.

3. Attach as Exhibit B, a list of all securities that were traded on the alternative trading system at any time during the period covered by this report.

EXECUTION:

The alternative trading system consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or SRO in connection with the alternative trading system's activities may be given by registered or certified mail or confirmed telegram to the alternative trading system's contact employee at the main address, or mailing address if different, given in Items 1D and 1E. The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said alternative trading system. The undersigned and alternative trading system represent that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true and complete.

Date: _____ _____
(MM/DD/YY) (Name of alternative trading system)

By: _____ _____
(Signature) (Printed Name and Title)

Subscribed and sworn before me this _____ day of _____, _____ by _____
(Month) (Year) (Notary Public)

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.

Affix notary stamp or seal where applicable.

DO NOT WRITE BELOW THIS LINE - FOR OFFICIAL USE ONLY

Form ATS-R Page 2	**U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 QUARTERLY REPORT OF ALTERNATIVE TRADING SYSTEM ACTIVITIES**	OFFICIAL USE	OFFICIAL USE ONLY

Alternative trading system name: _____ CRD Number: _____

Period covered in this report: _____ to _____

4. Provide the total unit and dollar volume of transactions in the following securities. Enter "None," "N/A" or "0" where appropriate.

Category of Securities	*Total Unit Volume of Transactions*	*Total Dollar Volume of Transactions*
A. Listed Equity Securities		
B. Nasdaq National Market Securities		
C. Nasdaq SmallCap Market Securities		
D. Equity securities issued pursuant to Rule 144A of the Securities Act of 1933		
E. Penny Stock, other than any securities included in Items 4A-4D above		
F. Other equity securities not included in Items 4A-4E above		
G. Rights and warrants		
H. Listed options		
I. Unlisted options		
J. Corporate debt securities		
K. Government securities		
L. Municipal securities		
M. Mortgage related securities		
N. Debt securities other than any securities included in Items 4J-4M above		

5. A. List the types of equity securities reported in Item 4F above:

_____

_____

_____

B. List the types of debt reported in Item 4N above:

_____

_____

DO NOT WRITE BELOW THIS LINE - FOR OFFICIAL USE ONLY

Form ATS-R Page 3	U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 QUARTERLY REPORT OF ALTERNATIVE TRADING SYSTEM ACTIVITIES	OFFICIAL USE	OFFICIAL USE ONLY

Alternative trading system name: _____ CRD Number: _____

Period covered in this report: _____ to _____

6. Provide the total unit and dollar volume of transactions for after-hours trading in the following securities. Enter "None," "N/A" or "0" where appropriate.

Category of Securities	*Total Unit Volume of Transactions*	*Total Dollar Volume of Transactions*
A. Listed Equity Securities		
B. Nasdaq National Market Securities		
C. Nasdaq SmallCap Market Securities		
D. Listed options		

DO NOT WRITE BELOW THIS LINE - FOR OFFICIAL USE ONLY

30. Section 249.821 and Form PILOT are added to read as follows:

§ 249.821 Form PILOT, information required of self-regulatory organizations operating pilot trading systems pursuant to § 204.19b–5 of this chapter.

This form shall be used by all self-regulatory organizations, as defined in Section 3(a)(26) of the Act, (15 U.S.C. 78c(a)(26)), to file required information and reports with regard to pilot trading systems pursuant to § 240.19b–5 of this chapter.

Form PILOT

OMB APPROVAL
OMB Number: 3235-
Expires:
Estimated Average
burden hours per form:

INITIAL OPERATION REPORT, AMENDMENT TO INITIAL OPERATION REPORT AND QUARTERLY REPORT FOR PILOT TRADING SYSTEMS OPERATED BY SELF-REGULATORY ORGANIZATIONS

FORM PILOT INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Form PILOT is the form a self-regulatory organization ("SRO") files to notify the Securities and Exchange Commission ("SEC" or "Commission") of its intention to operate a pilot trading system pursuant to Rule 19b-5, § 240.19b-5.

2. **WHEN TO FILE A FORM PILOT** - The SRO operating a pilot trading system under Rule 19b-5 must update information reported in Part I of Form PILOT by submitting amendments to the initial operation report at least 20 calendar days prior to implementing a material change to the operation of the pilot trading system as described on Form PILOT or any amendment thereto, other than information reported in Items 3b and 4b on Form PILOT relating to subscribers to, and securities traded on, the pilot trading system. Additionally, the SRO must update information in Part II of Form PILOT by submitting quarterly reports within 30 calendar days after the end of each calendar quarter in which the pilot trading system has operated after the effective date of Regulation ATS.

3. **CONTACT EMPLOYEE** - The individual listed on page 1 as the contact employee must be authorized to receive all contact information, communications and mailings and be responsible for disseminating that information within the pilot trading system's organization.

4. **FORMAT**
- Attach an Execution Page (Page 1) with original manual signatures.
- Please type all information.
- Provide the name of the SRO, pilot trading system and the filing date on each page.
- Use only the current version of Form PILOT or a reproduction.

5. **RECORDKEEPING** - A copy of this Form PILOT, as well as any amendments thereto filed with the SEC, must be retained by the sponsoring SRO at its principal place of business and made available for inspection upon request of the SEC.

6. **PAPERWORK REDUCTION ACT DISCLOSURE**
- Form PILOT requires an SRO intending to operate a pilot trading system pursuant to the temporary exemption under Rule 19b-5 to file certain information about the operation of the pilot trading system, and notices of material changes to the pilot trading system. In addition, Form PILOT requires SROs to report transaction volume on the pilot trading system on a quarterly basis.

- An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 3(a)(26), 3(a)(27), 3(a)(28) 19(b), 23(a) and 36(a) authorize the Commission to collect information on this Form PILOT from SROs. *See* 15 U.S.C. §§78c(a)(26), 78c(a)(27), 78c(a)(28), 78s(b), 78w(a) and 78mm(a).

- Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on the facing page of Form PILOT and any suggestions for reducing this burden.

- Form PILOT is designed to enable the Commission to determine whether an SRO has properly availed itself of Rule 19b-5, is operating a pilot trading system in compliance with the Exchange Act, and is carrying out its statutory oversight obligations under the Exchange Act.

- It is estimated that an SRO will spend approximately 24 hours completing the initial operation report on Form PILOT pursuant to Rule 19b-5. It is also estimated that each SRO will spend approximately 3 hours to prepare each notice of a material change and approximately 3 hours to prepare quarterly transaction information.

- Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

- It is mandatory that an SRO seeking to operate a pilot trading system under Rule 19b-5 file a Form PILOT with the Commission. It is also mandatory that an SRO operating a pilot trading system file notices of material systems changes and quarterly transaction reports on Form PILOT.

- All reports provided to the Commission on Form PILOT are deemed confidential and will be available only to the examination of Commission staff and state securities authorities. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA") and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

- This collection of information has been reviewed by the Office of Management and Budget ("OMB") in accordance with the clearance requirements of 44 U.S.C. §3507. The applicable Privacy Act system of records is SEC-2 and the routine uses of the records at set forth at 40 FR 39255 (August 27, 1975) and 41 FR 5318 (February 5, 1976).

FORM PILOT INSTRUCTIONS

B. EXPLANATION OF TERMS

PILOT TRADING SYSTEM - Shall mean any trading system, operated by an SRO, that:

(1)(i) has been in operation for less than two years; (ii) is independent of any other trading system operated by such self-regulatory organization that has been approved by the Commission pursuant to Section 19(b) of the Exchange Act; (iii) with respect to each security traded on such pilot trading system, during at least two of the last four consecutive calendar months, has traded no more than 5% of the average daily share trading volume of such security in the United States; and (iv) with respect to all securities traded on such pilot trading system, during at least two of the last four consecutive calendar months, has traded no more than 20% of the average daily share trading volume of all trading systems operated by such self-regulatory organization;

(2)(i) has been in operation for less than two years; (ii) with respect to each security traded on such pilot trading system, during at least two of the last four consecutive calendar months, has traded no more than 1% of the average daily share trading volume of such security in the United States; and (iii) with respect to all securities traded on such pilot trading system, during at least two of the last four consecutive calendar months, has traded no more than 20% of the average daily share trading volume of all trading systems operated by such self-regulatory organization; or

(3)(i) has been in operation for less than two years; and (ii)(A) satisfied the definition of "pilot trading system" under paragraph (1) above no more than 30 days ago, and continues to be independent of any other trading system operated by such self-regulatory organization that has been approved by the Commission pursuant to Section 19(b); or (B) satisfied the definition of "pilot trading system" under paragraph (2) above no more than 30 days ago.

SUBSCRIBER - Shall mean any person, as the term is defined in Section 3(a)(9) of the Exchange Act, that has entered into a contractual agreement with a pilot trading system to access such pilot trading system for the purpose of effecting transactions in securities or for submitting, disseminating or displaying orders on such pilot trading system, including a customer, member, user, or participant in an pilot trading system. *A subscriber, however, shall not include a national securities exchange or national securities association.*

ORDER - Shall mean any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order or other priced order.

Page 1 Execution Page	**U.S. SECURITIES AND EXCHANGE COMMISSION** **WASHINGTON, D.C. 20549** **PART I** **INITIAL OPERATION REPORT, AMENDMENT TO INITIAL OPERATION REPORT, AND QUARTERLY REPORT FOR PILOT TRADING SYSTEMS OPERATED BY A SELF-REGULATORY ORGANIZATION**	Date filed (MM/DD/YY):	OFFICIAL USE ONLY

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of pilot trading systems would violate the federal securities laws and may result in disciplinary, administrative or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

❑ INITIAL OPERATION REPORT ❑ AMENDMENT TO INITIAL OPERATION REPORT ❑ QUARTERLY REPORT

1. Exact name, principal business address, mailing address, if different, and telephone number of pilot trading system:

   A. Name of the SRO filing Form PILOT:

   _____

   B. Full Name of pilot trading system:

   _____

   C. If this filing makes a name change on behalf of the pilot trading system, enter the previous name. Specify whether the _____ pilot trading system name (1A), or _____ business name (1B) changes:

   Previous name: _____

   D. Pilot trading system's business address (Do not use a P.O. Box):

   _____

   _____

   E. Business telephone and facsimile number:

   _____

   (Telephone) (Facsimile)

   F. Contact employee:

   _____

   (Name and Title) (Telephone Number) (Facsimile)

EXECUTION:

The SRO consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission in connection with the pilot trading system's activities may be given by registered or certified mail or confirmed telegram to the pilot trading system's contact employee at the business address. The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said pilot trading system. The undersigned and the SRO represent that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true and complete.

Date: _____ _____

(MM/DD/YY) (Name of pilot trading system)

By: _____ _____

(Signature) (Printed Name and Title)

Subscribed and sworn before me this _____ day of _____, _____ by _____

(Month) (Year) (Notary Public)

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.

Affix notary stamp or seal where applicable.

DO NOT WRITE BELOW THIS LINE - FOR OFFICIAL USE ONLY

Form PILOT Page 2	**U.S. SECURITIES AND EXCHANGE COMMISSION** **WASHINGTON, D.C. 20549** **PART I** **INITIAL OPERATION REPORT, AMENDMENT TO INITIAL OPERATION REPORT, AND QUARTERLY REPORT FOR PILOT TRADING SYSTEMS OPERATED BY A SELF-REGULATORY ORGANIZATION** **(to be filed at least 20 calendar days prior to commencing operation)**	OFFICIAL USE	OFFICIAL USE ONLY

SRO name: _____
Pilot trading system name: _____
Filing date: _____

2. If this is an initial operation report, the date the SRO expects to commence operation of the pilot trading system: _____

3. Attach as Exhibit A:

   a. A description of classes of subscribers (for example, broker-dealer, institution, or retail). Also describe any differences in access to the services offered by the alternative trading system.

   b. A list of the specific subscribers, by name, or if this is an initial operation report, a list of the anticipated subscribers and the classes to which each subscriber or anticipated subscriber belongs.

4. Attach as Exhibit B:

   a. A list of the types of securities the pilot trading system trades (for example, debt, equity, listed, Nasdaq NM), or if this is an initial operation report, the types of securities it expects to trade. Note whether any types of securities are not registered under Section 12(a) of the Exchange Act of 1934 ("Exchange Act").

   b. A list of the securities the pilot trading system trades, or if this is an initial operation report, the securities it expects to trade. Note whether any securities are not registered under Section 12(a) of the Exchange Act.

5. Attach as Exhibit C, the name, address, and telephone number of counsel, and counsel for the pilot trading system.

6. Attach as Exhibit D, the name of any entity, other than the SRO, that will be involved in the operation of the pilot trading system, including the execution, trading, clearing and settling of transactions on behalf of the SRO. Provide a detailed description of the role and responsibilities of each entity.

7. Attach as Exhibit E, the following information:

   a. The manner of operation of the pilot trading system;

   b. Procedures governing entry of orders into the pilot trading system;

   c. The SRO's means of granting access to the pilot trading system;

   d. The procedures governing execution, reporting, clearance and settlement of transactions effected through the pilot trading system;

   e. The procedures for ensuring subscriber compliance with system guidelines;

   f. The procedures for ensuring subscriber compliance with system guidelines;

   g. A copy of the alternative trading system's subscriber manual and any other materials provided to subscribers; and

   h. A copy of the subscriber agreement.

8. Attach as Exhibit F, a brief description of the SRO's procedures for reviewing capacity, security and contingency planning with respect to the pilot trading system.

Form PILOT Page 3	U.S. SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549	OFFICIAL USE	OFFICIAL USE ONLY

Part II
INITIAL OPERATION REPORT, AMENDMENT TO INITIAL OPERATION REPORT, AND QUARTERLY REPORT FOR PILOT TRADING SYSTEMS OPERATED BY A SELF-REGULATORY ORGANIZATION

SRO name: _____

Pilot trading system name: _____

Period covered in this report: _____ to _____

9. Provide the total unit and dollar volume of transactions in the following securities. Enter "None," "N/A" or "0" where appropriate.

Category of Securities	*Total Unit Volume of Transactions*	*Total Dollar Volume of Transactions*
A. Listed Equity Securities		
B. Nasdaq National Market Securities		
C. Nasdaq SmallCap Market Securities		
D. Equity securities issued pursuant to Rule 144A of the Securities Act of 1933		
E. Penny Stock, other than any securities included in Items 9A-9D above		
F. Other equity securities not included in Items 9A-9E above		
G. Rights and warrants		
H. Listed options		
I. Unlisted options		
J. Corporate debt securities		
K. Government securities		
L. Municipal securities		
M. Mortgage related securities		
N. Debt securities other than any securities included in Items 9J-9M above		

10. A. List the types of equity securities reported in Item 9F above: _____

_____

B. List the types of debt reported in Item 9N above: _____

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By the Commission.

Dated: April 21, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10945 Filed 4–28–98; 8:45 am]

BILLING CODE 8010–01–C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–39885; File No. S7–13–98]

RIN 3235–AH39

Proposed Amendment to Rule 19b–4, Under the Securities Exchange Act of 1934, That Would Deem the Listing and Trading of New Derivative Securities Products by Self-Regulatory Organizations To Not Be Proposed Rule Changes

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission proposes to amend Rule 19b–4 under the Securities Exchange Act of 1934. The amendment would expand the scope of SRO matters that do not constitute proposed rule changes to include the listing and trading of new derivative securities products pursuant to existing SRO trading rules, procedures, surveillance programs and listing standards.

DATES: Comments should be submitted by May 29, 1998.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comments should refer to File No. S7–13–98; this file number should be included in the subject line if e-mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted on the Commission's web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Sharon M. Lawson, Senior Special Counsel at (202) 942–0182 or Marianne H. Duffy, Special Counsel at (202) 942–4163, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 10–1, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Purpose of Amendment

The Securities and Exchange Commission (''SEC'' or ''Commission'') is proposing to amend Rule 19b–4 under the Securities Exchange Act of 1934, as amended (''Exchange Act'' or ''Act'')[1] to expand the scope of self-regulatory organization (''SRO'')[2] matters that do not constitute proposed rule changes, pursuant to section 19(b) of the Act and Rule 19b–4[3] thereunder, to include the listing and trading of certain new derivative securities products, as defined below, pursuant to existing trading rules, procedures, surveillance programs and listing standards.

B. Description of Proposed Amendment

Section 19(b) of the Exchange Act requires every SRO to file with the Commission any proposed rule or any proposed change in the rules of the SRO. In the past, the Commission has considered the listing and trading of new derivative securities products by an SRO to constitute a proposed rule change. In order to approve these changes, the Commission must find that the listing and trading of the new derivative securities product will serve to promote the public interest and help to remove impediments to a free and open securities market.[4] Further, the trading of such new derivative securities products must serve to protect investors and promote efficiency, competition and capital formation.

The Commission has exercised its rulemaking authority[5] by promulgating paragraphs (b),[6] (c)[7] and (d)[8] of Rule 19b–4 under the Act, which interpret the terms ''stated policy, practice or interpretation'' and ''proposed rule change.'' Paragraph (c) of Rule 19b–4 provides that certain stated policies, practices and interpretations of SROs do not constitute proposed rule changes. Specifically, a ''stated policy, practice or interpretation'' of an SRO is not a proposed rule change if it is reasonably and fairly implied by an existing SRO rule. The Commission now proposes to amend Rule 19b–4 so that the listing and trading of new derivative securities products would not be proposed rule changes so long as there are existing SRO trading rules, procedures, surveillance programs and listing standards. Specifically, the Commission proposes to add a new paragraph (e) to Rule 19b–4 which states:

> the listing and trading of a new derivative securities product by (an SRO) shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of (Rule 19b–4), if the Commission has approved, pursuant to section 19(b) of the Act ( ), such (SRO's) trading rules, procedures and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class.[9]

In proposing new paragraph (e), the Commission preliminarily believes that when the Commission has approved, pursuant to section 19(b) of the Act, an SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product, the listing and trading of the new derivative securities product is reasonably and fairly implied by the SRO's existing trading rules, procedures and listing standards. The Commission preliminarily believes it is therefore appropriate to deem the listing and trading of new derivative securities products to not be proposed rule changes pursuant to Rule 19b–4(c)(1) under certain conditions.

II. Background

A. Current Procedures for Submission and Approval of SRO New Derivative Securities Product Rule Filings

Over the years, the Commission has sought to revise the rule filing requirements to meet the changing needs of the SROs in a competitive international marketplace. The Commission has developed streamlined filing procedures to ease the regulatory burden in many circumstances. Today, the Commission is proposing to expand the scope of SRO matters that do not constitute proposed rule changes to include the listing and trading of new derivative securities products pursuant to existing SRO trading rules,

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[1] 15 U.S.C. 78a *et seq.*

[2] Section 3(a)(26) of the Exchange Act, 15 U.S.C. 78c(a)(26), defines SRO to mean any national securities exchange, registered securities association, registered research agency, and for purposes of Section 19(b) of the Act, 15 U.S.C. 78s(b), and other limited purposes, the Municipal Securities Rulemaking Board (''MSRB'').

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78f(b)(5).

[5] Sections 3(a)(26), 3(a)(27), 15 U.S.C. 78c(a)(27), 3(a)(28), 15 U.S.C. 78c(a)(28) and section 3(b), 15 U.S.C. 78c(b), of the Act provide that the Commission may promulgate rules regarding, among other things, ''stated policies, practices and interpretations'' of SROs. Section 19(b) authorizes the Commission to promulgate rules regarding ''proposed rule changes'' of SROs. Section 23(a), 15 U.S.C. 78w(a), of the Act provides that the Commission shall have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of the Exchange Act for which it is responsible or for the execution of the functions vested in it by the Exchange Act, and may for such purposes classify persons, securities, transactions, statements, applications, reports and other matters within its jurisdiction, and prescribe greater, lesser or different requirements for different classes thereof. (See *e.g.*, Securities Exchange Act Release No. 34140 (June 1, 1994), 59 FR 29393 (June 7, 1994)). In addition, in 1996, Congress granted the Commission the authority, under section 36(a), 15 U.S.C. 78mm(a), to exempt any class of person, security or transaction from any provision of the Act. Pub. L. 104–290, 110 Stat. 3416 (1996).

[6] 17 CFR 240.19b–4(b).

[7] 17 CFR 240.19b–4(c).

[8] 17 CFR 240.19b–4(d).

[9] See *Text of the Proposed Rule*, infra.

procedures, surveillance programs and listing standards.

1. Standard Statutory Procedures

Section 19(b)(1)[10] of the Act requires an SRO to file with the Commission its proposed rule changes accompanied by a concise general statement of the basis and purpose of the proposed rule change. Once a proposed rule change has been filed, the Commission is required to publish notice of it and provide an opportunity for public comment. The proposed rule change may not take effect unless it is approved by the Commission or is otherwise permitted to become effective under section 19(b) of the Act.[11] Section 19(b)(2)[12] of the Act sets forth the standards and time periods for Commission action either to approve a proposed rule change or to institute and conclude a proceeding to determine whether a proposed rule change should be disapproved. Generally, the Commission must either approve the proposed rule change or institute disapproval proceedings within 35 days of the publication of notice of the filing or within a longer period as the Commission finds appropriate or to which the SRO consents. The Commission must approve a proposed rule change if it finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the SRO proposing the rule change. If the Commission does not make that finding, it must institute proceedings to determine whether to disapprove the proposed rule change. The Commission also may approve a proposed rule change on an accelerated basis prior to 30 days after publication of the notice if the Commission finds good cause for so doing and publishes its reasons for so finding.[13]

SROs have submitted proposals under section 19(b)(2) to list and trade various derivative securities products, including stock options, broad-based and narrow-based stock index options[14] and warrants,[15] unit investment trusts,[16] foreign currency options,[17] indexed term notes[18] and other hybrid derivative equity and debt securities.[19]

2. Streamlined Procedures for Certain New Derivative Securities Product Rule Filings

Section 19(b)(3) of the Act[20] provides that, in certain circumstances, a proposed rule change may become effective immediately upon filing with the Commission and without the notice and approval procedures required by section 19(b)(2). Paragraph (A) of section 19(b)(3) permits certain types of proposed rule changes to take effect in this manner if appropriately designated by the SRO as: (1) Constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO; (2) establishing or changing a due, fee, or other charge imposed by the SRO; or (3) concerned solely with the administration of the SRO. Section 19(b)(3)(A)(iii)[21] also gives the Commission the authority to expand, by rule, the scope of proposed rule changes that may become effective under section 19(b)(3)(A) if the Commission determines that the expansion is consistent with the public interest and the purposes of Section 19(b). Currently, Rule 19b–4(e) under the Act[22] details the scope of proposed rule changes that may be filed under section 19(b)(3)(A) of the Act.

For the past several years, the Commission has worked with the SROs to develop procedures to streamline the review process of new derivative securities product rule filings. As a result, SROs can submit a proposed rule change in accordance with section 19(b)(3)(A) of the Act for certain proposed new derivative securities products. For example, on June 3, 1994, the Commission approved proposed rule changes submitted by several SROs to establish generic listing standards for options on narrow-based stock indices and to adopt streamlined procedures for introducing trading in options that satisfy these listing standards.[23] In addition, certain SROs have in place rules similar to the streamlined procedures for listing warrants on narrow-based stock indices.[24]

Furthermore, the Commission has approved rules for certain SROs that allow for the listing of specific broad-based[25] and narrow-based[26] stock index warrant issuances without further Commission approval pursuant to section 19(b) of the Act, as long as the listing complies with the SRO's generic warrant listing standards and the Commission has already approved the underlying stock index for warrant or

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[10] 15 U.S.C. 78s(b)(1).

[11] See generally, Senate Comm. on Banking, Housing & Urban Affs., Report to accompany S. 249: Securities Acts Amendments of 1975, S. Rep. No. 94–75, 94th Cong., 1st Sess. 22–38 (Comm. Print 1975), reprinted in (1975) U.S. Code Cong. & Ad. News 179, 200–15 (except on ''Self-Regulation and Sec Oversight'').

[12] 15 U.S.C. 78s(b)(2).

[13] Section 19(b)(2)(B) of the Act, 15 U.S.C. 78s(b)(2)(B).

[14] See *e.g.*, Securities Exchange Act Release No. 39011 (September 3, 1997), 62 FR 47841 (September 11, 1997) (order approving Chicago Board Options Exchange's, Incorporated (''CBOE'') proposal to list and trade options based upon the Dow Jones Industrial Average) and Securities and Exchange Act Release No. 38693 (May 29, 1997), 62 FR 30914 (June 5, 1997) (order approving American Stock Exchange's, Incorporated (''Amex'') proposal to list and trade options based on the the Tobacco Index).

[15] See *e.g.*, Securities Exchange Act Release No. 39079 (September 15, 1997), 62 FR 49543 (September 22, 1997) (order approving Amex proposal to list and trade warrants based on the ING Barings, Inc.'s BEMI Latin American Index).

[16] Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (order approving Amex rules to provide for the listing and trading of portfolio depositary receipts (''PDRs''), and specifically PDRs based on the Standard and Poors Corporation (''S&P'') 500 Index known as SPDRs). See also, Amex Rule 1000(b)(1).

[17] See *e.g.*, Securities Exchange Act Release No. 36505 (November 22, 1995), 60 FR 61277 (November 29, 1995) (order approving Philadelphia Stock Exchange's, Incorporated (''Phlx'') proposal to list and trade dollar-denominated delivery foreign currency options on the Japanese Yen).

[18] See *e.g.*, Securities Exchange Act Release No. 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (order approving Amex proposal to list and trade indexed term notes based upon a portfolio of the top ten dividend yielding stocks in the Dow Jones Industrial Average).

[19] See *e.g.*, Securities Exchange Act release No. 32950 (September 23, 1993), 58 FR 50985 (September 29, 1993) (order approving New York Stock Exchange's, Incorporated (''NYSE'') proposal to list and trade Debt Exchangeable for Common Stock issued by the American Express Corporation and linked to the performance of First Data Corporation).

[20] 15 U.S.C. 78s(b)(3).

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(e).

[23] Securities Exchange Act Release No. 34157 (June 3, 1994) 59 FR 30062 (June 10, 1994) (order approving generic narrow-based index options listing standards for the Amex, the CBOE, the NYSE, the Pacific Exchange, Inc., (''PCX''), and the Phlx (''Generic Narrow-Based Index Option Approval Order'')). Moreover, as of April 28, 1997, the NYSE transferred its options business to the CBOE. See Securities Exchange Act Release Nos. 38541 and 38542 (April 23, 1997) 62 FR 23516 and 23521 (April 30, 1997) (orders approving proposed rule changes by the CBOE and NYSE, respectively, regarding the transfer of the NYSE's options business to the CBOE). These SROs are the only U.S. exchanges that list standardized options products, which are issued, cleared, and settled through the Options Clearing Corporation.

[24] Securities Exchange Act Release Nos. 37007 (March 21, 1996) 61 FR 14165 (March 29, 1996) (Amex, CBOE, and Phlx) and 37445 (July 16, 1996) 61 FR 38494 (July 24, 1996) (NYSE) (orders approving uniform listing and trading guidelines for narrow-based stock index warrants (''Generic Narrow-Based Index Warrant Approval Orders'')).

[25] Securities Exchange Act Release Nos. 36165 (August 29, 1995) 60 FR 46653 (September 7, 1995) (NYSE); 36166 (August 29, 1995) 60 FR 46660 (September 7, 1995) (PCX); 36167 (August 29, 1995) 60 FR 46667 (September 7, 1995) (Phlx); 36168 (August 29, 1995) 60 FR 46637 (September 7, 1995) (Amex); and 36169 (August 29, 1995) 60 FR 36169 (CBOE) (September 7, 1995) (orders approving uniform listing and trading guidelines for index, currency and currency index warrants). See also, Securities Exchange Act Release No. 36296 (September 28, 1995) 60 FR 52234 (October 5, 1995) (order approving the National Association of Securities Dealers', Incorporated (''NASD'') proposed to adopt uniform listing and trading guidelines for broad-based index warrants on the NASD's Automated Quotation Stock Market).

[26] Supra notes 23 and 24.

options trading. In addition, the Commission has approved rules allowing for the listing of warrants overlying a single currency without a section 19(b) rule filing provided that the underlying currency has been approved for options trading.[27] The Commission also has approved rules allowing for the listing of warrants overlying a currency index without a section 19(b) rule filing provided the index previously has been approved by the Commission pursuant to a section 19(b) rule filing.

B. Reasons for Expanding the Scope of SRO Matters That Do Not Constitute Proposed Rule Changes

Over the years, the Commission has approved numerous SRO trading rules, procedures and listing standards for various classes of new derivative securities products. The Commission preliminarily believes that when it has approved, pursuant to section 19(b) of the Act, an SRO's trading rules, procedures and listing standards for the product class that would include a new derivative securities product, the listing and trading of the new derivative securities product should therefore be reasonably and fairly implied by the SRO's existing trading rules, procedures and listing standards.[28]

SROs are facing increasing competition from overseas and over-the-counter (''OTC'') derivatives markets.[29] The Commission believes that SROs should be able to bring new derivative securities products to market quickly to provide investors with tailored products that directly meet their evolving investment needs. Although the generic rules have helped to speed the process of reviewing new derivative securities product proposals, the Commission preliminarily believes that further changes are warranted. The Commission preliminarily believes that expanding the scope of SRO matters that do not constitute a proposed rule change to include the listing and trading of certain new derivative securities products will significantly speed the introduction of new derivative securities products and enable SROs to maintain their competitive balance with the overseas and OTC derivative markets. The proposal should foster innovation and create a streamlined procedure for SROs to promptly list new products subject to appropriate trading rules, procedures, a surveillance program and listing standards.

At the same time, SROs have had over 20 years of experience with SEC review of new derivative securities product proposals. SROs that have sought approval from the Commission to list and trade such new derivative securities products should be familiar with the factors discussed in this release that the Commission believes should be considered when listing and trading such new derivative securities products. Thus, the Commission believes that there is less need for SEC review, notice and approval prior to an SRO trading a new derivative securities product pursuant to existing trading rules, procedures, a surveillance program and listing standards. Nonetheless, the Commission preliminarily believes that the proposed procedures discussed in this release will enable the Commission to continue to effectively protect investors and promote the public interest.

III. Discussion

A. Definition of ''New Derivative Securities Product''

For the purposes of section 19(b) of the Act and Rule 19b–4 thereunder, the Commission proposes to define ''new derivative securities product'' as any type of option, warrant, hybrid securities product or any other security whose value is based upon the performance of an underlying instrument.

1. New Derivative Securities Product Must Be a ''Security'' as Defined in Section 3(a)(10) of the Act

The SROs have the authority to list and trade ''securities'' as defined in section 3(a)(10) of the Exchange Act.[30] The term ''security'' as defined in section 3(a)(10) of the Exchange Act, includes, among other instruments, ''any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to a foreign currency, or in general, any instrument commonly known as a 'security'.'' [31] Because SROs currently do not have the authority to trade non-securities, the proposed amendment does not provide SROs with any new authority to list a new derivative product that is not a ''security''.[32]

2. Scope of Proposal

As stated above, SROs have sought Commission approval to list and trade various new derivative securities products, including, among others, stock index options and warrants, unit investment trusts, foreign currency options and warrants, and indexed term notes. The Commission proposes to make the proposed amendment available to SROs seeking to list these classes of new derivative securities products and other classes, provided that such classes are subject to existing trading rules, procedures, a surveillance program and listing standards.

An SRO seeking to list a completely new class of derivative securities product without existing trading rules, procedures, a surveillance program and listing standards would still be required to submit a proposed rule change pursuant to section 19(b)(2) of the Act in order to adopt appropriate trading rules, procedures and listing standards for such class. These requirements are intended to ensure that there are

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[27] Supra note 25.

[28] The Commission notes that currently with regard to equity issues, once an SRO has received approval for its trading rules, procedures and listing standards, the listing and trading of a specific new equity issue is not deemed a proposed rule change that requires a filing under Rule 19b–4 of the Act. Rather, an SRO can immediately list and trade a new equity issue so long as that equity issue satisfies the Commission approved trading rules, procedures and listing standards of the SRO.

[29] In order to further promote competition, the Commission proposes, in a separate release issued today (Securities Exchange Act Release No. 39884 (April 17, 1998)), to permit SROs to operate new trading systems subject to certain conditions, for a period not to exceed two years, without submitting a Rule 19b–4 filing.

[30] 15 U.S.C. 78(c)(1)(j).

[31] *Id.*

[32] Furthermore, the proposal will only apply to securities SROs. It will not apply to entities that seek designation as contract markets for futures trading on an index or group of securities or to foreign boards of trade that apply to the Commodity Futures Trading Commission (''CFTC'') for certification to sell their futures contracts to U.S. persons. Under the amendments to the CEA effected by the Futures Trading Act of 1982 (Pub. L. 97–444, 96 Stat. 2294), Section 2(a)(1)(B) of the CEA (7 U.S.C. 2(a)(1)(B)) prohibits any person from offering or selling a futures contract based on ''any group or index of such securities or any interest therein based on the value thereof'' except as permitted under Section 2(a)(1)(B)(ii) of the act. The CFTC is required to seek the views of the SEC regarding each such application concerning a stock index and the SEC may object to the designation on the ground that any of the statutory criteria have not been met. The proposal would not alter these procedures nor does the Commission believe that it is appropriate to do so. The Commission notes that it would have the ability to inspect the securities SROs in order to ensure that they comply with the terms of the proposed amendment when they do not submit proposed rule changes to list and trade new derivative securities products. Moreover, the Commission could take appropriate measures, including, but not limited to, ordering the SRO to remediate the deficiency or prohibiting opening transactions in or discontinuing the listing of new derivative securities products if the new derivative securities product did not comply with the terms of the proposed amendment. In contrast, for stock index futures contracts, neither inspection nor enforcement authority is available to the Commission. Consequently, the Commission believes that it is important for the Commission to continue to review the terms of any proposed stock index futures contract before it commences trading.

adequate SRO rules to provide for fair and orderly trading for the class of securities. Thus, in order to rely on the proposed amendment, an SRO must have in place trading rules, procedures and listing standards for the specific class of new derivative securities product prior to the listing and trading of the class.[33] Procedures include, but are not limited to adequate procedures relating to sales practices (including suitability), margin and disclosure requirements. The SRO also must have a surveillance program adequate to monitor for abuses in the trading of the new derivative securities product, including trading in the underlying security or securities. Once an SRO has submitted, and the Commission has approved, a section 19(b)(2) proposal to establish an appropriate regulatory framework to support trading of a new class of new derivative securities product, the SRO would qualify under the proposed amendment for further new derivative securities products under the same class. For example, if an exchange without any options rules sought to trade options, it would first need to file a rule change, pursuant to Rule 19b–4, to adopt appropriate trading rules, procedures and listing standards that apply to options. In addition, the proposed amendment does not relieve an SRO from its obligation to submit a proposed rule change to amend its existing listing standards for particular classes of securities.

B. Standards for All New Derivative Securities Products

The proposal is premised upon the experience that the Commission has obtained through its review of new derivative securities product proposals by the SROs. Over the years, the Commission has identified the factors it believes new derivative securities product proposals should meet in order to be consistent with the Act. In order to rely on the proposed amendment, an SRO should ensure that the new derivative securities product meets the criteria discussed below in the areas of: Design and maintenance of the instruments or index underlying the new derivative securities product; customer protection rules; surveillance of the component securities; and the potential market impact of the new derivative securities product.[34] Specifically, an SRO should have adequate information sharing agreements, clearance and settlement procedures, systems capacity and transaction reporting procedures for underlying securities.

1. Information Sharing Agreements

In designing a new derivative securities product, the SRO should ensure that it has adequate information sharing procedures to detect and deter potential trading abuses. It is essential that the SRO have the ability to obtain the information necessary to detect and deter market manipulation, illegal trading and other abuses involving the new derivative securities product. Specifically, there should be a comprehensive information sharing agreement (''ISA'') in place between the SRO listing or trading a derivative product and the markets trading the securities underlying the new derivative securities product that covers trading in the new derivative securities product and its underlying securities.[35] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.

For new derivative securities products based upon domestic securities, the SRO should ensure the markets upon which all of the U.S. component securities trade are members of the Intermarket Surveillance Group (''ISG'').[36] The ISG was formed to coordinate, among other things, effective surveillance and investigative information sharing arrangements in the stock and options markets.

For new derivative securities products based on securities from a foreign market, the SRO should have a comprehensive ISA with the market for the securities underlying the new derivative securities product. The SRO should ensure there are no blocking or secrecy laws in the foreign country that would prevent or interfere with the transfer of information under the comprehensive ISA. If securing a comprehensive ISA is not possible, the SRO should contact the Commission prior to listing the new derivative securities product. In such instances, the Commission may determine that it is appropriate instead to rely on a Memorandum of Understanding (''MOU'') between the Commission and the foreign regulator.[37]

For a new derivative securities product overlying an instrument with component securities from several countries, the Commission recognizes that it may not be practical in all instances to secure comprehensive ISAs with all of the relevant foreign markets. Generally, foreign countries' securities or American depositary receipts that are not subject to a comprehensive ISA should not represent a significant percentage of the weight of such an underlying instrument.[38]

2. Clearance and Settlement

The calculation of the settlement value for the new derivative securities product should be clear, fixed and objective. In order to minimize market impact concerns, a new derivative securities product overlying an index of U.S. securities generally should be

[33] The Commission notes that several exchanges have adopted listing standard categories termed ''other securities.'' These standards were adopted to allow the listing of securities that contain features borrowed from more than one category of currently listed securities, such as hybrid new derivative securities products that have characteristics of both common stock and debt securities. The Commission has clearly stated and reiterates its belief that such standards ''are not intended to accommodate the listing of securities that raise significant new regulatory issues, and, therefore, would require a separate filing with the Commission pursuant to Rule 19b–4 under the Act.'' Securities Exchange Act Release No. 28217 (July 18, 1990) 55 FR 30056 (July 24, 1990). In other words, the ''other securities'' category is not intended to permit an SRO to list a new derivative securities product that does not fall under another listing category of the SRO. Accordingly, an SRO could not avoid the requirement of adopting appropriate listing standards in order to rely on the proposed amendment for a novel new derivative securities product by simply listing such product under the ''other security'' category.

[34] As discussed in Section IV. G. *Ensuring Proper Use Of The Proposed Amendment,* a failure to comply with the standards could compromise an SRO's reliance on the proposed amendment.

[35] The Commission believes that a comprehensive ISA should require that the parties provide each other, upon request, information about market trading, clearing activity and the identity of the ultimate purchasers and sellers of securities. See Securities Exchange Act Release No. 31529 (November 27, 1992) 57 FR 57248 (December 3, 1992).

[36] See ISG Agreement, dated July 14, 1983, amended January 29, 1990. The ISG members are: the Amex; the Boston Stock Exchange, Incorporated; the CBOE; the Chicago Stock Exchange, Inc.; the NASD; the NYSE; the PCX; and the Phlx. The major stock index futures exchanges joined the ISG as affiliate members in 1990.

[37] An MOU provides a framework for mutual assistance in investigatory and regulatory matters. Generally, the Commission has permitted an SRO to rely on an MOU in the absence of a comprehensive ISA only if the SRO receives an assurance from the Commission that such an MOU can be relied on for surveillance purposes and includes, at a minimum, the transaction, clearing and customer information necessary to conduct an investigation. See Securities Exchange Act Release No. 35184 (December 30, 1994) 60 FR 2616 (January 10, 1995) (order approving the listing and trading of warrants on the CBOE overlying the Nikkei Stock Index 300 where there was no comprehensive ISA between the CBOE and the underlying market, the Tokyo Stock Exchange but there was an MOU between the SEC and the Japanese Ministry of Finance). In addition, an SRO should endeavor to develop comprehensive ISAs with foreign exchanges that trade the underlying securities of an index even if the SRO receives prior Commission approval to rely on an MOU in place of a comprehensive ISA.

[38] If, however, a foreign security had more than 50% of its global trading volume in dollar value in U.S. markets, the Commission, in the past, has treated such security as a U.S. security.

settled based on opening prices of the component stocks. If opening price settlement is not utilized, the SRO should ensure that the settlement value reflects the last available closing prices prior to settlement for the underlying securities or some alternative objective settlement measurement. If the new derivative securities product is settled in foreign currency, the SRO should ensure that a recognized exchange rate is used to convert the settlement value into U.S. dollars. In addition, the SRO should ensure that adequate clearance procedures have been established for the new derivative securities product.

3. Systems Capacity

It is essential that the SRO and the applicable price reporting authority have adequate systems processing capacity to accommodate the listing and trading of a new derivative securities product. The SRO should, prior to listing a new derivative securities product, ensure that it has adequate systems processing capacity to accommodate the new listing and obtain a representation from the applicable price reporting authority that such price reporting authority also has adequate systems processing capacity.

4. Transaction Reporting of Underlying Securities

In order to prevent manipulation and ensure liquidity of securities underlying a new derivative securities product, underlying equity securities should be listed on a national securities exchange or traded through the facilities of a national securities association or otherwise subject to real-time public transaction reporting. For securities that are not subject to transaction reporting (*e.g.*, municipal securities), there should be an objective means of capturing price information through disseminated quotations. For foreign securities underlying a new derivative securities product, an SRO should ensure that those securities satisfy and maintain all other criteria described in this release when relying on the proposed amendment.

C. Index Based Products

In addition to the items discussed above, SROs should ensure that if a new derivative securities product is index based: The index is classified properly as broad-based or narrow-based; the index is constructed according to established criteria for initial inclusion of new component securities; the index is maintained so that it measures the same segment of the market as originally intended; the index value is disseminated frequently; component securities that fail to meet the maintenance criteria are replaced according to established policies and procedures; and when the index is maintained by a broker-dealer, a functional separation exists between the broker-dealer's trading desk and research department.

1. Designation of Index as Broad-Based or Narrow-Based

An SRO should first classify the underlying index as narrow-based (*i.e.*, containing securities from a specific industry sector or comprised of a small group of securities) or broad-based (*i.e.*, a larger group of securities that is representative of the entire market or a substantial portion of the entire market).[39] In order to make a determination that an index is broad-based, the SRO should identify how the index represents the overall stock market or a substantial portion thereof. The SRO should undertake an analysis of the basis for such a determination. A mere conclusion by the SRO that an index has been designated as broad-based is not determinative of the status of the index.

2. Index Construction

The index underlying a new derivative securities product should be constructed according to established criteria for initial inclusion of new component securities. SROs seeking to rely on the proposed amendment should employ objective index construction standards that include a minimum number of component securities and a fixed and objective weighting methodology (*e.g.*, capitalization weighted, price weighted or equal-dollar weighted).[40] In addition, SROs should use index construction standards that ensure that the underlying securities have sufficient liquidity so as to help reduce the potential for manipulation of the index's component securities. For example, the index construction criteria should include, among other things, a minimum price, available capitalization, average daily trading volume and value of each component security and set a maximum relative weight for the top component and the five largest components.

3. Maintenance Criteria

Maintenance criteria should be designed to ensure that an index that has derivative products overlying it continues to measure the same segment or sector of the market as originally intended, remains composed of liquid securities, and does not become dominated by one (or a few) component(s). As a result, an SRO seeking to rely on the proposed amendment should ensure the index meets reasonable maintenance standards.

4. Dissemination of the Index Value

In most circumstances, the index value should be disseminated frequently and, if based on U.S. equities only, should reflect last-sale prices. If an index is comprised of both U.S. and foreign securities, prices for all securities that trade on markets that are open during U.S. trading hours should be disseminated, if practicable, at least every 15 seconds. Dissemination of an index value based in whole or in part on closing prices of component securities should occur only for those component securities where the underlying markets are closed during U.S. trading hours (the disseminated index value may still be adjusted for currency fluctuations) or the underlying component value itself is not calculated real-time (*e.g.*, indices of open-end mutual funds that report net asset value at the close of trading).[41] Certain indices may use quotes (*e.g.*, a bond index) if last sale prices are unavailable and the quotes are reliable and spread across several dealers.

5. Component Changes

Component securities that fail to meet the index maintenance standards should be replaced within the index according to established policies and procedures for reviewing and replacing such component securities. Automatic rebalancing of index components also should occur according to established policies and procedures (*e.g.*, annually, semi-annually or quarterly). Notice of component changes should be disseminated to news vendors and the public. SROs should ensure that components are replaced promptly in the event of specified circumstances such as corporate mergers or spin-offs.

6. Functional Separation Letter

When the index is maintained by a broker-dealer or an affiliate of a broker-dealer, the SRO should assure, prior to the listing of a new derivative securities product, that there will be a functional

[39] Such a classification is essential because regulatory requirements such as position limits and margin levels are different for narrow-based and broad-based index options. See *e.g.*, CBOE Rules 24.4, 24.4A and 24.11.

[40] See Generic Narrow-Based Index Option Approval Order, supra note 23 and Generic Narrow-Based Index Warrant Approval Orders, supra note 24.

[41] Securities Exchange Act Release No. 39244 (October 15, 1997) 62 FR 55289 (October 23, 1997).

separation between the trading desk of the broker-dealer and the research persons responsible for maintaining the index through a fire wall. A fire wall is a mechanism by which employees responsible for constructing and maintaining the index are separated from employees involved in the sale and trading of securities. In accordance with the broker-dealer's fire wall mechanism, the persons responsible for maintaining an index should be subject to certain procedures limiting the dissemination of index information within the broker-dealer and particularly should be prohibited from relaying any information concerning a potential change to the components of the index to anyone not responsible for maintaining the index, including employees of the sales and trading department.

D. Compliance With Other Federal Securities Laws

The Commission notes that the proposed amendment does not relieve SROs from any other obligation under the federal securities laws, or rules or regulations thereunder, except the requirement of filing a proposed rule change pursuant to section 19(b) of the Act and Rule 19b–4 thereunder. For example, Form S–20 [42] under the Securities Act of 1933, as amended (''Securities Act'') [43] and Rule 9b–1 [44] under the Exchange Act establish a disclosure framework specifically tailored to the informational needs of investors in ''standardized options'' [45] that are traded on an ''options market'' [46]. Under Rule 9b–1, broker-dealers must provide an updated copy of the options disclosure document (''ODD'') [47] to each customer at or prior to the approval of the customer's account for trading in standardized options.[48] Accordingly, when trading a new standardized option, an SRO must determine if it should change the ODD to reflect specific characteristics and risks associated with the new derivative securities product not currently set forth in the ODD and submit such changes to the Commission. In addition, a particular new derivative securities product may need to be designated as a standardized option under Rule 9b–1 in order to utilize the ODD.[49] If the proposing SRO and the issuer of the new derivative securities product determine that such steps are necessary, they are required to submit proposals to the Commission, under Rule 9b–1, prior to listing the new derivative securities product.

The Commission preliminarily notes that the proposed amendment to Rule 19b–4 may still be available if an SRO determines that the above steps are necessary. So long as all conditions to the proposed amendment are met, including the existence of appropriate current listing standards for the new product, the SRO may immediately list the new derivative securities product without a Section 19(b) rule filing after the Commission designates the particular new product as a ''standardized option'' and approves the Rule 9b–1 filing of amendments to the ODD.

In addition to Form S–20 and Rule 9b–1, the Commission notes that other federal securities laws must be complied with even when an SRO relies on the proposed amendment to Rule 19b-4. For example, issuers of new derivative securities products must continue to comply with, among other things, the registration requirements of the Securities Act and in addition, if a product is an investment company [50] regulated under the Investment Company Act of 1940, as amended, (''ICA'') [51] the product must comply with the ICA.

E. Existing Trading Rules, Procedures, Surveillance Programs and Listing Standards

An SRO wishing to list a new derivatives securities product should have in place trading rules, procedures, a surveillance program and listing standards that pertain to the class of securities covering the new product. For example, the Amex, CBOE, NYSE,[52] PCX, and Phlx are the only SROs that currently have in place trading rules, position limits, margin requirements and internal surveillance programs that pertain to the listing and trading of narrow-based stock index options.[53] Should another exchange desire to trade narrow-based index options, it would first have to submit a proposed rule change to the Commission adding relevant trading rules, procedures and listing standards to its rules. Procedures include, but are not limited to adequate procedures relating to sales practices (including suitability), margin and disclosure requirements. Otherwise, the SRO would be in violation of sections 6(b) and 19(b) of the Act in order to assure fair and orderly trading markets. The SRO also must have a surveillance program adequate to monitor for abuses in the trading of the new derivative securities product, including trading in the underlying security or securities.

SROs that have the appropriate regulatory framework in place for a specific class of new derivative securities product could immediately list such class of new derivative securities product, provided the particular SRO satisfies the conditions for the proposed amendment. If an SRO sought to alter position limits, margin requirements, or any other rules or procedures for a new derivative securities product class, however, it would be required to submit a section 19(b)(2) rule filing for Commission review. The SRO could apply such proposed rule changes to a new product only after the Commission has reviewed and approved the proposal pursuant to section 19(b)(2). For example, if an options exchange wanted to list immediately a new narrow-based index option it could do so under its existing applicable rules. In particular, the SRO could immediately list the new narrow-based index option and impose its existing position limits and margin requirements.

If the SRO wanted to impose different position limits or margin requirements, or alter other existing trading rules or procedures for the new derivative securities product class, it would still be required to submit to the Commission a rule filing proposing such changes to its existing rules pursuant to section 19(b)(2) of the Act. This framework would not prevent an SRO from using

[42] 17 CFR 239.20. Form S–20 is used to register classes of options under the Securities Act.

[43] 15 U.S.C. 77a et seq.

[44] 17 CFR 240.9b–1.

[45] Standardized options'' are options contracts trading on a national securities exchange, an automated quotation system of a registered securities association or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices or such other securities as the Commission may, by order, designate. 17 CFR 240.9b–1(a)(4).

[46] Options market'' means a national securities exchange, an automated quotation system of a registered securities association or a foreign securities exchange on which standardized options are traded. 17 CFR 240.9b–1(a)(1).

[47] The ODD identifies the issuer and describes the uses, mechanics and risks of options trading and other matters in language that can be easily understood by the general investing public.

[48] The ODD may be used as a substitute for the traditional prospectus.

[49] See Securities Exchange Act Release No. 31920 (February 24, 1993) 58 FR 12280 (March 3, 1993) (order approving CBOE proposal to list and trade FLEX Options based on the S & P's 500 and 100 Stock Indices).

[50] See *e.g.*, Investment Company Act Release No. 21802 (March 5, 1996) (exemptive order under the ICA permitting the trading of Countrybasket Index Funds on the NYSE).

[51] 15 U.S.C. 80a et seq.

[52] Although the NYSE transferred its options business to the CBOE, supra note 23, the NYSE still has listing standards for narrow-based index options in its rules.

[53] See *e.g.*, Amex Rules 900c through 980C; CBOE Rules 24.1 through 24.8; and PCX Rules 7.1 through 7.18.

the proposed amendment to immediately list a new derivative securities product under its existing rules, and then impose different position limits, margin requirements, or any other trading rule for the new product once the Commission has approved the Section 19(b)(2) rule filing proposing such rule changes.[54]

F. Form of Notification to the SEC of New Derivative Securities Product Listing Pursuant to the Proposed Amendment

In order for the Commission to maintain an accurate record of all new derivative securities products traded on the SROs, it is proposing that an SRO file a new form, proposed Form 19b–4(e), to notify the Commission when an SRO begins to trade a new derivative securities product that is not required to be submitted as a proposed rule change to the Commission for approval. Proposed Form 19b–4(e) should be submitted within five business days after an SRO begins trading a new derivative securities product that is not the subject of a proposed rule change.

G. Ensuring Proper Use of the Proposed Amendment

The Commission contemplates that its Office of Compliance Inspections and Examinations (''OCIE'') will review SRO compliance with the proposed amendment through its routine inspection process of the SROs. In order for OCIE to determine whether an SRO has properly availed itself of the proposed amendment, it is necessary that the SRO maintain, on-site, relevant records and information pertaining to each new derivative securities product for which the SRO relied on the proposed amendment. Such records should be maintained for a period of not less than five years, the first two years in an easily accessible place, according to the recordkeeping requirements set forth in Rule 17a–1 under the Act.[55]

Such records available for OCIE review would include, among other things, a copy of proposed Form 19b–4(e) under the Act and whether the factual and numerical information regarding the new derivative securities product's characteristics meet the conditions of the proposed amendment. The SRO should be able to provide the listing standard under which the new derivative securities product falls as well as, but not limited to, such other things as the details of its surveillance program, records of adequate information sharing procedures and index construction and maintenance standards. In short, the Commission believes that when an SRO relies on the proposed amendment, such SRO should ensure that its regulatory framework adequately supports the listing and trading of any new derivative securities product. Failure to comply with this requirement would mean that the SRO could be in violation of the Act. If so, appropriate measures would be taken, including, but not limited to, ordering the SRO to remediate the deficiency or prohibiting opening transactions in or discontinuing the listing of new derivative securities products.[56]

IV. Technical Changes

Because the Commission proposes that a new paragraph (e) be added to Rule 19b–4 under the Act, Form 19b–4 under the Act[57] is amended by revising the phrase ''subparagraph (e) of Rule 19b–4'' to read ''subparagraph (f) of Rule 19b–4'' and the phrase ''subparagraph (e) of Securities Exchange Act Rule 19b–4'' to read ''subparagraph (f) of Securities Exchange Act Rule 19b–4'' in Exhibit 1, III. (B); and in Exhibit 1, IV. revise the first sentence to read ''Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act.''

V. Conclusion

For the reasons discussed above, the Commission preliminarily believes that an amendment to Rule 19b–4 under the Act that deems the listing and trading of new derivative securities products pursuant to existing SRO trading rules, procedures, surveillance programs and listing standards, to not be a proposed rule change will reduce significantly the SROs' regulatory burden and help SROs maintain their competitive balance with the overseas and OTC derivatives markets. The proposed amendment to Rule 19b–4 will provide guidelines for SROs seeking to rely on it but removes the need for SEC review, notice and approval prior to an SRO trading a new derivative securities product pursuant to existing SRO trading rules, procedures, surveillance programs and listing standards.[58]

The Commission preliminarily believes that the proposed amendment offers potential benefits for investors. If adopted, the proposed amendment will facilitate the listing and trading of new derivative securities products by permitting SROs to bring such products to market quickly to provide investors with tailored products that directly meet their evolving investment needs. The Commission does not anticipate that the proposed amendment will result in any costs for U.S. investors or others. The Commission preliminarily believes that the proposed amendment would reduce the cost of offering new derivative securities products to investors because it will foster innovation and create a streamlined process for SROs to list and trade such new derivative securities products subject to existing trading rules, procedures, surveillance programs and listing standards. Thus, the Commission has considered the proposed amendment's impact on efficiency, competition and capital formation and preliminarily believes that it would promote these three objectives.[59] Finally, the Commission believes that the SROs will spend significantly less time filling out the form to be used under the proposed amendment than they do now when submitting a complete proposed rule change for Commission review, notice and approval pursuant to Rule 19b–4 under the Act.

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[54] The Commission does not anticipate that every proposed change in an SRO's existing trading rules to accommodate a new derivatives securities product will require a Section 19(b)(2) rule filing. An SRO will not be required to submit a rule filing for a stated policy, practice or interpretation of the SRO that is reasonably or fairly implied by an existing rule of the SRO or is concerned solely with the administration of the SRO and is not a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the SRO. 17 CFR 240.19b–4(c), supra note 7. For example, if an SRO has rules that merely delineate each new derivative securities product covered by a particular existing trading rule, the SRO need not submit a rule filing pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder merely because it is adding a new derivative securities product to the list. See *e.g.*, CBOE Rule 24.9(a)(3) and (4).

[55] 17 CFR 240.17a–1. SROs may also destroy or otherwise dispose of such records at the end of five years according to Rule 17a–6 under the Act, 17 CFR 240.17a–6.

[56] See section 19(h) of the Act, 15 U.S.C. 78s(h).

[57] 17 CFR 249.819.

[58] The Commission anticipates that the proposed amendment will eliminate approximately 45 SRO filings each year pursuant to Rule 19b–4 and Form 19b–4. In addition, the Commission believes that the proposed amendment reduces the recordkeeping and reporting requirements, purusant to Rule 19b–4 and Form 19b–4, on the SROs by permitting them to submit a one page summary form after they list a new derivative securities product instead of filing a complete proposed rule change for Commission review prior to listing such new derivative securities product.

[59] Section 3(f) of the Act, 15 U.S.C. 78c(f), requires the Commission, when it is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

VI. Request for Public Comments

The Commission seeks comments on adopting proposed Rule 19b–4(e) and Form 19b–4(e) under the Act. Commentators are asked to consider whether the proposed amendment provides appropriate review of the listing and trading of new derivative securities products subject to existing trading rules, procedures, surveillance programs and listing standards. Specifically, comments should address whether more or less information is needed on Form 19b–4(e) in order to enable the Commission to comply with its statutory obligations to help remove impediments to a free and open securities market, protect investors and promote the public interest. For example, should Form 19b–4(e) require the SRO to cite its relevant standards under which it has listed a new derivative securities product? Commentators also may wish to discuss whether there are any legal or policy reasons why the Commission should consider a different approach in regulating new derivative securities products. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed amendment on the economy on an annual basis. If possible, commentators should provide empirical data to support their views. Finally, commentators should consider the proposed rule amendment's effect on competition, efficiency and capital formation. Comments should be submitted by May 29, 1998.

VII. Costs and Benefits of the Proposed Amendment and its Effects on Competition, Efficiency and Capital Formation

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed amendment, commentators are requested to provide analysis and data, if possible, relating to costs and benefits associated with the proposal herein. The Commission preliminarily believes that the proposed amendment will reduce SRO compliance burdens under Rule 19b–4.[60] The proposal would reduce significantly the SROs' regulatory burden and help SROs maintain their competitive balance with the overseas and OTC derivative markets.[61] Moreover, the Commission believes that the proposed amendment will foster innovation and create a streamlined procedure for SROs to promptly list new derivative securities products subject to appropriate listing standards.

The individual hour burden for each respondent to the collection of information requirements of proposed Rule 19b–4(e) and Form 19b–4(e) under the Act is estimated to be two hours per proposed Form 19b–4(e). The annual aggregate burden for all respondents to the recordkeeping collection of information requirements of proposed Rule 19b–4(e) and Form 19b–4(e) under the Act is estimated to be 90 hours. This burden is computed by estimating that an SRO will utilize 1 hour of in-house legal processing time to prepare the substantive information for proposed Form 19b–4(e) and 1 hour of clerical time to process proposed Form 19b–4(e) for filing. The Commission estimates that an SRO will incur a cost of $88 for each proposed Form 19b–4(e) that it submits.[62] Thus, the total cost per year to all SROs to comply with proposed Rule 19b–4(e) and Form 19b–4(e) is estimated to be $7,920 (90 hours at $88 per hour). When the annual aggregate SRO burden of preparing proposed Form 19b–4(e) (positive 90 hours) is added to the reduction in SRO burden hours under Form 19b–4 (negative 2,295 hours), the Commission estimates that the SROs would receive an aggregate net savings of 2,205 burden hours per year.

In addition, section 23(a)(2)[63] of the Act requires that the Commission, when promulgating rules under the Exchange Act, to consider the impact any rule would have on competition and to not adopt any rule that would impose a burden on competition that is not necessary or appropriate in the public interest. The Commission has considered the proposed amendment in light of the standards cited in section 23(a)(2) of the Act and believes that it would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. Indeed, the Commission believes that the proposed amendment will reduce compliance cost and will enable SROs to compete more effectively with overseas and OTC derivatives markets. The Commission preliminarily believes that SROs should be able to bring new derivative securities products to market quickly to provide investors with tailored products that directly meet their evolving investment needs.[64] SROs have had over 20 years of experience with SEC review of new derivative securities product proposals. SROs that have sought approval from the Commission to list and trade such new derivative securities products should be familiar with the factors discussed in this release that the Commission believes should be considered when listing and trading such new derivative securities products. Thus, the Commission preliminarily believes that there is less need for SEC review, notice and approval prior to an SRO trading a particular new derivative securities product pursuant to existing SRO trading rules, procedures, a surveillance program and listing standards. The Commission preliminarily believes that the proposed procedures discussed in this release will enable the Commission to continue to effectively protect investors and promote the public interest. Nonetheless, the Commission solicits comments on the costs, benefits and competitive effects of the proposed rule amendment, in general, and the potential competitive effects across

[60] See supra note 58. As previously stated, the Commission believes that the proposed amendment reduces the recordkeeping and reporting requirements, pursuant to Rule 19b–4 and Form 19b–4, on the SROs by eliminating the requirement of filing a complete proposed rule change for Commission review prior to trading a new derivate securities product. The Commission estimates that the annual aggregate burden and annual aggregate cost for all respondents under Form 19b–4 would be reduced by 2,295 hours and $152,786, respectively. The cost per hour and per filing is derived from information supplied by the SROs. We have valued related overhead at 35% of the value of legal and clerical work combined. See GSA *Guide to Estimating Reporting Costs (1973)*.

The annual aggregate burden was derived as follows: 30 routine filings at 25 hours legal review time per filing equals 750 hours; 15 significant filings at 100 hours legal review time per filing equals 1,500 hours; and 45 total filings at 1 hour of clerical work per filing equals 45 hours. The total of the three sums equals 2,295 hours.

The annual aggregate cost was derived as follows: 2,250 hours of in-house legal work at $50 per hour equals $112,500; 45 hours of clerical work at $15 per hour equals $675; and overhead equals $39,611. The total of the three sums equals $152,786.

A routine filing is one that takes the Commission approximately 90 days to approve and a significant filing takes more time. See *infra* note 61.

[61] The Commission estimates that under current procedures, a proposed rule filing for a new derivative securities product takes 90 days, on average, from the date of the original submission, to be approved. In contrast, the proposed amendment permits SROs to immediately list and trade a new derivative securities product so long as such product is in compliance with proposed Rule 19b–4(e) under the Act.

[62] The Commission estimates that the $88 cost will be broken down as follows: 1 hour in-house professional work at $50 per hour; 1 hour of clerical work at $15 per hour; and overhead (telephone, copying and postage) at $23 per Proposed Form 19b–4(e).

We have valued related overhead at 35% of the value of legal and clerical work combined. The cost per hour and per Form 19b–4(e) is derived from the information supplied by the SROs used to compute the SROs' burden under Form 19b–4, see note 60, supra.

[63] See 15 U.S.C. 78w(a)(2).

[64] The Commission also believes that the proposed amendment will benefit broker-dealers. See VII. *Summary of Regulatory Flexibility Act Analysis*, infra.

markets, in particular. Specifically, the Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits or impose any costs on U.S. investors or others.

VIII. Summary of Regulatory Flexibility Act Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 605(b) regarding the proposed amendment to Rule 19b–4 and Form 19b–4(e) under the Exchange Act. The following summarizes the IRFA.

The IRFA sets forth the statutory authority for the proposed amendment to Rule 19b–4. The IRFA also discusses the effect of the proposed amendment on broker-dealers that are small entities as defined in Rule 0–10 under the Exchange Act.[65] A broker-dealer that has total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, or, if not required to prepare such statements, a broker-dealer that had total capital of less than $500,000 on the last business day of the preceding fiscal year is deemed to be a small entity for purposes of the IRFA. The IRFA states that the proposed amendment would enable broker-dealers that are small entities (such as certain options market makers and options specialists) to trade new derivative securities products pursuant to existing trading rules, procedures, surveillance programs and listing standards approximately 90 days earlier, on average, because the proposed amendment will permit SROs to immediately list these new derivative securities product without prior Commission approval. As a result, broker-dealers will have additional days to earn income through trading such new derivative securities products. As of December 31, 1996, the Commission estimated that there were over 900 options market makers and specialists that may be considered small entities.[66]

The IRFA states that the proposed amendment would not impose any new reporting, recordkeeping or compliance requirements on broker-dealer small entities. Any new reporting, recordkeeping or compliance burdens rest with the SROs, not broker-dealer small entities.

The IRFA discusses the various alternatives considered by the Commission in connection with the proposed amendment that might minimize the effect on small entities, including: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the proposed rule amendment, or any part thereof, for small entities. The Commission believes that different compliance or reporting requirements for small entities are not necessary because the proposed rule amendment does not establish any new reporting, recordkeeping or compliance requirements for small entities. In addition, the Commission has concluded that it is not feasible to further clarify, consolidate or simplify the proposed rule amendment for small entities. The Commission also believes that it would be inconsistent with the purposes of the Act to use performance standards to specify different requirements for small entities or to exempt broker-dealer small entities from being able to trade new derivative securities products that are covered by the proposed rule amendments.

The IRFA includes information concerning the solicitation of comments with respect to the IRFA generally, and in particular, the number of small entities that would be affected by the proposed rule amendment. A copy of the IRFA may be obtained by contacting Marianne H. Duffy, Special Counsel, (202) 942–4163 at Office of Market Supervision, Division of Market Regulation, SEC, Mail Stop 10–1, 450 Fifth Street, NW., Washington, DC 20549.

IX. Paperwork Reduction Act

Certain provisions of the proposed amendment to Rule 19b–4 contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995[67] through the use of proposed Form 19b–4(e) under the Act. The Commission has submitted the collection to the Office of Management and Budget (''OMB'') in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. Persons should note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The title for the collection of information is: ''Form 19b–4(e) Under the Securities Exchange Act of 1934.''

A. Summary of Collection of Information Under Proposed Rule 19b–4(e) and Form 19b–4(e)

The collection of information would require SROs to prepare a one-page summary sheet of nine questions that requests factual information regarding the characteristics of the new derivative securities product and the underlying securities. Such questions do not require any analysis or exhibits.

B. Proposed Use of the Information

Currently, in order to list and trade a new derivative securities product, an SRO must submit a proposed rule change to the Commission pursuant to section 19(b) of the Exchange Act and Rule 19b–4 thereunder. Paragraph (c) of Rule 19b–4 provides that certain stated policies, practices and interpretations of SROs do not constitute proposed rule changes. Specifically, a ''stated policy, practice or interpretation'' of an SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO. The Commission proposes to not deem the listing and trading of new derivative securities products as proposed rule changes pursuant to Rule 19b–4(c)(1) because, if the Commission has approved, pursuant to section 19(b) of the Act, such SRO's trading rules and procedures and listing standards for the product class that would include the new derivative securities product, the listing and trading of the new derivative securities product is reasonably and fairly implied by the existing trading rules and procedures and listing standards.

Under current procedures, a proposed rule filing for a new derivative securities product takes approximately 90 days from the date of the original submission to be ordered.[68] In contrast, the proposed amendment permits SROs to immediately list and trade a new derivative securities product so long as such new derivative securities product is in compliance with proposed Rule 19b–4(e) under the Act. However, in order for the Commission to maintain an accurate record of all new derivative securities products traded on the SROs and to determine whether an SRO has properly relied on the proposed amendment, it is necessary that the SRO file proposed Form 19b–4(e) with the Commission when such SRO begins trading a new derivative securities product pursuant to the proposed amendment. In addition, an SRO must

[65] 17 CFR 240.0–10(c).

[66] The Commission bases its estimate on the information provided in Form X–17A–5—Financial and Operational Combined Uniform Single Reports pursuant to section 17 of the Act and Rule 17a–5 thereunder.

[67] 44 U.S.C. 3501 et seq.

[68] See supra note 61.

maintain, on-site, a copy of proposed Form 19b–4(e). The Commission contemplates that it will ensure SRO compliance with the proposed amendment through its routine inspection process of the SROs.

C. Respondents

The proposed amendment may be used by any SRO. Currently, there are ten such SROs for which it is estimated that the proposed amendment would be used, in the aggregate, approximately 45 times a year.

D. Total Annual Reporting and Recordkeeping Burden

The individual burden for each respondent to the collection of information requirements of proposed Rule 19b–4(e) and Form 19b–4(e) under the Act is estimated to be two hours per proposed Form 19b–4(e). The annual aggregate burden for all respondents to the collection of information requirements of proposed Rule 19b–4(e) and Form 19b–4(e) under the Act is estimated to be 90 hours. This burden is computed by estimating that an SRO will utilize 1 hour of in-house legal processing time to prepare the substantive information for proposed Form 19b–4(e) and 1 hour of clerical time to process proposed Form 19b–4(e) for filing. The Commission also estimates that an SRO will incur an additional cost of $23 for overhead, including telephone, copying and postage, for each proposed Form 19b–4(e) that it submits.[69] Thus, the total operation and maintenance cost per year, in addition to the burden hours, to all SROs to comply with proposed Rule 19b–4(e) and Form 19b–4(e) is estimated to be $7,920 (90 hours at $88 per hour).

In addition, as previously stated, because SROs will no longer be required to file a lengthier Form 19b–4, the Commission estimates that the annual aggregate costs and annual aggregate burden for all respondents under Form 19b–4 would be reduced by $152,786 and 2,295 hours, respectively.[70] As previously stated, when the annual aggregate SRO burden of preparing proposed Form 19b–4(e) is added to the reduction in SRO burden hours under Form 19b–4, the Commission estimates that the SROs would receive an aggregate net savings of 2,205 burden hours per year.

E. Retention Period for Recordkeeping Requirements

The SROs would be required to retain records of the collection of information for a period of not less than five years, the first two years in an easily accessible place, according to the current recordkeeping requirements set forth in Rule 17a–1 under the Act.[71]

F. Collection of Information Is Mandatory

Any collection of information pursuant to proposed Rule 19b–4(e) and Form 19b–4(e) under the Act would be mandatory as a means for the Commission to maintain accurate records of new derivative securities products that are traded.

G. Responses to Collection of Information Will Not Be Kept Confidential

Any collection of information pursuant to proposed Rule 19b–4(e) and Form 19b–4(e) under the Act would not be confidential and would be publicly available from the Commission upon request.

H. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility and clarity of the information to be collected;

(iv) and minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549 with reference to File No. S7–13–98. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

X. Statory Basis

The amendment to Rule 19b–4(e) under the Exchange Act is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(27), 3(b), 19(b), 23(a) and 36(a) of the Act, unless otherwise noted.

Text of the Proposed Rule

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for part 240 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–*1*, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.19b–4 is amended by redesignating paragraphs (e), (f), (g), and (h) as paragraphs (f), (g), (h) and (i) and adding new paragraph (e) to read as follows:

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

* * * * *

(e) For the purposes of this paragraph, *new derivative securities product* means any type of option, warrant, hybrid securities product or any other security whose value is based upon the performance of an underlying instrument.

(1) The listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of this section, if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class.

(2) Recordkeeping and reporting:

[69] Supra note 62.

[70] Supra note 60.

[71] SROs may also destroy or otherwise dispose of such records at the end of five years according to Rule 17a–6 under the Act, supra note 55.

(i) Self-regulatory organizations shall retain at their principal place of business a file, available to Commission staff for inspection, of all relevant records and information pertaining to each new derivative securities product traded pursuant to this paragraph (e) for a period of not less than five years, the first two years in an easily accessible place, as prescribed in § 240.17a–1.

(ii) When relying on this paragraph (e), a self-regulatory organization shall submit Form 19b-4(e) (17 CFR 249.820) to the Commission within five business days after commencement of trading a new derivative securities product.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

4. Form 19b–4 (referenced in § 249.819) is amended as by revising the phrase ''subparagraph (e) of Rule 19b–4'' to read ''subparagraph (f) of Rule 19b–4'' and the phrase ''subparagraph (e) of Securities Exchange Act Rule 19b-4'' to read ''subparagraph (f) of Securities Exchange Act Rule 19b–4'' in Exhibit 1, III. (B); and in Exhibit 1, IV. revise, the first sentence to read ''Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act.''

5. Section 249.820 and Form 19b–4(e) are added to read as follows:

§ 249.820 Form 19b–4(e) for the listing and trading of new derivative securities products by self-regulatory organizations that are not deemed proposed rule changes pursuant to Rule 19b–4(e) (§ 240.19b–4(e)).

This form shall be used by all self-regulatory organizations, as defined in Section 3(a)(26) of the Act, to notify the Commission of a self-regulatory organization's listing and trading of a new derivative securities product that is not deemed a proposed rule change, pursuant to Rule 19b–4(e) under the Act (17 CFR 240.19b–4(e)).

BILLING CODE 8010–01–P

[Note: Form 19b-4(e) will not appear in the Code of Federal Regulations.]

OMB Approval Number 3235-
Expires:
Estimated average burden
hours per response: 2.00

U.S. SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 19b-4(e)

Information Required of a Self-Regulatory Organization Listing and Trading a New Derivative Securities Product Pursuant to Rule 19b-4(e) Under the Securities Exchange Act of 1934

READ ALL INSTRUCTIONS PRIOR TO COMPLETING FORM

Part I **Initial Listing Report**

1.	Name of Self-Regulatory Organization Listing New Derivative Securities Product:
2.	Type of Issuer of New Derivative Securities Product (e.g., clearinghouse, broker-dealer, corporation, etc.):
3.	Class of New Derivative Securities Product:
4.	Name of Underlying Instrument:
5.	If Underlying Instrument is an Index, State Whether it is Broad-Based or Narrow-Based:
6.	Ticker Symbol(s) of New Derivative Securities Product:
7.	Market or Markets Upon Which Securities Comprising Underlying Instrument Trades:
8.	Settlement Methodology of New Derivative Securities Product:
9.	Position Limits of New Derivative Securities Product (if applicable):

Part II	**Execution**
	The undersigned represents that the governing body of the above-referenced Self-Regulatory Organization has duly approved, or has duly delegated its approval to the undersigned for, the listing and trading of the above-referenced new derivative securities product according to its relevant trading rules, procedures, surveillance programs and listing standards.
Name of Official Responsible for Form:	
Title:	
Telephone Number:	
Manual Signature of Official Responsible for Form:	
Date:	

Instructions for Completing Form 19b-4(e)

I. Terms. Unless the context clearly indicates otherwise, terms used in this Form have the meaning ascribed to them in the Securities Exchange Act of 1934, as amended, and Rule 19b-4 thereunder.

II. Who Must File; When to File. Rule 19b-4(e) requires every self-regulatory organization (SRO) seeking to rely on Rule 19b-4(e) to file Form 19b-4(e) with the Securities and Exchange Commission (Commission or SEC) at least 5 business days after commencement of trading a new derivative securities product that is not deemed to be a proposed rule change. Each time an SRO files Form 19b-4(e), the execution page must be completed.

III. Number of Copies; How and Where to File. File the original and nine copies of each Form 19b-4(e) with the Division of Market Regulation, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. The SRO must keep an exact copy of the filing for its records. All copies must be legible. The filing date of any Form 19b-4(e) is the date of its actual receipt by the SEC, provided that the filing complies with applicable requirements.

IV. Format of Filing. An SRO may use the printed Form 19b-4(e) or a reproduction of it.

V. Paperwork Reduction Act Disclosure. Form 19b-4(e) requires an SRO filing the Form to provide the Commission with certain information concerning the nature of the new derivative securities product it intends to list and/or trade.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 3(a)(26), 3(a)(27), 3(a)(28), 3(b), 19(b), 23(a) and 36(a) of the Securities Exchange Act of 1934 authorize the Commission to collect information on Form 19b-4(e) from SROs. See 15 U.S.C. §§78c(a)(26), 78c(a)(27), 78c(a)(28), 78c(b), 78s(b), 78w(a), 78mm(a).

Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on the facing page of Form 19b-4(e) and any suggestions for reducing this burden.

The principal purpose of Form 19b-4(e) is to enable the Commission to maintain an accurate record of the listing and trading of all new derivative securities products on the SROs not deemed to be proposed rule changes pursuant to Rule 19b-4(e).

It is estimated SROs will spend approximately 2 hours completing each Form 19b-4(e).

It is mandatory that an SRO file Form 19b-4(e) with the Commission at least 5 business days after commencement of trading a new derivative securities product that is not deemed to be a proposed rule change.

No assurance of confidentiality is given by the Commission with respect to the responses made in the Form. The public has access to the information contained in the Form.

This collection of information has been reviewed by the Office of Management and Budget (OMB) in accordance with the clearance requirements of 44 U.S.C. 3507. The applicable Privacy Act system of records is SEC-2 and the routine uses of the records are set forth at 40 FR 39255 (August 27, 1975) and 41 FR 5318 (February 5, 1976).

By the Commission.
Dated: April 17, 1998.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 98–10946 Filed 4–28–98; 8:45 am]
BILLING CODE 8010–01–C

Federal Register

Wednesday
April 29, 1998

Part III

Department of Education

34 CFR Part 305 et al.
Removal of Obsolete Regulations; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 305, 307, 309, 315, 316, 318, 319, 320, 324, 325, 326, 327, 328, 330, 331, 332, 333, and 338

RIN 1820–AB43

Removal of Regulations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Code of Federal Regulations (CFR) to remove obsolete regulations. As a result of enactment of the Individuals with Disabilities Education Act Amendments of 1997, these regulations are no longer needed. The Secretary therefore takes this action to remove the regulations.

EFFECTIVE DATE: Parts 305, 307, 309, 315, 316, 318, 319, 320, 324, 325, 326, 327, 328, 330, 331, 332, 333, and 338 are removed effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, U.S. Department of Education, Room 5112, FB–10B, 600 Independence Avenue, SW, Washington, DC 20202–2241. Telephone: (202) 401–8300. 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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mimcy, Director of the Alternate Formats Center. *Telephone:* (202) 205–8113.

SUPPLEMENTARY INFORMATION: President Clinton's memorandum of March 4, 1995, titled ''Regulatory Reinvention Initiative,'' directed heads of departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. The Department has undertaken a thorough review of its existing regulations and has identified the regulations removed by this document as obsolete and unnecessary. The regulations removed are 34 CFR parts 305 (Regional Resource and Federal Centers), 307 (Services for Children with Deaf-Blindness), 309 (Early Education Program for Children with Disabilities), 315 (Program for Children with Severe Disabilities), 316 (Training Personnel for the Education of Individuals with Disabilities—Parent Training and Information Centers), 318 (Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training), 319 (Training Personnel for the Education of Individuals with Disabilities—Grants to State Educational Agencies and Institutions of Higher Education), 320 (Clearinghouses), 324 (Research in Education of Individuals with Disabilities Program), 325 (State Systems for Transition Services for Youth with Disabilities Program), 326 (Secondary Education and Transitional Services for Youth with Disabilities Program), 327 (Special Studies Program), 328 (Program for Children and Youth with Serious Emotional Disturbance), 330 (Captioned Films Including Videos Loan Service Program for Deaf and Hard of Hearing Individuals), 331 (Educational Media and Descriptive Videos Loan Service Program for Individuals with Disabilities), 332 (Educational Media Research, Production, Distribution, and Training), 333 (Technology, Educational Media, and Materials for Individuals with Disabilities Program), and 338 (Postsecondary Education Programs for Individuals with Disabilities). Additional obsolete and unnecessary regulations were previously removed on May 23, 1995 (60 FR 27223); April 29, 1996 (61 FR 18680); June 25, 1996 (61 FR 32656); and October 4, 1996 (61 FR 51783) as part of the Regulatory Reinvention Initiative.

The regulations being removed are no longer necessary because they have been superseded by the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105–17, enacted June 4, 1997. The removal of these regulations does not alter the obligations of current recipients of Federal funds. The regulations in effect when a grant or other agreement is made govern that grant or agreement, unless otherwise specifically provided.

The Department is continuing to review its other existing regulations thoroughly in consultation with its customers and partners. To the extent the Secretary can identify further opportunities for regulatory reinvention, the Secretary will propose appropriate amendments to revise or eliminate outdated provisions, reduce burden, and increase flexibility.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this document merely removes obsolete regulations from the Code of Federal Regulations. Removal of the regulations does not establish or affect substantive policy. Therefore, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment is unnecessary and contrary to the public interest.

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects

34 CFR Part 305

Education of individuals with disabilities, Educational research, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Technical assistance.

34 CFR Part 307

Education of individuals with disabilities, Educational research, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 309

Education of individuals with disabilities, Educational research, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 315

Education of individuals with disabilities, Educational research, Elementary and secondary education, Grant programs—education, Reporting

and recordkeeping requirements, Teachers.

34 CFR Part 316

Education of individuals with disabilities, Elementary and secondary education, Grant programs—education, Nonprofit organizations, Teachers.

34 CFR Part 318

Education of individuals with disabilities, Elementary and secondary education, Grant programs—education, Infants and children, Reporting and recordkeeping requirements, Student aid, Teachers.

34 CFR Part 319

Education of individuals with disabilities, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid, Teachers.

34 CFR Part 320

Education of individuals with disabilities, Educational research, Government contracts, Grant programs—education, Reporting and recordkeeping requirements, Teachers.

34 CFR Part 324

Education of individuals with disabilities, Educational research, Elementary and secondary education, Government contracts, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 325

Education of individuals with disabilities, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Vocational education.

34 CFR Part 326

Education of individuals with disabilities, Educational research, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 327

Education of individuals with disabilities, Educational research, Elementary and secondary education, Grant programs—education, Infants and children, Reporting and recordkeeping requirements.

34 CFR Part 328

Education of individuals with disabilities, Educational research, Elementary and secondary education, Grant programs—education, Infants and children, Reporting and recordkeeping requirements.

34 CFR Part 330

Individuals with disabilities, Motion pictures.

34 CFR Part 331

Education of individuals with disabilities.

34 CFR Part 332

Education of individuals with disabilities, Educational research, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 333

Education of individuals with disabilities, Educational research, Government contracts, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 338

Adult education, Colleges and universities, Education of individuals with disabilities, Educational research, Grant programs—education, Reporting and recordkeeping requirements, Vocational education.

Dated: April 22, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance numbers do not apply.)

PARTS 305, 307, 309, 315, 316, 318, 319, 320, 324, 325, 326, 327, 328, 330, 331, 332, 333, and 338—[REMOVED]

For the reasons stated in the preamble, under the authority at 20 U.S.C. 1221e–3, the Secretary amends Title 34 of the Code of Federal Regulations by removing parts 305, 307, 309, 315, 316, 318, 319, 320, 324, 325, 326, 327, 328, 330, 331, 332, 333, and 338.

[FR Doc. 98–11297 Filed 4–28–98; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday
April 29, 1998

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

Special Flight Rules in the Vicinity of Grand Canyon National Park; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28537; Amendment Nos. 91–257, 121–270, 135–72, 93–76]

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: On February 26, 1997, the FAA delayed the implementation of certain provisions of the December 31, 1996 final rule, Special Flight Rules in the Vicinity of Grand Canyon National Park. In addition, the final rule reinstated and removed certain portions of Special Federal Aviation Regulation (SFAR) No. 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park, AZ. The final rule contained an error, in that it inadvertently removed section 3 of SFAR No. 50–2. Section 3 provides certain restrictions, such as altitude requirements, for non-commercial sightseeing operations in the Special Flight Rules Area (SFAR) of the Grand Canyon National Park. This action corrects the error by reinstating section 3.

EFFECTIVE DATE: April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Reginald C. Matthews, Manager, Airspace and Rules Division, ATA–400, Office of Air Traffic Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On December 31, 1996, the FAA published three concurrent actions (a final rule, a Notice of Proposed Rulemaking, and a Notice of Availability of Proposed Commercial Air Tour Routes) in the **Federal Register** (62 FR 69301) as part of an overall strategy to reduce further the impact of aircraft noise on the GCNP environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100–91. The final rule amended part 93 of the Federal Aviation Regulations and added a new subpart to codify the provisions of SFAR No. 50–2, modified the dimensions of the GCNP SFRA; established new and modified existing flight-free zones; established new and modified existing flight corridors; and established reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area. In addition, to provide further protection for park resources, the final rule prohibited commercial sightseeing operations in the Zuni and Dragon corridors during certain time periods, and placed a temporary limit on the number of aircraft that can be used for commercial sightseeing operations in the GCNP SFRA. These provisions originally were to become effective on May 1, 1997.

On February 21, 1997, the FAA issued a final rule that delayed the implementation of certain sections of the final rule (62 FR 8862; February 26, 1997). Specifically, this action delayed the implementation date, until January 31, 1998, of those sections of the rule that address the SFRA, flight-free zones, and flight corridors, respectively §§ 93.301, 93.305, and 93.307. In addition, certain portions of SFAR No. 50–2 were reinstated and the expiration date was extended. With the goal to produce the best air tour routes possible, implementation of the airspace portions of the final rule, was delayed to allow the FAA and the Department of Interior (DOI) to further consider comments and suggestions to improve the proposed route structure. This latter action did not affect or delay the implementation of the curfew, aircraft cap, or reporting requirements of the rule. On December 11, 1997, the FAA subsequently delayed implementation of the airspace portions of the final rule until January 31, 1999, and correspondingly extended certain provisions of SFAR No. 50–2 (62 FR 66248; December 17, 1997).

Recently, it was discovered that the final rule issued on February 26, 1997, removed SFAR No. 50–2, section 3, Aircraft operations: general. Section 3 sets forth the requirements for non-commercial sightseeing aircraft operating in the SFRA. This was an inadvertent error on the part of the FAA since the February 26, 1997, final rule was intended, as stated in the preamble, to delay the effective date for certain portions of the final rule for implementation of the airspace portions that address commercial sightseeing aircraft only. This correcting amendment reinstates section 3 to SFAR No. 50–2.

Because this final rule only corrects an inadvertent error, the FAA finds that notice and comment are unnecessary.

The FAA has determined that this action imposes no additional burden on any person. Accordingly, it determines that this action: (1) is not a significant action under Executive Order 12866; and, (2) is not a significant action under Department of Transportation Regulatory Policy and Procedures (44 FR 11034). In addition, the FAA certifies that this action 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

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control.

14 CFR Part 121

Aircraft, Airmen, Aviation safety, Charter flights, Safety, transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

Adoption of Amendments

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR parts 91, 93, 121, and 135 as follows:

PARTS 91, 121, AND 135—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

SFAR No. 50–2 [Amended]

4. Amend parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, to reinstate Section 3 to read as follows:

SFAR No. 50–2—SPEICAL FLIGHT RULES IN THE VICINITY OF THE GRAND CANYON NATIONAL PARK, AZ

* * * * *

Section 3. Aircraft operations: general. Except in an emergency, no person may operate an aircraft in the Special Flight Rules, Area under VFR on or after September 22, 1988, or under IFR on or after April 6, 1989, unless the operation—

(a) Is conducted in accordance with the following procedures:

Note: THE FOLLOWING PROCEDURES DO NOT RELIEVE THE PILOT FROM SEE-AND-AVOID RESPONSIBILITY OR COMPLIANCE WITH FAR 91.119.

(1) Unless necessary to maintain a safe distance from other aircraft or terrain—

(i) Remain clear of the areas described in Section 4; and

(ii) Remain at or above the following altitudes in each sector of the canyon:

Eastern section from Lees Ferry to North Canyon and North Canyon to Boundary Ridge: as prescribed in Section 5.

Boundary Ridge to Supai Point (Yumtheska Point): 10,000 feet MSL.

Western section from Diamond Creek to the Grant Wash Cliffs: 8,000 feet MSL.

(2) Proceed through the four flight corridors describe in Section 4 at the following altitudes unless otherwise authorized in writing by the Flight Standards District Office:

Northbound

11,500 or
13,500 feet MSL

Southbound

10,500 or
12,500 feet MSL

(b) Is authorized in writing by the Flight Standards District Office and is conducted in compliance with the conditions contained in that authorization. Normally authorization will be granted for operation in the areas described in Section 4 or below the altitudes listed in Section 5 only for operations of aircraft necessary for law enforcement, firefighting, emergency medical treatment/evacuation of persons in the vicinity of the Park; for support of Park maintenance or activities; or for aerial access to and maintenance of other property located within the Special Flight Rules Area. Authorization may be issued on a continuing basis.

(c)(1) Prior to November 1, 1988, is conducted in accordance with a specific authorization to operate in that airspace incorporated in the operator's part 135 operations specifications in accordance with the provisions of SFAR 50–1, notwithstanding the provisions of Sections 4 and 5; and

(2) On or after November 1, 1988, is conducted in accordance with a specific authorization to operate in that airspace incorporated in the operated in the operator's operations specifications and approved by the Flight Standards District Office in accordance with the provisions of SFAR 50–2.

(d) Is a search and rescue mission directed by the U.S. Air Force Rescue Coordination Center.

(e) Is conducted within 3 nautical miles of Whitmore Airstrip, Pearce Ferry Airstrip, North Rim Airstrip, Cliff Dwellers Airstrip, or Marble Canyon Airstrip at an altitudes less than 3,000 feet above airport elevation, for the purpose of landing at or taking off from that facility. Or

(f) Is conducted under an IFR clearance and the pilot is acting in accordance with ATC instructions. An IFR flight plan may not be filed on a route or at an altitude that would require operation in an area described in Section 4.

* * * * *

Issued in Washington, DC, on April 23, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 98–11335 Filed 4–24–98; 12:20 pm]

BILLING CODE 4910–13–M

Federal Register

Wednesday
April 29, 1998

Part V

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51888; FRL–5774–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from December 15, 1997 to December 19, 1997.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51888]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51888]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51888]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 26 Premanufacture Notices Received From: 12/15/97 to 12/19/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0244	12/15/97	03/15/98	CBI	(S) Organic synthesis intermediate	(G) 2-naphthalenesulfonamide, *n,n*-bis(3-substituted propyl)-1-hydroxy-4-[[4-methoxy-2-(4-morpholinylsulfonyl) phenyl] azo]-5-[(metylsulfonyl)amino]-,sulfate (1:1)(salt)
P–98–0250	12/15/97	03/15/98	CBI	(S) Disperse dye for polyester fibers	(G) Disubstitiuted phenyl azo phenyl *N*-methyl substituted polyheterocycle ester alanine
P–98–0251	12/15/97	03/15/98	3M Ccompany	(G) Coating for fibers	(G) Fluorochemical acrylate copolymer
P–98–0252	12/15/97	03/15/98	3M Company	(G) Polymeric coating	(G) Polyurethane
P–98–0253	12/15/97	03/15/98	CBI	(S) Resin for printing ink	(G) Hydrocarbon modified rosin resin
P–98–0254	12/15/97	03/15/98	CBI	(G) Highly dispersive use	(G) Trisubstituted aliphatic aldehyde
P–98–0255	12/15/97	03/15/98	CBI	(G) Paint	(G) Polyester polyol
P–98–0256	12/15/97	03/15/98	CBI	(G) Protective coating additive	(G) Fatty acid modified phenolic polymer
P–98–0257	12/17/97	03/17/98	CBI	(G) Drilling mud additive	(G) Sodium poly (hydroxyalkyl carboxyalkyl acrylamido sulphate)
P–98–0258	12/17/97	03/17/98	CBI	(G) Component in a polyurethane sealant	(G) Polyurethane prepolymer
P–98–0259	12/17/97	03/17/98	(S) Drier, paint; catalyst	(S) Isooctonoic acid, calcium salt	
P–98–0260	12/17/97	03/17/98	CBI	(G) Polymer additives and coating	(G) Aciphatic acrylic oligomer
P–98–0261	12/17/97	03/17/98	International Flavors and Fragrances, Inc.	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(S) Cyclohexane, 1–(1,1-dimethylpropyl)-4-ethoxy-,cis-; cyclohexane, 1-(1,1-dimethylpropyl)-4-ethoxy-, trans-*
P–98–0262	12/18/97	03/18/98	3M Company	(S) Stabilizer for imaging film;* as part of total coating solution	(G) Cyanoacetate derivative
P–98–0263	12/17/97	03/17/98	CBI	(G) Coating and plastics additives	(G) Mixture of unsaturated polyesters, polyethers, and polyamide salts
P–98–0264	12/18/97	03/18/98	CBI	(S) Paper coatings; printing inks	(G) Amine acrylate
P–98–0265	12/17/97	03/17/98	Allied Signal Inc	(S) Coating (radiation curable); inks (radiation curable); adhesives (radiation curable)	(G) Vinyl ether terminated polyester polymer
P–98–0266	12/17/97	03/17/98	Allied Signal Inc	(S) Coating (radiation curable); inks (radiation curable); adhesives (radiation curable)	(G) Vinyl ether terminated polyester polymer
P–98–0267	12/17/97	03/17/98	CBI	(G) Performance additive	(G) Alkanoic acid, metal salt
P–98–0268	12/17/97	03/17/98	CBI	(G) Performance additive	(G) Alkanoic acid, metal salt¶
P–98–0269	12/17/97	03/17/98	CBI	(G) Performance additive	(G) Alkanoic acid, metal salt
P–98–0270	12/17/97	03/17/98	CBI	(G) Performance additive	(G) Alkanoic acid, metal salt
P–98–0271	12/17/97	03/17/98	CBI	(G) Performance additive	(G) Alkanoic acid, metal salt
P–98–0272	12/19/97	03/19/98	Daychem Laboratories, Inc.	(S) Chemical intermediate used in the manufacture of photoresist	(G) Diaryliodonium salt
P–98–0274	12/19/97	03/19/98	Arizona Chemical	(S) Resin component in production of heat-set, web off set and sheetfed inks	(G) Phenolic modified esterof modified rosin and fatty acid
P–98–0306	12/19/97	03/19/98	Pierce and Stevens Corporation	(S) Laminating adhesive	(S) Polymer of: 1,1′-methylenebis(isocyanatobenzene); hexanedioic acid; 2,2-dimethyl-1,3-propanediol; 2,2′-oxybis(ethanol)

II. 12 Notices of Commencement Received From: 12/15/97 to 12/19/97

Case No.	Received Date	Commencement/Import Date	Chemical
P–95–1289	12/15/97	12/01/97	(G) 2-Naphthalenol [(phenylazo) phenyl] azo alkyl derivatives
P–95–1319	12/16/97	11/25/97	(G) Substituted aromatic amine
P–95–1320	12/16/97	12/04/97	(G) Substituted aromatic nitrile
P–95–1321	12/16/97	12/08/97	(G) Substituted aromatic nitrile

II. 12 Notices of Commencement Received From: 12/15/97 to 12/19/97—Continued

Case No.	Received Date	Commence-ment/Import Date	Chemical
P–96–0330	12/17/97	11/05/97	(G) Alkyl amine
P–96–1454	12/15/97	12/06/97	(G) Aromatic ketone derivatives
P–97–0547	12/16/97	11/18/97	(G) Polyester copolymer
P–97–0616	12/16/97	11/27/97	(G) Alkarylamine
P–97–0671	12/15/97	11/19/97	(S) Poly(oxy-1,2-ethanediyl), alpha-hydro-omega-hydroxy-, ether with *N*-(2-aminomethylethyl)-1,2-propanediame *N*-dodecyl *N,N,N,N*-tetrakis (2-hydroxyethyl) derivatve. (4:1)
P–97–0855	12/19/97	12/08/97	(S) 1*H*-isoindole-1,3(2*h*)-dione, 2,2′-(iminodi-3,1-propanediyl)bis-, monohydrochloride
P–97–0931	12/16/97	12/10/97	(G) Ether-ester polymer
P–97–0963	12/18/97	11/21/97	(G) Mixed metal salts of substituted polyalkylene polyether and carbomonocyclic carbocylic acids

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 19, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11366 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51889; FRL–5774–4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from December 22, 1997 to December 31, 1997.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51889]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51889]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51889]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in

writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 21 Premanufacture Notices Received From: 12/22/97 to 12/31/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0285	12/24/97	03/24/98	CBI	(S) Leuco sulfur dye for dyeing cellulosic fibers	(G) Substituted aromatic compound reaction product with sodium sulfides, reduced
P–98–0286	12/24/97	03/24/98	CBI	(S) Sulfur dye for dyeing cellulosic fibers	(G) Substituted aromatic compound reaction product with sodium sulfides, oxidized
P–98–0287	12/24/97	03/24/98	3M Company	(S) Cesium absorbent for radioactive contaminated aqueous media	(S) Ferrate(4-), hexakis(cyano-.kappa.c)-, cobalt(2+) potassium (1:1:2), (0c-6-11)-
P–98–0289	12/24/97	03/24/98	CBI	(G) Petroleum additive	(G) Metal phenate/ sulfonate/salicylate complex
P–98–0290	12/29/97	03/29/98	3M Company	(G) Low surface energy coating	(G) Silicone polyurea
P–98–0291	12/29/97	03/29/98	CBI	(S) High solids baking enamel crosslinked with melamines	(G) Mixed glycol polyester resin
P–98–0292	12/29/97	03/29/98	CBI	(G) Intermediate for coatings	(G) Polyurethane resin
P–98–0293	12/29/97	03/29/98	CBI	(G)	(G) Polyurethane/acrylic grafted copolymer
P–98–0294	12/29/97	03/29/98	CBI	(G) A component used in coatings for plastics	(G) Polyether type polyurethane
P–98–0295	12/30/97	03/30/98	CBI	(G) Urethane coating component/ elastomeric urethane	(G) Poly [oxy(methyl-1,2 ethanediyl], alpha, hydro-omega-hydroxy-, polymer with 1,3 diisocyanato methyl benzene
P–98–0296	12/30/97	03/30/98	Huls America Inc	(S) Hot melt adhesive for automotive industry.	(S) Octadecanoic acid, 1,4-butanediyl ester
P–98–0297	12/30/97	03/30/98	Tfl USA/Canada, Inc.	(G) Softener for leather	(G) Alkyldioic aic, sulfo, monoesters with fatty alcohols, disodium salts
P–98–0298	12/30/97	03/30/98	CBI	(G) Non-dispersive use as a lubrication additive	(G) Oil soluble barium petroleum sulfonate
P–98–0299	12/30/97	03/30/98	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Unsaturated carboxylic acid
P–98–0300	12/30/97	03/30/98	CBI	(G) Charge control agent	(G) Metal azo complex
P–98–0301	12/30/97	03/30/98	CBI	(G) Paint	(G) Polycarbodiimide polymer
P–98–0302	12/30/97	03/30/98	CBI	(G) Paint	(G) Polycarbodiimide polymer
P–98–0303	12/30/97	03/30/98	CBI	(G) Paint	(G) Polycarbodiimide polymer
P–98–0304	12/30/97	03/30/98	CBI	(G) Paint	(G) Polycarbodiimide polymer
P–98–0305	12/30/97	03/30/98	CBI	(G) Paint	(G) Polycarbodiimide polymer
P–98–0308	12/30/97	03/30/98	Bedoukian Research, Inc	(S) Flavor use (ffdca); fragrance use (soaps, detertents, air fresheners, scented papers	(S) 3,6-nonadien-1-ol, (e,z)-

II. 9 Notices of Commencement Received From: 12/22/97 to 12/31/97

Case No.	Received Date	Commencement/Import Date	Chemical
P–96–1548	12/30/97	12/22/97	(S) Isooctadecanoic acid, 1-carboxyethyl ester, sodium salt
P–96–1549	12/30/97	12/22/97	(S) Isooctadecanoic acid, 2-(1-carboxyethoxy)-1-methyl 2-oxoethyl ester, sodium salt
P–96–1550	12/30/97	12/22/97	(S) Isooctadecanoic acid, 2-[2-(1-carboxyethoxy)-1-methyl 2-oxoethoxy]-1-methyl-2-oxoethyl ester, sodium salt
P–96–1551	12/30/97	12/22/97	(S) Isooctadecanoic acid, 2-[2-[2-(1-carboxyethoxy)-1-methyl 2-oxoethoxy]-1-methyl 2-oxoethoxy]-1-methyl-2-oxoethyl ester, sodium salt
P–97–0118	12/30/97	12/15/97	(S) D-Glucopyranose, oligomeric, 6-(hydrogen sulfobutanedioate), 1-(coco alkyl)ethers, sodium salts
P–97–0934	12/24/97	12/11/97	(G) 3-Cyano-4-[3-substituted-phenylazo]-1-phenyl-5-pyrazolone
P–97–0996	12/29/97	11/28/97	(G) Light steam-cracked petroleum naphtha fractions polymerized with polycyclic unsaturated hydrocarbon
P–97–0997	12/29/97	11/22/97	(G) Light steam-cracked petroleum naphtha fractions polymerized with polycyclic unsaturated hydrocarbon and alkenylsubstituted aromatics
P–97–0998	12/29/97	11/28/97	(G) Light steam-cracked petroleum naphtha fractions polymerized with polycyclic unsaturated hydrocarbon

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 19, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11367 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51890; FRL–5774–5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from January 1, 1998 to January 9, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51890]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51890]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51890]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

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Electronic comments must be submitted as an ASCII file avoiding the

use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 27 Premanufacture Notices Received From: 01/01/98 to 01/09/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–310	01/05/98	04/05/98	CBI	(G) Urethane coating component/elastomeric urethane	(G) Polymer of aliphatic isocyanate and polyester polyols
P–98–0311	01/02/98	04/02/98	Nye Lubricants, Inc.	(G) N/a	(S) Phenol, 3-pentadecyl-, phosphate (3:1)
P–98–0312	01/05/98	04/05/98	Hercules Incorporated	(G) Industrial use- open non-dispersive use-(tackifier resin for adhesive formulations)	(G) Aliphatic modified aromatic hydrocarbon resin
P–98–0313	01/05/98	04/05/98	Hercules Incorporated	(G) Industrial use- open non-dispersive use-(tackifier resin for adhesive formulations)	(G) Aliphatic modified aromatic hydrocarbon resin
P–98–0314	01/05/98	04/05/98	Hercules Incorporated	(G) Industrial use- open non-dispersive use-(tackifier resin for adhesive formulations)	(G) Aliphatic modified aromatic hydrocarbon resin
P–98–0315	01/05/98	04/05/98	CBI	(G) Substituted cyclic olefin	(G) Monomers for specialty olefin
P–98–0316	01/05/98	04/05/98	CBI	(G) Substituted cyclic olefin	(G) Monomers for specialty olefin
P–98–0317	01/05/98	04/05/98	CBI	(G) Substituted cyclic olefin	(G) Monomers for specialty olefin
P–98–0318	01/05/98	04/05/98	CBI	(G) Substituted cyclic olefin	(G) Monomers for specialty olefin
P–98–0319	01/06/98	04/05/98	CBI	(S) A polymeric retanning agent for leather	(G) Sodium salt of 2-butenedioic acid, polymer with alkenes
P–98–0320	01/06/98	04/05/98	CBI	(S) Polyurethane foam surfactant	(G) Siloxane-polyether copolymer
P–98–0321	01/07/98	04/06/98	CBI	(G) Anti-foulant	(S) Acetamide, *N*-ethenyl-*N*-methyl-, polymer with 1- ethenylhexahydro-2*H*-azepin-2-one
P–98–0322	01/07/98	04/06/98	CBI	(G) Anti-foulant	(S) Acetamide, *N*-ethenyl-*N*-methyl-, polymer with 1-ethenylhexahydro-2*H*-azepin-2-one, 2,2′-azobis[2-methyl butanenitrile]-intiated
P–98–0323	01/07/98	04/06/98	CBI	(G) Anti-foulant	(S) Acetamide, *N*-ethenyl-*N*-methyl-, polymer with 1-ethenylhexahydro-2*H*-azepin-2-one, 2,2′-azobis[2-methyl propanenitrile]-intiated
P–98–0324	01/07/98	04/07/98	CBI	(G) Open, non-dispersive: part of emulsifier for binder used in construction and maintenance of roads	(G) Reaction products formed between tannins and tallow amines in the presence of hydrochloric
P–98–0325	01/07/98	04/07/98	Huntsman Petrochemical Corporation	(S) Epoxy curing agent	(G) Polyoxyalkylenealkylamine

I. 27 Premanufacture Notices Received From: 01/01/98 to 01/09/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0326	01/07/98	04/07/98	Huntsman Petrochemical Corporation	(S) Chemical intermediate	(G) Polyoxyalkylenealkanol
P–98–0327	01/06/98	04/06/98	CBI	(G) Polymeric component of water based latex blend	(G) Acrylic copolymer
P–98–0328	01/07/98	04/07/98	Pierce and Stevens Corporation	(S) Laminating adhesive	(S) Polymer of: hexanedioic acid, polymer with 2,2′-oxybis(ethanol); alpha-hydro-omega-hydroxypoly [oxy-(methyl-1,2-ethanediyl)]; 1,1′,1″-Nitrilotris-2-propanol; generic MDI/tpg/1,3bg/pg prepolymer; 4,4′ MDI homopolymer; 4,4′ MDI; bht
P–98–0329	01/08/98	04/08/98	Eastman Chemical Company	(S) Chemical intermediate	(G) Substituted porphyrin
P–98–0330	01/08/98	04/08/98	Eastman Chemical Company	(S) Ink jet additive	(G) Metallated porphyrin
P–98–0331	01/08/98	04/08/98	CBI	(G) Industrial metal coating binder	(G) Salt of amine modified bisphenol a-epoxy resin
P–98–0332	01/07/98	04/07/98	Pilot	(S) Moisturizer in cosmetics, shampoos and cleaners	(S) Chitosan, *N*-(3-carboxy-1-methylpropyl)
P–98–0333	01/09/98	04/09/98	CBI	(S) Chemical allows exterior usage of pigment and improves adhesion of pigment in pigment	(G) Polysiloxane modified aluminum-cerium hydroxide
P–98–0334	01/09/98	04/09/98	E.I. duPont deNemours & Company,	(G) Isolated intermediate	(G) Perfluoropolyether alcohol
P–98–0335	01/09/98	04/09/98	Eastman Chemical Company	(G) Isolated intermediate	(G) Alkyl ester of a perfluoropolyether
P–98–0336	01/09/98	04/09/98	E. I. duPont deNemours & Company	(S) Additive for bearing grease	(G) Aryl phosphonate ester of a perfluoropolyether

II. 5 Notices of Commencement Received From: 01/01/98 to 01/09/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–96–0583	01/08/98	12/11/97	(G) Alkyl *N*-heterocycle
P–97–0266	01/07/98	12/26/97	(G) Substituted triazine
P–97–0459	01/05/98	12/04/97	(G) Epoxy ester with bisphenol a polymer
P–97–0932	01/02/98	12/10/97	(G) Ether-ester polymer
P–97–1027	01/02/98	12/19/97	(G) Polymer of vinyl substituted acid and acrylic acid derivative

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 19, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11368 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51891; FRL–5774–6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from January 12, 1998 to January 16, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51891]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51891]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51891]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 15 Premanufacture Notices Received From: 01/12/98 to 01/16/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0337	01/13/98	04/13/98	SC Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer
P–98–0338	01/13/98	04/13/98	SC Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer

I. 15 Premanufacture Notices Received From: 01/12/98 to 01/16/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0339	01/13/98	04/13/98	SC Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer
P–98–0340	01/13/98	04/13/98	SC Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer
P–98–0341	01/13/98	04/13/98	SC Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer
P–98–0342	01/13/98	04/13/98	SC Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer
P–98–0343	01/13/98	04/13/98	Henkel Corporation	(S) Crosslinking agent for epoxy-type industrial coatings for metal and concrete substrates	(G) Fatty acids polymers with polyalkylene polyamines
P–98–0344	01/13/98	04/13/98	CBI	(S) Polymer adduct for adhesive use	(G) Epoxy resin polymer adduct
P–98–0345	01/13/98	04/13/98	CBI	(G) Open, non dispersive use	(G) Acrylic copolymer
P–98–0346	01/14/98	04/14/98	IFS Industries, Inc.	(S) Adhesive for plastic-to-wood lamination; adhesive for fire door assembly	(S) Hexanedioic acid, polymer with 1,4-butanediol, 1,6-hexanediol, a-hydro-w-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,3-isobenzofurandione, 1,1'-methylenebis[4-isocyanatobenzene], 2-oxepanone and 2,2'-oxybis[ethanol]*
P–98–0347	01/15/98	04/15/98	H. B. Fuller Company	(S) Fabric adhesive	(G) Polyester isocyanate prepolymer
P–98–0348	01/14/98	04/14/98	3M Company	(G) Resin	(G) Copolymer of aromatic diesters and alkyl polyols
P–98–0349	01/15/98	04/15/98	OMG Americas, Inc.	(S) Drier, paint; catalyst	(S) Isooctanoic acid, calcium salt
P–98–0350	01/15/98	04/15/98	Mitsubishi Gas Chemical America, Inc.	(S) Modifier of spandex (polyurethane); modifier of polymers for textile production	(S) Furan, tetrahydro-3-methyl-
P–98–0356	01/15/98	04/15/98	Amoco Corporation	(S) Chemical intermediate for coating resin; chemical intermediate for polyester fiber adhesion; chemical intermediate for polyurethane elastomers	(G) Olefinic cycloaliphatic diol

II. 10 Notices of Commencement Received From: 01/12/98 to 01/16/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–96–1094	01/15/98	11/11/97	(G) Polyether polyol isocyanate adduct
P–96–1720	01/15/98	12/18/97	(G) Silica-supported transition metal complex
P–97–0519	01/12/98	12/24/97	(G) Polyester resin
P–97–0544	01/12/98	12/26/97	(G) Hydroxy functional oligomer
P–97–0641	01/13/98	12/17/97	(G) Modified acrylic terpolymer
P–97–0652	01/13/98	12/18/97	(G) Thiol terminated, poly (thioether) polyether
P–97–0834	01/12/98	12/16/97	(G) Alkyl phenol blocked polyisocyanate
P–97–0842	01/12/98	12/16/97	(G) Alkyl phenol blocked polyisocyanate
P–97–0896	01/12/98	12/21/97	(G) Polyurethane dispersion
P–97–1083	01/14/98	01/04/98	(G) Metallized azo yellow pigment

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 19, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11369 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51892; FRL–5774–7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from January 20, 1998 to January 23, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51892]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental

Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51892]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

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FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

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Electronic comments can be sent directly to EPA at:

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Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; (II) TMEs received; and (III) Notices of Commencement to manufacture/import.

I. 59 Premanufacture Notices Received From: 01/20/98 to 01/23/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0352	01/20/98	04/20/98	TFI Inc.	(G) Softner for leather	(G) Fatty oil, oxidized, sulfited sodium salt
P–98–0353	01/20/98	04/20/98	The C.P. Hall Company	(S) Plasticizer; surfactant	(S) 2-butenedioic acid, dicyclohexyl ester
P–98–0354	01/20/98	04/20/98	CBI	(G) Open, non-dispersive use	(G) Glycidyl ketime adduct
P–98–0355	01/20/98	04/20/98	CBI	(G) Open, non-dispersive use	(G) Ketime adduct
P–98–0357	01/21/98	04/21/98	CBI	(G) Open, non dispesive use	(G) Acrylic resin
P–98–0358	01/21/98	04/21/98	CBI	(G) Component of manufactured consumer article - contained use	(G) Naphthalenesulfonamide, *N,N*-bis [3-[[[3-(dimethyloctadecylheteromonocycle)-4-hydroxyphenyl]sulfonyl]amino]propyl]-1-hydroxy-4-[[4-methoxy-2-(4-morpholinosulfamoyl)phenyl]azo]-5-[(methylsulfonyl)amino]-
P–98–0359	01/21/98	04/21/98	CBI	(S) Formulation component for uv curable inks; formulation component for UV curable coatings	(G) Alkoxylated acrylate monomer
P–98–0360	01/21/98	04/21/98	CBI	(G) Industrial metal coating binder	(G) Salt of amine modified bisphenol a-eposy resin
P–98–0361	01/21/98	04/21/98	CBI	(S) Electronic photoresist; electronic solder mask; printing plates; printing inks	(G) Aromatic acid acrylate half ester
P–98–0362	01/21/98	04/21/98	CBI	(G) Component of industrial fluid with open use	(G) Organic acid amine salt
P–98–0363	01/21/98	04/21/98	CBI	(G) Component of industrial fluid with open use	(G) Organic acid amine salt
P–98–0364	01/21/98	04/21/98	CBI	(G) Component of industrial fluid with open use	(G) Organic acid amine salt
P–98–0365	01/21/98	04/21/98	CBI	(G) Component of industrial fluid with open use	(G) Organic acid amine salt
P–98–0366	01/21/98	04/21/98	CBI	(G) Component of industrial fluid with open use	(G) Organic acid amine salt
P–98–0367	01/21/98	04/21/98	CBI	(G) Component of industrial fluid with open use	(G) Organic acid amine salt
P–98–0368	01/21/98	04/21/98	CBI	(S) Corrosive additive for machining fluids; machining fluid (coolant); synthetic forming lubricant; corrosion inhibitor	(G) Organic acid amine salt
P–98–0369	01/21/98	04/21/98	CBI	(S) Corrosive additive for machining fluids; machining fluid (coolant); synthetic forming lubricant; corrosion inhibitor	(G) Organic acid amine salt
P–98–0370	01/21/98	04/21/98	CBI	(S) Corrosive additive for machining fluids; machining fluid (coolant); synthetic forming lubricant; corrosion inhibitor	(G) Organic acid amine salt
P–98–0371	01/21/98	04/21/98	CBI	(S) Corrosive additive for machining fluids; machining fluid (coolant); synthetic forming lubricant; corrosion inhibitor	(G) Organic acid amine salt
P–98–0372	01/21/98	04/21/98	CBI	(S) Corrosive additive for machining fluids; machining fluid (coolant); synthetic forming lubricant; corrosion inhibitor	(G) Organic acid amine salt
P–98–0373	01/21/98	04/21/98	CBI	(S) Corrosive additive for machining fluids; machining fluid (coolant); synthetic forming lubricant; corrosion inhibitor	(G) Organic acid amine salt
P–98–0374	01/21/98	04/21/98	CBI	(G) Component of coating with open use	(G) Quarternary ammonium functional acrylic polymer
P–98–0375	01/21/98	04/21/98	CBI	(G) Component of coating with open use	(G) Quarternary ammonium functional acrylic polymer
P–98–0376	01/21/98	04/21/98	CBI	(G) Component of coating with open use	(G) Quarternary ammonium functional acrylic polymer
P–98–0377	01/21/98	04/21/98	CBI	(G) Component of coating with open use	(G) Quarternary ammonium functional acrylic polymer
P–98–0378	01/21/98	04/21/98	CBI	(G) Component of coating with open use	(G) Quarternary ammonium functional acrylic polymer
P–98–0379	01/21/98	04/21/98	CBI	(G) Component of coating with open use	(G) Quarternary ammonium functional acrylic polymer
P–98–0380	01/21/98	04/21/98	Allied Signal Corporation	(S) A monomer for a polymer for electronics industry	(G) Dihalogenated biphenyl

I. 59 Premanufacture Notices Received From: 01/20/98 to 01/23/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0381	01/21/98	04/21/98	CBI	(S) Coatings; thermoplastic polyurethanes	(G) Polycaprolactive polyol
P–98–0382	01/21/98	04/21/98	CBI	(S) Coatings; thermoplastic polyurethanes	(G) Polycaprolactive polyol
P–98–0383	01/21/98	04/21/98	CBI	(S) Coatings; thermoplastic polyurethanes	(G) Polycaprolactive polyol
P–98–0384	01/21/98	04/21/98	CBI	(S) Coatings; thermoplastic polyurethanes	(G) Polycaprolactive polyol
P–98–0385	01/23/98	04/23/98	CBI	(G) Open non dispersive (coating material)	(G) 1703802746
P–98–0386	01/23/98	04/23/98	CBI	(G) Adhesive component	(G) Polymer of methylenebis[isocyanatobenzene], benzenedicarboxylic acid-based polyester, and mixed polyether polyols
P–98–0387	01/26/98	04/26/98	Arco Chemical Company	(S) Unsaturated polyester resin	(G) Glycerol-propylene oxide polyether triol, polyester with maleic anhydride, 1,2-propane diol and 2-ethylhexanol.
P–98–0388	01/27/98	04/27/98	CBI	(G) Intermediate in the manufacture of the acrylic acid ester	(G) Polyester polyol
P–98–0389	01/23/98	04/23/98	CBI	(S) Industrial products: belts, timing belts; wheels, small rollers	(G) *PDI* polyester prepolymer
P–98–0390	01/26/98	04/26/98	3M Company	(S) Protective treatment for carpet	(G) Acrylate resin
P–98–0391	01/26/98	04/26/98	CBI	(S) Thermoplastic polyurethane coating material applied to textiles	(G) Polyurethane resin
P–98–0392	01/26/98	04/26/98	CBI	(G) Open, non-dispersive (crosslinker for coatings applications))	(G) Blocked polyisocyanate
P–98–0393	01/26/98	04/26/98	CBI	(G) Open, non-dispersive (coating material)	(G) Aqueous polyurethane dispersion
P–98–0394	01/28/98	04/28/98	CBI	(G) Component in polyurethane adhesive/sealant	(G) Polyurethane prepolymer
P–98–0395	01/28/98	04/28/98	CBI	(G) Polyurethane adhesive component	(G) Polyurethane prepolymer
P–98–0396	01/27/98	04/27/98	CBI	(G) Chemical for use in industrial coatings	(S) 2,6,7-trioxabicyclo [2.2.2] octane 4-ethyl-, 1-$C_{5–9}$-alkyl derivatives
P–98–0397	01/26/98	04/26/98	3M Company	(S) Chemical intermediate	(G) Acrylate resin
P–98–0398	01/27/98	04/27/98	CBI	(S) UV absorber for polyester fibers	(G) Substituted benzophenone
P–98–0399	01/27/98	04/27/98	CBI	(G) Additive for polymers fibres	(G) Benzene sulfonic acid, dodecyl, ion(1-), *N,N,N*-tributyl benzene methananium
P–98–0400	01/29/98	04/29/98	Dover Chemical Corporation	(S) Extreme pressure lubricant additive	(S) Amines, $_{12–14}$-tert-alkyl, sulfonates
P–98–0401	01/28/98	04/28/98	CBI	(G) Coating with open use	(G) Non-ionic, hydroxyl-rich polyurethane oligomer
P–98–0402	01/28/98	04/28/98	CBI	(G) Coating with open use	(G) Non-ionic, hydroxyl-rich polyurethane oligomer
P–98–0403	01/28/98	04/28/98	CBI	(G) Coating with open use	(G) Non-ionic, hydroxyl-rich polyurethane oligomer
P–98–0404	01/28/98	04/28/98	CBI	(G) Coating with open use	(G) Non-ionic, hydroxyl-rich polyurethane oligomer
P–98–0405	01/28/98	04/28/98	CBI	(G) Coating with open use	(G) Non-ionic, hydroxyl-rich polyurethane oligomer
P–98–0406	01/28/98	04/28/98	CBI	(G) Coating with open use	(G) Non-ionic, hydroxyl-rich polyurethane oligomer
P–98–0407	01/30/98	04/30/98	CBI	(S) Marker or tracer for petroleum fuels and lubes	(G) Substituted bis (phenyl) isobenzofuranone
P–98–0408	01/29/98	04/29/98	Eastman Chemical Company	(G) Ink and paint vehicle, intermediate	(G) Substituted styrene-acrylate polymer
P–98–0409	01/30/98	04/30/98	CBI	(S) Curing agent in baked finishes	(G) Cross linking stoving polyurethane resin
P–98–0410	01/29/98	04/29/98	CBI	(G) Plastic additive	(G) Halogenated bisimide
P–98–0411	01/30/98	04/30/98	CBI	(G) Paint	(G) Polyester polyol

II. 1 Test Marketing Exemption Notice Received From: 01/20/98 to 01/23/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–98–0001	11/28/97	01/12/98	CBI	(G) Alternative fluorocarbon for open, non-dispersive and contained uses	(G) Hydrofluorocarbon

III. 15 Notices of Commencement Received From: 01/20/98 to 01/23/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–97–0567	09/23/97	08/01/97	(G) Aluminium salicylate
P–92–0845	01/26/98	01/08/98	(G) Fatty acids, C_{5-9}, straight chain and branched, esters with pentaerythritol
P–95–1322	01/20/98	01/08/98	(G) Substituted phthalocyanine
P–95–2078	01/26/98	01/09/98	(S) 1,4-butanediamine, catch,*N,N′*,N′-terakis (3-aminopropyl)
P–96–0325	01/20/98	12/31/97	(G) Magnesium alkylbenzene sulfonates
P–97–0051	01/22/98	01/09/98	(G) Substituted aromatic ketone
P–97–0688	01/23/98	12/21/97	(G) Chromophore substituted polyoxyalkylene tint
P–97–0887	01/23/98	01/08/98	(G) Dipentaerythritol, mixed ester with fatty acids, $_{5-9}$, straight and branched
P–97–1026	01/21/98	01/06/98	(G) Polyacrylic derivative
P–97–1043	01/21/98	01/10/98	(G) 2*H*-1-benzopyran-2-one, 3,4-dihydro-6-hydroxy-polymethyl-
P–97–1046	01/22/98	01/15/98	(G) Substituted *s*-phenylthiazole
P–97–0868	01/29/98	01/13/98	(S) Cyclopropanecarboxylic acid, 3-hexenyl ester, (*z*)
P–97–1068	01/30/98	01/20/98	(G) Vinyl alkyl polyester copolymer
P–97–1069	01/30/98	01/20/98	(G) Alkyl polyester polymer
P–97–1100	01/28/98	01/21/98	(G) Polyacrylic resin

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 19, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11370 Filed 4–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51893; FRL–5774–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from January 26, 1998 to January 31, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51893]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51893]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application

requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51893]'' (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 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 24 Premanufacture Notices Received From: 01/26/98 to 01/31/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0387	01/26/98	04/26/98	Arco Chemical Company	(S) Unsaturated polyester resin	(G) Glycerol-propylene oxide polyether triol, polyester with maleic anhydride, 1,2-propane diol and 2-ethylhexanol.
P–98–0388	01/27/98	04/27/98	CBI	(G) Intermediate in the manufacture of the acrylic acid ester	(G) Polyester polyol
P–98–0390	01/26/98	04/26/98	3M Company	(S) Protective treatment for carpet	(G) Acrylate resin
P–98–0391	01/26/98	04/26/98	CBI	(S) Thermoplastic polyurethane coating material applied to textiles	(G) Polyurethane resin
P–98–0392	01/26/98	04/26/98	CBI	(G) Open, non-dispersive (crosslinker for coatings applications)	(G) Blocked polyisocyanate
P–98–0393	01/26/98	04/26/98	CBI	(G) Open, non-dispersive (coating material)	(G) Aqueous polyurethane dispersion
P–98–0394	01/28/98	04/28/98	CBI	(G) Component in polyurethane adhesive/sealant	(G) Polyurethane prepolymer
P–98–0395	01/28/98	04/28/98	CBI	(G) Polyurethane adhesive component	(G) Polyurethane prepolymer
P–98–0396	01/27/98	04/27/98	CBI	(G) Chemical for use in industrial coatings	(S) 2,6,7-trioxabicyclo [2.2.2] octane 4-ethyl-, 1-c5–9-alkyl derivatives
P–98–0397	01/26/98	04/26/98	3M Company	(S) Chemical intermediate	(G) Acrylate resin
P–98–0398	01/27/98	04/27/98	CBI	(S) UV absorber for polyester fibers	(G) Substituted benzophenone

I. 24 Premanufacture Notices Received From: 01/26/98 to 01/31/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0399	01/27/98	04/27/98	CBI	(G) Additive for polymers fibres	(G) Benzene sulfonic acid, dodecyl, ion (1-), *N,N,N*-tributyl benzene methananium
P–98–0400	01/29/98	04/29/98	Dover Chemical Corporation	(S) Extreme pressure lubricant additive	(S) Amines, $C_{12–14}$-tert-alkyl, sulfonates
P–98–0401	01/28/98	04/28/98	CBI	(G) Coating with open use	(G) Non-ionic, hydroxyl-rich polyurethane oligomer
P–98–0402	01/28/98	04/28/98	CBI	(G) Coating with open use	(G) Non-ionic, hydroxyl-rich polyurethane oligomer
P–98–0403	01/28/98	04/28/98	CBI	(G) Coating with open use	(G) Non-ionic, hydroxyl-rich polyurethane oligomer
P–98–0404	01/28/98	04/28/98	CBI	(G) Coating with open use	(G) Non-ionic, hydroxyl-rich polyurethane oligomer
P–98–0405	01/28/98	04/28/98	CBI	(G) Coating with open use	(G) Non-ionic, hydroxyl-rich polyurethane oligomer
P–98–0406	01/28/98	04/28/98	CBI	(G) Coating with open use	(G) Non-ionic, hydroxyl-rich polyurethane oligomer
P–98–0407	01/30/98	04/30/98	CBI	(S) Marker or tracer for petroleum fuels and lubes	(G) Substituted bis (phenyl) isobenzofuranone
P–98–0408	01/29/98	04/29/98	Eastman Chemical Company	(G) Ink and paint vehicle, intermediate	(G) Substituted styrene-acrylate polymer
P–98–0409	01/30/98	04/30/98	CBI	(S) Curing agent in baked finishes	(G) Cross linking stoving polyurethane resin
P–98–0410	01/29/98	04/29/98	CBI	(G) Plastic additive	(G) Halogenated bisimide
P–98–0411	01/30/98	04/30/98	CBI	(G) Paint	(G) Polyester polyol

II. 6 Notices of Commencement Received From: 01/26/98 to 01/31/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–92–0845	01/26/98	01/08/98	(G) Fatty acids, $C_{5–9}$, straight chain and branched, esters with pentaerythritol
P–95–2078	01/26/98	01/09/98	(S) 1,4-butanediamine, *N,N,N′*,N′-terakis (3-aminopropyl)
P–97–0868	01/29/98	01/13/98	(S) Cyclopropanecarboxylic acid, 3-hexenyl ester, (*z*)
P–97–1068	01/30/98	01/20/98	(G) Vinyl alkyl polyester copolymer
P–97–1069	01/30/98	01/20/98	(G) Alkyl polyester polymer
P–97–1100	01/28/98	01/21/98	(G) Polyacrylic resin

List of Subjects

Environmental protection, Premanufacture notices.

Dated: April 21, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–11371 Filed 4–28–98; 8:45 am]

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Federal Register

Wednesday
April 29, 1998

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure or Function of the Body; Proposed Rule and Dietary Supplements: Comments on Report of the Commission on Dietary Supplement Labels; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0044]

RIN 0910–AA59

Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure or Function of the Body

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing regulations defining the types of statements that can be made concerning the effect of a dietary supplement on the structure or function of the body. The proposed regulations also establish criteria for determining when a statement about a dietary supplement is a claim to diagnose, cure, mitigate, treat, or prevent disease. This action is intended to provide direction to the dietary supplement industry and to respond to guidance on this issue provided by the Commission on Dietary Supplement Labels (the Commission).

DATES: Written comments and recommendations by August 27, 1998.

ADDRESSES: Submit written comments and recommendations to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jeanne Latham, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4697.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Dietary Supplement Health and Education Act of 1994 (the DSHEA) authorizes manufacturers of dietary supplements to make certain types of statements about the uses of their products. Among the types of permitted statements are certain claims that, prior to enactment of the DSHEA, could have rendered the product a ''drug'' under the Federal Food, Drug, and Cosmetic Act (the act). Specifically, section 403(r)(6) of the act (21 U.S.C. 341(r)(6)), added by the DSHEA, allows dietary supplement labeling to bear a statement that ''describes the role of a nutrient or dietary ingredient intended to affect the structure or function in humans'' or that ''characterizes the documented mechanism by which a nutrient or dietary ingredient acts to maintain such structure or function.'' These types of claims are generally referred to as ''structure/function claims.''

Certain other types of statements about dietary supplements continue, under the DSHEA, to cause the product to be regulated as a drug. Statements permitted under section 403(r)(6) of the act ''may not claim to diagnose, mitigate, treat, cure, or prevent a specific disease or class of diseases,'' except that such statements may claim a benefit related to a classical nutrient deficiency disease, provided that they also disclose the prevalence of the disease in the United States. Such statements are generally referred to as ''disease claims.'' FDA notes that certain statements that pertain to a disease or health-related condition are permitted on food products, including dietary supplements. These statements are known as health claims (see section 403(r)(1)(B) of the act) and describe the relationship between a nutrient and a disease or health-related condition. Unlike structure/function claims, health claims must be authorized by FDA before they may be used on the label or in the labeling of a food or dietary supplement (see section 403(r)(3) and (r)(4) and 21 CFR 101.14 and 101.70). Thus, certain claims about disease may be made for foods and dietary supplements without causing these products to be regulated as drugs, provided the claim has been authorized for use by FDA in accordance with the applicable regulations. FDA also notes that a dietary supplement for which only structure/function claims are made in the label or labeling in accord with section 403(r) of the act may nevertheless be subject to regulation as a drug if the agency has other evidence (see 21 CFR 201.128) that the intended use of the product is for the diagnosis, cure, mitigation, treatment, or prevention of disease.

A dietary supplement manufacturer who wishes to make a permitted structure/function statement under section 403(r)(6) of the act must have substantiation that the statement is truthful and not misleading, and must include in the statement the following disclaimer: ''This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.'' The DSHEA requires the manufacturer of a dietary supplement bearing a statement under section 403(r)(6) of the act to notify FDA, no later than 30 days after the first marketing of the dietary supplement with the statement, that such a statement is being made for the product. Regulations implementing these requirements were published in the **Federal Register** of September 23, 1997, and are codified at § 101.93 (21 CFR 101.93) (62 FR 49859 at 49883, September 23, 1997, OMB Control Number 0910–0351).

Diseases, by definition, adversely affect some structure or function of the body, and it is possible to describe most products intended to treat or prevent disease in terms of their effects on the structure or function of the body. The DSHEA, thus, does not authorize the use of all claims that describe the effect of a dietary supplement on the structure or function of the body. Instead, section 403(r)(6) of the act authorizes only those structure/function claims that describe an effect of a product on the structure or function of the body but that are not also disease claims. Because the distinction between allowable structure/function claims and disease claims is not always obvious, the dietary supplement industry has requested clarification from FDA on structure/function claims that can be made for dietary supplements under section 403(r)(6) of the act. To develop clarifying criteria for such claims, FDA has reviewed the notification letters that have been submitted to FDA under section 403(r)(6) of the act. In addition, FDA has reviewed the report of the Commission, which was established by the DSHEA to provide guidance and recommendations for the regulation of label claims and statements for dietary supplements.

The Commission issued a draft report (the draft report) on June 24, 1997, among other things, the report included the Commission's views on ''what constitutes an acceptable statement * * * of the structure/function type'' (the draft report, p. 36). The Commission received public comment on the draft report and issued a final report (the report) on November 24, 1997. Guidance in the report ''represents advice to specific agencies, groups, or individuals. Guidance should be considered by the identified recipients as they develop or implement activities related to the availability of dietary supplements in the marketplace'' (the report, p. vi).

The Commission's final report contains the following guidance (the guidance) on the scope of permissible structure/function claims:

GUIDANCE

- While the Commission recognizes that the context of a claim has to be considered on a case-by-case basis, the Commission proposes the following general guidelines:

1. Statements of nutritional support should provide useful information to consumers about the intended use of a product.

2. Statements of nutritional support should be supported by scientifically valid evidence substantiating that the statements are truthful and not misleading.

3. Statements indicating the role of a nutrient or dietary ingredient in affecting the structure or function of humans may be made when the statements do not suggest disease prevention or treatment.

4. Statements that mention a body system, organ, or function affected by the supplement using terms such as ''stimulate,'' ''maintain,'' ''support,'' ''regulate,'' or ''promote'' can be appropriate when the statements do not suggest disease prevention or treatment or use for a serious health condition that is beyond the ability of the consumer to evaluate.

5. Statements should not be made that products ''restore'' normal or ''correct'' abnormal function when the abnormality implies the presence of disease. An example might be a claim to ''restore'' normal blood pressure when the abnormality implies hypertension.

6. Health claims are specifically defined under NLEA as statements that characterize the relationship between a nutrient or a food component and a specific disease or health-related condition. Statements of nutritional support should be distinct from NLEA health claims in that they do not state or imply a link between a supplement and prevention of a specific disease or health-related condition.

7. Statements of nutritional support are not to be drug claims. They should not refer to specific diseases, disorders, or classes of diseases and should not use drug-related terms such as ''diagnose,'' ''treat,'' ''prevent,'' ''cure,'' or ''mitigate.''

(The report, pp. 38–39).

The guidance thus focuses on the distinction between allowable structure/function claims and claims that a product can diagnose, treat, prevent, cure, or mitigate disease (disease claims), and makes clear that structure/function claims made for dietary supplements should not imply treatment or prevention of disease. The guidance also provides examples of types of structure/function claims that do and do not imply disease claims. In its findings, the Commission expressed the view that ''guidance by FDA to manufacturers making statements [under section 403(r)(6) of the act][1] is appropriate and helpful in clarifying the appropriate scope of these statements'' (the report, p. 38).

[1] The report refers to statements under section 403(r)(6) of the act as ''statements of nutritional support.'' As noted in a September 23, 1997 final rule regarding labeling claims for dietary supplements, FDA no longer uses the term ''statements of nutritional support'' because many of the substances that can be the subject of this type of claim have no nutritional value. Thus, the term ''statement of nutritional support'' is not accurate in all instances (62 FR 49859 at 49863).

FDA agrees with the Commission that an acceptable structure/function claim must not imply prevention or treatment of disease. FDA believes that the Commission's guidelines provide a useful framework for clarifying the sometimes difficult distinction between structure/function claims and disease claims. Based upon the Commission's advice and the agency's experience in reviewing notification letters submitted under section 403(r)(6) of the act, FDA has developed proposed regulations to define the types of claims that are ''disease claims'' and thus not acceptable as structure/function claims.

II. Provisions of the Proposed Rule and Guidance

As described in section I of this document, the manufacturer of a dietary supplement may make a truthful, nonmisleading labeling statement claiming that the product affects the structure or function of the body, unless the statement expressly or implicitly claims an effect on a disease or class of diseases (other than a classical nutrient deficiency disease). Therefore, to determine the scope of structure/function claims that may be made for a dietary supplement, it is necessary to define the types of claims about the effects of a product that are prohibited disease claims. The proposed rule is designed to provide criteria for determining when a statement about a product constitutes a disease claim.

The agency used several methods and sources to develop the proposed criteria for discerning which categories of labeling statements constitute express or implied claims that a product can diagnose, cure, mitigate, treat or prevent disease. To establish what types of claims the agency had already determined to be disease claims, FDA reviewed the letters it has sent in response to notifications from dietary supplement manufacturers, listing specific claims the agency regards as disease claims, as well as other regulatory actions taken in response to dietary supplement claims. FDA also reviewed the Commission Report's guidance on distinguishing structure/function claims and disease claims. In addition, the agency developed a definition of ''disease.'' As described below, the agency relied upon standard medical and legal definitions of disease as a basis for a proposed regulatory definition. The agency then used the proposed definition of disease to generate workable criteria, by applying the proposed definition to a wide variety of statements currently made by dietary supplement manufacturers to determine whether the statements claimed an effect on ''disease,'' as tentatively defined. Based upon the information derived from these reviews, the agency developed the general criteria below.

The proposed rule applies only to structure/function claims and disease claims within the meaning of section 403(r)(6) of the act. DSHEA generally, and section 403(r)(6) of the act specifically, apply only to dietary supplements for human consumption, and were enacted to provide a unique regulatory regime for these products. Thus, the proposed rule is not intended to apply to products other than dietary supplements for human consumption nor to interpret other provisions of the act.

A. Permitted Structure/Function Claims

Under proposed § 101.93(f), dietary supplement labels and labeling may bear structure/function statements that are not disease claims within the meaning of proposed § 101.93(g) and that otherwise comply with the notification and disclaimer provisions of § 101.93 (a) through (e), including the requirement that any structure/function statement be substantiated.

B. Definition of Disease

To assist in describing what constitutes a disease claim, the proposed rule contains a definition of ''disease.'' The proposed definition is based on standard medical and legal definitions of the term (Refs. 1, 2, 3 and 4). Under proposed § 101.93(g)(1), a ''disease'' is any deviation from, impairment of, or interruption of the normal structure or function of any part, organ, or system (or combination thereof) of the body that is manifested by a characteristic set of one or more signs or symptoms. For purposes of this definition, ''signs or symptoms'' include laboratory or clinical measurements that are characteristic of a disease, such as elevated cholesterol fraction, uric acid, blood sugar, and glycosylated hemoglobin, and characteristic signs of disease, such as elevated blood pressure or intraocular pressure.

To eliminate any inconsistency between this definition of ''disease'' and the definition of ''disease or health-related condition'' found in § 101.14(a)(6) and used for purposes of the agency's regulation of health claims, the proposal would also amend § 101.14(a)(6). That section defines ''disease or health-related condition'' as ''damage to an organ, part, structure, or system of the body such that it does not function properly (e.g., cardiovascular disease), or a state of health leading to such dysfunctioning (e.g. hypertension);

except that diseases resulting from essential nutrient deficiencies (e.g., scurvy, pellagra) are not included in this definition * * *'' Under the proposed amendment to 101.14(a)(6), ''disease or health-related condition'' would be defined, in relevant part, as:

''any deviation from, impairment of, or interruption of the normal structure or function of any part, organ, or system (or combination thereof) of the body that is manifested by a characteristic set of one or more signs or symptoms (including laboratory or clinical measurements that are characteristic of a disease), or a state of health leading to such deviation, impairment, or interruption; except that diseases resulting from essential nutrient deficiencies (e.g., scurvy, pellagra) are not included within this definition * * *.

FDA believes that the proposed amendment of § 101.14(a)(6) is appropriate because experience since the issuance of the health claims regulations has shown that the current definition is too narrow in some respects. The term ''damage'' can be interpreted as limiting the definition to serious or long-term diseases, and as excluding certain conditions that are medically understood to be diseases, such as headaches. The proposed amendment, which covers both ''damage'' to an organ, part, structure, or system leading to dysfunction, and other deviations from, impairments of, or interruptions of the normal functioning of an organ, part, or system, more accurately covers the range of conditions that are medically understood to be diseases. FDA notes that the definition in § 101.14(a)(6) is intended to cover both diseases and ''health-related conditions.'' As amended, the proposed definition in § 101.14(a)(6) would remain broader than the proposed definition of ''disease'' in proposed § 101.93(g)(1) because proposed § 101.14(a)(6) includes the phrase ''or a state of health leading to such deviation, impairment, or interruption.''

C. Criteria for Identifying Disease Claims

Based upon the definition of disease in proposed § 101.93(g)(1), § 101.93(g)(2) of the proposed rule lists criteria for determining whether a statement about a product is a disease claim. To illustrate these criteria, FDA has provided examples of statements that would be considered disease claims under the proposed rule. FDA has also provided examples of statements that would not, by themselves, be considered disease claims. FDA emphasizes that in determining whether a statement about a product constituted a disease claim under these criteria, FDA would also consider the context in which the statement appeared. A statement that by itself would be considered an acceptable structure/function claim could become a disease claim if, in context, an effect on disease were expressed or implied. FDA seeks comment on the examples and the provisions of the proposed rule. To assist the industry, and especially small businesses, if the agency issues a final rule, it will issue an accompanying guidance providing examples of claims that would and would not be considered disease claims under the final rule.

1. Under proposed § 101.93(g)(2)(i), a statement would be considered a disease claim if it explicitly or implicitly claimed an effect on a specific disease or class of diseases. Examples of such disease claims include: ''protective against the development of cancer,'' ''reduces the pain and stiffness associated with arthritis,'' ''decreases the effects of alcohol intoxication,'' or ''alleviates constipation.'' Claims that do not refer explicitly or implicitly to an effect on a specific disease state would not be disease claims under this criterion. Examples include: ''helps promote urinary tract health,'' ''helps maintain cardiovascular function and a healthy circulatory system,'' ''helps maintain intestinal flora,'' and ''promotes relaxation.'' FDA has tentatively concluded that these examples do not contain express or implied references to specific diseases. Instead, they refer broadly to body systems or functions without sufficient reference to specific abnormalities or symptoms to be understood as references to particular diseases.

2. Proposed § 101.93(g)(1) defines disease as any one of several types of abnormalities that are ''manifested by a characteristic set of one or more signs or symptoms.'' FDA believes that reference to a characteristic set of signs or symptoms, even in the absence of the name of the disease, can be understood as a reference to the disease itself. Under proposed § 101.93(g)(2)(ii), a statement would be considered a disease claim if it explicitly or implicitly claimed an effect (using scientific or lay terminology) on one or more signs or symptoms that are recognizable to health care professionals or consumers as being characteristic of a specific disease or of a number of diseases. Examples of such disease claims include: ''improves urine flow in men over 50 years old'' (characteristic symptoms of, e.g., benign prostatic hypertrophy); ''lowers cholesterol'' (characteristic sign of, e.g., hypercholesterolemia); ''reduces joint pain'' (characteristic symptom of, e.g., arthritis); and ''relieves headache'' (characteristic symptom of, e.g., migraine or tension headache). In each of these cases, the symptoms described are sufficient to characterize one or more specific diseases. To determine whether a reference to a set of signs and symptoms constituted a disease claim, FDA would interpret the reference in context. Claims of an effect on symptoms that are not recognizable as characteristic of a specific disease or diseases would not constitute disease claims. Examples include: ''reduces stress and frustration,'' ''inhibits platelet aggregation,'' and ''improves absentmindedness.'' In these examples, the signs or symptoms noted may be broadly associated with a number of diseases, but are not, by themselves, sufficient to characterize a specific disease or diseases. If the context did not suggest treatment or prevention of a disease, a claim that a substance helps maintain normal function would not ordinarily be a disease claim. Examples include: ''helps maintain a healthy cholesterol level,'' or ''helps maintain regularity.''

FDA requests comment on the distinction between maintaining normal function, which is potentially the basis for an allowable structure/function claim, and preventing or treating abnormal function, which is potentially a disease claim. This can be a difficult distinction conceptually, especially if the only reason for maintaining normal function is to prevent a specific disease or diseases associated with abnormal function. According to the report, ''Commission members who were troubled about the wording of structure/function statements suggested that the most problematic wording is seen in statements ostensibly relating to 'normal healthy function' that actually imply the need to remedy an underlying abnormal or unhealthy state * * *'' (the report, pp. 36–37).

The Commission concluded that ''statements that mention a body system, organ, or function affected by the supplement using terms such as ''stimulate,'' ''maintain,'' ''support,'' ''regulate,'' or ''promote'' can be appropriate when the statements do not suggest disease prevention or treatment or use for a serious health condition that is beyond the ability of the consumer to evaluate'' (the report, p. 38). This is consistent with the criterion proposed by FDA. As the report illustrates, however, there can be disagreement about the circumstances in which a reference to maintaining normal function implies disease treatment or prevention. Therefore, FDA welcomes

comment on the basis for the distinction between maintaining normal function and preventing or treating abnormal function and on factors that help distinguish between claims relating to normal, healthy function that do not imply disease treatment or prevention and those that do. Because of the Commission's concerns that claims relating to maintaining healthy cholesterol levels raise particularly difficult issues (the report, p. 37), FDA seeks comment on these claims.

3. Certain natural states, such as pregnancy, aging, or the menstrual cycle, that are themselves not ''diseases,'' are sometimes associated with abnormalities that are characterized by a specific set of signs or symptoms, and thus meet the proposed definition of disease. Under proposed § 101.93(g)(2)(iii), a statement would be considered a disease claim if it explicitly or implicitly claimed an effect on a consequence of a natural state that presents a characteristic set of signs or symptoms recognizable to health care professionals or consumers as constituting an abnormality of the body, such as toxemia of pregnancy, premenstrual syndrome, or abnormalities associated with aging such as presbyopia, decreased sexual function, Alzheimer's disease, or hot flashes. Claims that did not refer to a recognizable abnormality resulting from a natural state or to its signs or symptoms (e.g., ''for men over 50 years old,'' and ''to meet nutritional needs during pregnancy'') would not be disease claims under this criterion. These examples do not include references to specific abnormalities or symptoms. FDA thus believes that they would not be understood as references to particular diseases.

4. Various aspects of a product's labeling may be used to express or imply that the product will diagnose, cure, mitigate, treat, or prevent disease. Under proposed § 101.93(g)(2)(iv), a statement would be considered a disease claim if it explicitly or implicitly claimed an effect on disease through one or more of the following factors:

(a) The name of the product (e.g., ''Carpaltum'' (carpal tunnel syndrome), ''Raynaudin'' (Raynaud's phenomenon), ''Hepatacure'' (liver problems)). Names that did not imply an effect on a disease, such as ''Cardiohealth'' and ''Heart Tabs,'' would not constitute disease claims;

(b) Statements about the formulation of the product, including a claim that the product contained an ingredient that has been regulated primarily by FDA as a drug and is well known to consumers for its use in preventing or treating a disease (e.g., aspirin, digoxin, or laetrile). FDA notes that this proposed rule is not intended to interpret section 201(ff)(3)(A) of the act (21 U.S.C. 321(ff)(3)(A)), and that a product may be included in or excluded from the definition of ''dietary supplement'' under that provision regardless of whether the statement made for the product under section 403(r)(6) of the act meets the criteria specified here;

(c) Citation of a title of a publication or other reference, if the title refers to a disease use. For example, labeling for a vitamin E product that included a citation to an article entitled ''Serial Coronary Angiographic Evidence That Antioxidant Vitamin Intake Reduces Progression of Coronary Artery Atherosclerosis,'' would create a disease claim under this criterion;

(d) Use of the term ''disease'' or ''diseased;'' or

(e) Otherwise suggesting an effect on disease by use of pictures, vignettes, symbols, or other means (e.g., electrocardiogram tracings, pictures of organs that suggest prevention or treatment of a disease state, the prescription symbol (Rx), or any reference to prescription use). A picture of a body would not constitute a disease claim under this criterion.

5. Certain product class names are so strongly associated with diagnosis, cure, mitigation, treatment or prevention of a disease or diseases, that a claim that a product belonged to such a class would be understood as a disease claim. Under proposed § 101.93(g)(2)(v), a statement would be considered a disease claim if it claimed that the product belonged in a class of products recognizable to health care professionals or consumers as intended for use to diagnose, mitigate, treat, cure, or prevent a disease (e.g., claims that the product was an ''antibiotic,'' a ''laxative,'' an ''analgesic,'' an ''antiviral,'' a ''diuretic,'' an ''antimicrobial,'' an ''antiseptic,'' an ''antidepressant,'' or a ''vaccine''). The foregoing examples do not constitute an exclusive list of product class names that convey disease claims. Claiming that a product was in a class that is not recognizable to health care professionals or consumers as intended for use to diagnose, mitigate, treat, cure or prevent disease (e.g., an ''energizer,'' a ''rejuvenative,'' a ''revitalizer,'' or an ''adaptogen'') would not constitute a disease claim under this criterion.

6. A statement may imply that a dietary supplement has an effect on disease by claiming that the effect of the dietary supplement is the same as that of a recognized drug or disease therapy. A statement may also imply an effect on disease by suggesting that the dietary supplement should be used as an adjunct to a recognized drug or disease therapy in the treatment of a disease. In both cases, the statement implies that the dietary supplement is intended for the same purpose as the drug or disease therapy, i.e., for the diagnosis, cure, mitigation, treatment, or prevention of disease. Under proposed § 101.93(g)(2)(vi) and (g)(2)(vii), a statement would be considered a disease claim if it explicitly or implicitly claimed that the product was a substitute for another product that is a therapy for a disease (e.g., ''Herbal Prozac'') or that it augmented a particular therapy or drug action (e.g., ''use as part of your diet when taking insulin to help maintain a healthy blood sugar level''). A claim that did not identify a specific drug, drug action, or therapy (e.g., ''use as a part of your weight loss plan'') would not constitute a disease claim under this criterion.

7. A statement may contain an express or implied disease claim if it suggests that the product cures, mitigates, treats or prevents a disease or diseases by augmenting the body's own disease-fighting capabilities. Under proposed § 101.93(g)(2)(viii), a statement would be considered a disease claim if it explicitly or implicitly claimed a role in the body's response to a disease or to a vector of disease. A vector of disease is an organism or object that is able to transport or transmit to humans an agent, such as a virus or bacterium, that is capable of causing disease in man. A claim that a product ''supports the body's antiviral capabilities'' or ''supports the body's ability to resist infection'' would constitute a disease claim under this criterion. Infections are well-known disease states that result from the action of pathogenic (disease-causing) microorganisms, such as bacteria and viruses, and are deviations from and impairments of the normal structure and/or function of the body with characteristic signs and symptoms. Claims that a product is intended to affect the body's ability to kill or neutralize pathogenic microorganisms, or to mitigate the consequences of the action of pathogenic microorganisms on the body (i.e., the signs and symptoms of infection) are disease claims because they are claims exclusively associated with the body's ability to prevent or respond to infectious diseases. A more general reference to an effect on a body system that has several functions, only one of which is resistance to disease, would not constitute a disease claim under this criterion (e.g., ''supports the immune system'').

8. Many adverse reactions to drugs or medical procedures meet the proposed definition of disease because they are abnormalities of structure or function manifested by a characteristic set of signs or symptoms. In addition, the clinical management of adverse events that are consequences of medical intervention is an integral part of the overall medical management of the underlying disease state for which the therapeutic intervention is intended. Therefore, claims that a product is intended to counter adverse events resulting from medical intervention are claims that the product is intended as a part of the treatment program and, as such, are claims that the product is to mitigate, treat, or cure the disease state. Under proposed § 101.93(g)(2)(ix), a statement would be considered a disease claim if it explicitly or implicitly claimed to treat, prevent, or mitigate adverse events associated with a medical therapy or procedure and manifested by a characteristic set of signs or symptoms (e.g., ''reduces nausea associated with chemotherapy,'' ''helps avoid diarrhea associated with antibiotic use,'' and ''to aid patients with reduced or compromised immune function, such as patients undergoing chemotherapy''). A claim that did not mention a therapy for disease (e.g., ''helps maintain healthy intestinal flora'') would not constitute a disease claim under this criterion.

9. Under proposed § 101.93(g)(2)(x), a statement would be considered a disease claim if it otherwise suggested an effect on a disease or class of diseases.

III. Legal Authority

This proposed rule is authorized under sections 201, 403(r), and 701(a) of the act (21 U.S.C. 321, 343(r), and 371(a)).

IV. Effective Date and Implementation Plan

The agency proposes that any final rule based on this proposal will become effective 30 days after the date of publication of the final rule in the **Federal Register**. However, for a product marketed by a small business (as defined below) that was on the market as of the date of publication of the final rule, the agency is proposing to allow an additional 17 months within which claims made about such product as of the date of publication of the final rule must be brought into compliance with the final rule, provided that the small business has notified FDA of the claim as required by section 403(r)(6) of the act and § 101.93(a) and that FDA has not objected to the claim. A ''small business'' for purposes of this proposal is a business with total annual revenues of less than $20 million. For all other products that were on the market as of the date of publication of the final rule, the agency is proposing to allow an additional 11 months within which claims made about such products as of the date of publication of the final rule must be brought into compliance, again provided that the firm has notified FDA of the claim as required by section 403(r)(6) of the act and § 101.93(a) and that FDA has not objected to the claim. Any product that is marketed for the first time after publication of the final rule, and any new claims made for an existing product for the first time after publication of the final rule, will be expected to be in compliance beginning 30 days after publication of the final rule.

During the pendency of this rulemaking, manufacturers will continue to be under an obligation to comply with section 403(r)(6) and other applicable provisions of the act and applicable regulations. FDA will continue to respond to notifications submitted under section 403(r)(6) of the act, and the agency will continue to enforce that provision and all other applicable legal requirements.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h), (k) and 25.34(f) 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.

VI. Analysis of Economic Impacts

A. Benefit—Cost Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach which maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a rule is significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. Because it raises novel policy issues, FDA finds that this proposed rule is a significant regulatory action as defined by Executive Order 12866.

In addition, FDA has determined that this rule does not constitute a significant rule under the Unfunded Mandates Reform Act of 1995 requiring cost-benefit and other analyses. A significant rule is defined in Section 1531(a) as ''a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year * * *''.

Finally, in accordance with the Small Business Regulatory Enforcement Fairness Act, the administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget has determined that this proposed rule is not a major rule for the purpose of Congressional review.

There are several different types of products that may be considered to be dietary supplements. These products include but are not limited to vitamin and mineral supplements, herbal products, and products that contain other similar nutritional substances. Estimates of the number of dietary supplements are approximate because no one source collects information on all types of dietary supplements. In fact, until the DSHEA, there was no agreed upon definition of a dietary supplement. Some sources include only dietary supplements of vitamins and minerals, others include herbals or botanicals, and still others include other types of products that may or may not be dietary supplements, such as sports nutrition products and ''functional foods,'' a term for which there is no regulatory definition. FDA's preliminary estimate of the number of such products is approximately 29,000. FDA's estimate of the number of stockkeeping units (skus), a more accurate count of the number of labels, is approximately 75,000.

In its analysis of the rule establishing nutrition labeling requirements for dietary supplements (62 FR 49826 at 49843), FDA provided an estimate of the number of dietary supplement firms. According to Dun's Market Identifiers (Ref. 5), there are approximately 250 manufacturers of vitamin and mineral products. According to Nutrition Business Journal (Ref. 6), the dietary supplement industry includes 850 supplement manufacturing companies. The Journal reports 1995 industry revenues at $4.5 billion. The Journal's estimate of 850 firms is an overestimate of the dietary supplement industry as defined by FDA because it includes homeopathic products, which are drugs by statutory definition, and ''functional

foods'' and sports nutrition products, which may be either conventional foods or dietary supplements depending on how they are marketed and used. Although the Journal does not break down the number of firms by the type of dietary supplement produced, it does specify that 250 firms produce herbal or botanical products.

For purposes of determining the costs of regulation, FDA has used 850 as an upper bound estimate of the number of firms. As a lower bound estimate, FDA has used 500 (250 vitamin/mineral firms plus 250 herbal/botanical firms). Since publication of the nutrition labeling final rule in September 1997 (62 FR 49826), FDA has not been challenged on these estimates. Therefore, the same range of estimates is used in this analysis.

In this proposed rule, FDA is clarifying the distinction between disease claims and structure/function claims in dietary supplement labeling. If the proposed rule becomes final, any firm currently making a claim that was not previously classified as a disease claim but is classified as a disease claim by the rule will be required to change the claim to an acceptable structure/function claim, remove the claim from labeling, petition and be granted permission to carry a health claim, or bear the consequences of being classified as an unapproved drug. FDA has received approximately 2,300 notifications of structure/function claims and has sent objection letters for approximately 150 of the notifications. FDA believes that those firms have made the necessary changes to make their claims come into compliance. FDA has estimated the number of additional notifications to which it would have objected under the criteria in this proposed rule. Using conservative, worst-case estimates, FDA estimated that it would have objected to approximately 60 additional notifications. The firms making these 60 products will have to change their claims if the proposal becomes final; these firms would bear the costs of this proposed rule.

FDA is aware that, despite the notification requirements in section 403(r)(6) of the act and § 101.93(a), some firms that have not sent notifications are in fact marketing products whose labeling contains structure-function claims. If the labels contain claims that are unacceptable under the criteria FDA is proposing to adopt, and if the firms change those labels in response to this proposed rule, then the costs of those labeling changes can be attributed to the rule.

1. Costs

Only those firms who must change their labeling will bear the costs of this rule. Categories of costs for relabeling include administrative, analytical, printing, and inventory disposal. FDA will first estimate compliance costs for the 60 products for which the agency has received notifications of claims that would be classified as disease claims under the criteria in the proposed rule. These costs will be the lower-bound costs of the proposed rule. FDA will then estimate the compliance costs for the products for which FDA has not received notification, but whose labeling contains claims that would be classified as disease claims under the criteria in the proposed rule. The sum of the compliance costs for the two categories of products will be the upper-bound costs of the proposed rule.

a. Lower-bound Estimate

The administrative costs associated with a labeling regulation result from the incremental administrative labor expended in order to comply with a regulation. FDA estimates administrative costs at approximately $425 per firm for a 1-year compliance period and approximately $320 for an 18-month compliance period. Longer compliance periods decrease administrative effort because firm executives often delegate downward decisions that are less immediate. FDA will assume that the number of firms affected by the proposed rule is proportional to the number of labels affected. FDA therefore estimates the number of firms affected by multiplying the upper-bound estimate of total firms in the industry by the fraction of the labels in violation, or 850 x (60/2,300) = 22. Total administrative costs are estimated to be $7,040 (22 x $320) with an 18-month compliance period and $9,350 (22 x $425) with a 1-year compliance period.

Based on an average of the estimates provided in comments to earlier rules, FDA estimates that the average redesign cost for a 1-year compliance period is $1,700 per dietary supplement label. Redesign costs associated with an 18 - month compliance period are typically 3/4 of those for a 1 year compliance period, or $1,300 per dietary supplement label. Therefore, FDA estimates total redesign costs to be $102,000 (60 x $1,700) for a 12-month compliance period and $78,000 (60 x $1,300) for an 18-month compliance period.

FDA received information from an earlier rule affecting the entire dietary supplement industry indicating that inventory disposal costs would be $8 million for an 18-month compliance period and $15 million for a 12-month compliance period. FDA has some experience suggesting that some firms will experience minimal inventory disposal costs due to the rapid frequency with which they change labels or move product. Because FDA is assuming that 0.08 percent (60/75,000) of the industry will incur costs as a result of this rule, total inventory disposal costs are estimated to be $6,400 (0.0008 x $8 million) for an 18-month compliance period and $12,000 (0.0008 x $15 million) for a 12-month compliance period.

FDA has estimated the impact of the proposed regulation and has determined that, for a 1-year compliance period, lower-bound total costs would be approximately $123,400. Alternatively, if FDA were to provide 18 months for compliance, lower-bound total costs would be approximately $91,400. The components of lower-bound total costs are shown in the following table.

Cost Category	12-month compliance	18-month compliance
Administrative	$9,400	$7,000
Redesign	$102,000	$78,000
Inventory	$12,000	$6,400
Total	$123,400	$91,400

b. Upper-bound Estimate

Some manufacturers of dietary supplements may not have notified FDA that their product labels contain structure-function claims. Because these manufacturers have not complied with the existing legal requirement to notify FDA of the claims they are making for their products, FDA believes that it is unlikely that they would change their labels to comply with new regulations defining acceptable structure/function claims. However, to ensure that all possible costs are considered in this impact analysis, the agency is including costs that might be incurred by such manufacturers as an upper bound on its estimate of the costs of this proposed rule. Based on visual observation of dietary supplements sold in retail establishments (grocery, drug, and health food stores), FDA estimates that up to 30 percent of all labels contain structure-function claims. FDA therefore estimates that up to 22,500 (0.3 x 75,000) dietary supplement labels may contain structure-function claims. Although it is uncertain how many of these labels contain claims that would be disease claims under the proposed rule, if the proportion of all labels containing such claims is the same as the proportion of notifications containing such claims, then there may

be up to 585 [(60/2,300) x 22,500] labels that would need to be changed if the proposed rule becomes final. Subtracting the 60 unacceptable labels for which FDA has received notifications leaves about 525 additional labels that may be affected by the rule.

Based on its model of food labeling compliance costs, FDA assumes that compliance costs per label double with each halving of the compliance period (Ref. RTI Final Report, ''Compliance Costs of Food Labeling Regulations''). The cost per label for a 12-month compliance period is approximately $2,000 ($123,400/60). The compliance period for claims for which no notification has been received is 30 days. Based on the model, FDA expects that compliance costs will double as the compliance period falls from 12 to 6 months, and double again as the compliance period falls to 3 months. Although the model does not predict compliance costs for periods shorter than 3 months, FDA assumes that as the compliance period falls from 3 months to 30 days, compliance costs are likely to double again. Estimated costs per label should therefore be approximately 8 times (2 x 2 x 2) higher for a compliance period of 30 days than for a compliance period of 12 months. FDA therefore estimates compliance costs per label for current structure-function claims for which no notification has been received to be $16,000 (8 x $2,000). The total costs for 525 label changes would be $8.4 million (525 x $16,000). Although FDA believes that it is very unlikely that all of these label changes would be made, the upper-bound total cost of this proposed rule is the sum of the costs for the 60 unacceptable claims for which notifications have been received and the costs of the additional unacceptable claims. The total cost will thus range between approximately $0.1 million and $8.5 million.

2. Benefits

Most of the benefits from this rule will come from the reduced uncertainty associated with structure/function claims in dietary supplement labeling. Some manufacturers of dietary supplements, as shown by the submission of a significant number of notifications for purported structure/function statements that are clearly disease claims, are uncertain about what constitutes an acceptable structure/function claim. This proposed rule establishes clarifying criteria that will reduce and perhaps eliminate this uncertainty.

FDA cannot quantify the benefits from this proposed rule. Because of the uncertainty about what constitutes an acceptable structure/function claim, some manufacturers of dietary supplements may have hesitated to attempt to make structure/function claims. These clarifying criteria will enable those firms to go forward with those claims. To the extent that the lack of these claims has caused consumers to seek out the information from other sources, this rule will benefit consumers by reducing the cost of searching for information and ensuring that the information provided to consumers is appropriate.

Manufacturers who were considering making claims that would be considered unacceptable will be provided with clear criteria showing that the claims are unacceptable. As evidenced by notifications of structure/function claims already received by FDA, several firms have had to bear the cost of redesigning labeling to incorporate the changes recommended by the agency. By providing criteria to firms before they submit notifications to FDA, this rule will reduce costs to firms by reducing the probability of having to redo labels. Government costs will also be lessened by reducing the number of letters informing firms of inappropriate label statements.

3. Regulatory Alternatives

FDA considered, but did not adopt, other regulatory options. First, the agency considered treating a statement about a dietary supplement as a disease claim only if the statement included an express reference to a specific disease. This option would have resulted in a significantly larger number of permitted claims for dietary supplements, and reduced costs for dietary supplement manufacturers. FDA did not adopt this option for several reasons. First, it would be inconsistent with FDA's longstanding policy of considering both express and implied claims when determining whether a product falls within various definitions under the act. Second, it would be inconsistent with the interpretation of ''disease claims'' that FDA has used in administering section 403(r)(6) of the act prior to issuing this proposed rule. Finally, because many implied claims, e.g., claims that list the symptoms of a disease without naming the disease, are well-understood by consumers as disease treatment or prevention claims, this option would be inconsistent with the intent of section 403(r)(6).

Second, FDA considered treating any mention of an abnormality of the structure or function of the body as a disease claim, even if the abnormality was not characterized by a set of signs or symptoms recognized as a disease. This option would have resulted in a significantly smaller number of permitted claims for dietary supplements, and greater costs for dietary supplement manufacturers. FDA did not adopt this option because section 403(r)(6) of the act prohibits only claims of an effect on a disease. Because not all abnormalities are recognized by health professionals or consumers as diseases, this option would have been overbroad, and would have prevented manufacturers from making claims permitted by the statute.

Finally, FDA considered taking no new regulatory action. This option would have resulted in no immediate change in the number of permitted claims, and no costs for dietary supplement manufacturers. FDA rejected this option because there is substantial confusion among dietary supplement manufacturers and consumers about what types of claims are permitted for dietary supplements, and the agency has been called upon to provide clarification of permitted and prohibited claims. In the absence of direction from the agency, an increasing number of products in the marketplace carry express and implied disease claims, misleading consumers and creating unfairness to those manufacturers who have attempted to comply with advice from FDA.

B. Small Entity Analysis

According to the Regulatory Flexibility Act, the definition of a small entity is a business independently owned and operated and not dominant in its field. The Small Business Administration (SBA) has set size standards for most business categories through use of four-digit Standard Industrial Classification (SIC) codes. Dietary supplements of vitamins and minerals are included in the industry group Pharmaceutical Preparations (SIC 2834); a business in that classification is considered small if it has fewer than 750 employees. According to Dun's Market Identifiers, there are approximately 250 producers of vitamin and mineral supplements, of which 200 have fewer than 750 employees. The remaining dietary supplement products—mainly herbs, other botanicals, and amino acids—do not fit in any classification, but come closest to the industry groups Food Preparations Not Elsewhere Classified (SIC 2099) and Medicinal Chemicals and Botanical Products (SIC 2833). The SBA size standards are 500 or fewer employees for food preparations and 750 or fewer employees for medicinal and botanical products.

According to Nutrition Business Journal (Ref. 6), 11 of the 850 dietary supplement manufacturing firms have

total revenues over $100 million, accounting for 53 percent of total sales; 30 firms have sales revenues between $20 and $100 million, accounting for 28 percent of industry sales; and 809 firms have sales under $20 million, accounting for 19 percent of industry sales. The 809 firms in the under $20 million category have an average sales revenue of $800,000 and will be considered small by FDA.

No employment data are available for some of these firms. Many of the firms are in the SIC codes 2833 and 2834, however. According to Dun's Market Identifiers, no firms for which both employment and sales data are available in SIC code 2833 have less than $20 million in annual sales and more than 500 employees. Indeed, 96% of the firms in that sales category have fewer than 100 employees. By contrast, over 90% of the firms in SIC codes 2833 and 2834 (vitamin and minerals sub-category) with annual sales greater than $100 million have more than 750 employees. If the relationship between sales and employment for SIC codes 2833 and 2834 holds for other sectors of the dietary supplement industry, then the proportion of firms with sales under $20 million should be approximately the same as the proportion of firms with fewer than 500 employees, an employment category that is classified as small for any SIC code involving the manufacture of foods, chemicals and kindred or allied products. FDA concludes therefore that as many as 809 firms in the dietary supplement industry, or 95 percent of firms, could be considered small (sales under $20 million). As stated previously in this analysis, 809 small firms may be an overestimate because it counts firms that produce homeopathic products, which are drugs, and sports nutrition products and ''functional foods,'' which may be either foods or dietary supplements. If there are as few as 500 dietary supplement firms, there may be 475 small dietary supplement firms.

Because virtually all firms affected by this rule will be classified as small under SBA standards, FDA assumes that small entities will bear 100 percent of the costs. Because per firm labeling costs are probably burdensome for small firms and because the costs of this rule are borne entirely by small firms, FDA tentatively concludes that this rule will result in a significant economic impact on a substantial number of small entities. In section VI. A. of this document, entitled Benefit—Cost Analysis, FDA estimated that, as a lower-bound, 22 firms would be affected by this proposed rule and that the lower-bound costs with a compliance period of 12 months would be approximately $123,400, or about $5,600 per small firm. FDA estimated upper-bound costs, $8.5 million, by adding the costs of changing 525 additional labels (with a 30-day compliance period) to the lower-bound costs. If the number of additional firms affected is proportional to the number of additional labels changed, the upper-bound number of firms affected by this proposed rule is 215, for an upper-bound average cost of about $40,000 per small firm.

The Regulatory Flexibility Act requires agencies to examine regulatory alternatives that would minimize the impact on small entities. FDA considered exempting small entities from this rule, which would eliminate the costs borne by small entities. FDA rejected this option for several reasons. First, the agency has no authority to exempt small entities from their statutory obligations, and this proposed rule merely clarifies a statutory requirement. Second, as described above, virtually all manufacturers covered by this proposal are small entities. Exempting small entities would thus eliminate the benefits of the proposed rule. Finally, some of the benefits of the rule, such as reducing the uncertainty associated with structure/function claims and reducing the probability of having to re-do labels, will accrue to small entities.

FDA has examined the impact of different compliance periods and has determined that extending the compliance period from 12 to 18 months for firms that have notified the agency of a claim and have not received an objection reduces the burden on small entities in this category. Extending the compliance period from 12 to 18 months reduces lower-bound estimated costs borne by small firms by $32,000, and average costs per firm would fall from $5,600 to about $4,200. Extending the compliance period beyond 18 months could provide additional relief to these small entities. Based on FDA's experience with the dietary supplement industry, however, the agency believes that labels are changed more often than every 18 months; therefore, FDA believes that this additional relief would be small. FDA has tentatively concluded that the compliance period for those firms whose products contain structure/function claims but who have not complied with the legal requirement to notify FDA of those claims should not be extended.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Comment Request

Interested persons may, on or before August 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. *Dorland's Illustrated Medical Dictionary*, 28th Edition, W.B. Saunders Co., Philadelphia, p. 478, 1994.

2. *Stedman's Medical Dictionary*, 26th Edition, Williams & Wilkins, Baltimore, p. 492, 1995.

3. *The Encyclopedia Americana, International Edition*, Grolier Inc., Danbury, p. 168, 1985.

4. *Black's Law Dictionary*, 6th Edition, West Publishing Co., St. Paul, p. 467, 1990.

5. *Dun's Market Identifiers*, Knight-Ridder Information, Inc., Mountain View, CA, 1998.

6. *Nutrition Business Journal*, 1(1):15, 16, 1996.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.14, as currently in effect, is amended by revising paragraph (a)(6) to read as follows:

§ 101.14 Health claims: general requirements.

(a) * * *

(6) *Disease or health-related condition* means any deviation from, impairment

of, or interruption of the normal structure or function of any part, organ, or system (or combination thereof) of the body that is manifested by a characteristic set of one or more signs or symptoms (including laboratory or clinical measurements that are characteristic of a disease), or a state of health leading to such deviation, impairment, or interruption; except that diseases resulting from essential nutrient deficiencies (e.g., scurvy, pellagra) are not included in this definition (claims pertaining to such diseases are thereby not subject to this section or § 101.70).

* * * * *

3. Section 101.93, as currently in effect, is amended by revising the section heading and by adding paragraphs (f) and (g) to read as follows:

§ 101.93 Certain types of statements for dietary supplements.

* * * * *

(f) *Permitted structure/function statements.* (1) Dietary supplement labels or labeling may, subject to the requirements of this section, bear statements that describe the role of a nutrient or dietary ingredient intended to affect the structure or function in humans or that characterize the documented mechanism by which a nutrient or dietary ingredient acts to maintain such structure or function, but may not bear statements that are disease claims under paragraph (g) of this section.

(g) *Disease claims.* (1) *Definition of disease.* For purposes of 21 U.S.C. 343(r)(6), a ''disease'' is any deviation from, impairment of, or interruption of the normal structure or function of any part, organ, or system (or combination thereof) of the body that is manifested by a characteristic set of one or more signs or symptoms, including laboratory or clinical measurements that are characteristic of a disease.

(2) *Disease claims.* FDA will find that a statement about a product claims to diagnose, mitigate, treat, cure, or prevent disease (other than a classical nutrient deficiency disease) under section 403(r)(6) of the act if it meets one or more of the criteria listed in this paragraph (g)(2). In determining whether a statement is a disease claim under these criteria, FDA will consider the context in which the claim is presented. A statement claims to diagnose, mitigate, treat, cure, or prevent disease if it claims, explicitly or implicitly, that the product:

(i) Has an effect on a specific disease or class of diseases;

(ii) Has an effect, using scientific or lay terminology, on one or more signs or symptoms that are recognizable to health care professionals or consumers as being characteristic of a specific disease or of a number of different specific diseases;

(iii) Has an effect on a consequence of a natural state that presents a characteristic set of signs or symptoms recognizable to health care professionals or consumers as constituting an abnormality of the body;

(iv) Has an effect on disease through one or more of the following factors:

(A) The name of the product;

(B) A statement about the formulation of the product, including a claim that the product contains an ingredient that has been regulated by FDA as a drug and is well known to consumers for its use in preventing or treating a disease;

(C) Citation of the title of a publication or reference, if the title refers to a disease use;

(D) Use of the term ''disease'' or ''diseased''; or

(E) Use of pictures, vignettes, symbols, or other means;

(v) Belongs to a class of products that is intended to diagnose, mitigate, treat, cure, or prevent a disease;

(vi) Is a substitute for a product that is a therapy for a disease;

(vii) Augments a particular therapy or drug action;

(viii) Has a role in the body's response to a disease or to a vector of disease;

(ix) Treats, prevents, or mitigates adverse events associated with a therapy for a disease and manifested by a characteristic set of signs or symptoms; or

(x) Otherwise suggests an effect on a disease or diseases.

Dated: April 22, 1998.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–11294 Filed 4–24–98; 4:27 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0048]

RIN 0910–AA59

Dietary Supplements; Comments on Report of the Commission on Dietary Supplement Labels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its views on recommendations and guidance of the Commission on Dietary Supplement Labels, as presented in the Commission's Final Report. The document also responds to recommendations and guidance directed to FDA. Elsewhere in this issue of the **Federal Register**, FDA is issuing a proposed rule that responds to guidance in the Commission Report concerning statements about the effect of dietary supplements on the structure or function of the body.

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: Ilisa B.G. Bernstein, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380, IBernste@oc.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 12 of the Dietary Supplement Health and Education Act of 1994 (the DSHEA) (Pub. L. 103–417) established an independent agency within the Executive Branch known as the Commission on Dietary Supplement Labels (the Commission). The Commission was charged with conducting a study on, and providing recommendations for regulating label claims and statements for dietary supplements, including the use of literature in connection with the sale of dietary supplements and procedures for evaluating such claims.

The Commission was appointed in October 1995 and convened its first meeting in February 1996. Interested persons presented oral and written testimony at several Commission meetings. A draft report of the Commission was released for public comment on June 24, 1997. On November 24, 1997, the final report of the Commission (Commission Report) was released.

Under section 12(d)(3) of the DSHEA, within 90 days of issuance of the Commission's final report, the Secretary of Health and Human Services is required to publish in the **Federal Register**

> a notice of any recommendation of [the] Commission for changes in regulations of the Secretary for the regulation of dietary supplements and shall include in such notice a notice of proposed rulemaking on such changes together with an opportunity to present views on such changes. Such rulemaking shall be completed not later than 2 years after the date of issuance of such report.

The Commission divided its conclusions into three categories: Findings, guidance, and recommendations. The Commission Report did not contain any recommendations for changes to FDA's ''regulations * * * for the regulation of dietary supplements.'' The Commission made only two recommendations directed to FDA. These recommendations pertain to botanicals and are discussed in section VIII of this document. Neither of the two recommendations suggests changes in regulations governing dietary supplements. Therefore, there are no recommendations subject to the deadlines imposed under section 12 of the DSHEA. In this document the agency is announcing its views on the Commission's recommendation and guidance, as well as a description of the actions the agency intends to take because of these recommendations and guidance. In addition, based on guidance set forth in the Commission Report, the agency is issuing a proposed rule elsewhere in this issue of the **Federal Register** concerning statements about the effects of dietary supplements on the structure or function of the body.

This document addresses only guidance and recommendations made in the Commission Report that are addressed to FDA or relevant to its responsibilities.

II. Safety of Dietary Supplements

The Commission Report states that existing postmarket surveillance systems for dietary supplements could be improved. The Commission Report notes that there is no mandatory requirement for industry, consumers, or health care professionals to report adverse events resulting from consumption of foods and dietary supplements, and specifically states that the Commission is not recommending such a requirement. However, the Commission Report does urge FDA, industry, the scientific community, and consumer groups to work together voluntarily to improve passive postmarketing surveillance systems.

The agency agrees that greater cooperation among FDA, industry, and other interested parties to enhance the effectiveness of current surveillance systems would improve the ability of these systems to identify potential safety problems and thereby improve their public health utility. FDA currently collects reports of adverse events associated with the use of dietary supplements through its MedWatch system, which accepts voluntary reports of adverse events from health professionals and consumers for serious adverse events related to FDA-regulated products. FDA also receives reports of adverse events associated with the use of dietary supplements through the Center for Food Safety and Applied Nutrition (CFSAN) Adverse Event Monitoring System. All reports FDA receives concerning adverse events associated with dietary supplements are entered into CFSAN's Special Nutritionals Adverse Event Monitoring System database for evaluation and monitoring.

The agency intends to respond to the Commission Report's guidance by initiating a process to further cooperation among interested parties. The agency has asked the FDA Foods Advisory Committee (composed of outside experts who advise the agency on food issues) to consider the issue of postmarket surveillance and particularly, how best to collect and share surveillance information. The Foods Advisory Committee (FAC) considered these issues at its February 1998 meeting and referred them to a FAC internal working group to develop recommendations for consideration by the full FAC.

The Commission Report strongly suggests that dietary supplement manufacturers include appropriate warning statements in product information where necessary. Although no corresponding guidance or recommendation to the agency was made, the agency intends to work with the FDA Foods Advisory Committee and industry in developing guidance on the use of warning statements on dietary supplement labeling.

Also related to safety of dietary supplements, the Commission Report urges FDA to use its authority under the DSHEA to take swift enforcement action to address potential safety issues. The agency takes seriously its mission to promote and protect the public health. When the agency becomes aware of the presence of harmful dietary supplements in the marketplace, it is

committed to taking timely action, within the legal limits of its authority, to remove unsafe products from the market or to take other steps to protect consumers from adverse health effects that may result from the use of unsafe dietary supplements.

III. Nutritional Labeling and Education Act (NLEA) Claims in Dietary Supplement Labeling (Health Claims)

A health claim is ''any claim made on the label or in labeling of a food, including a dietary supplement, that expressly or by implication * * * characterizes the relationship of any substance to a disease or health-related condition'' (21 CFR 101.14(a)(1) (§ 101.14(a)(1)). The Federal Food, Drug, and Cosmetic Act (the act) provides that FDA may authorize a health claim for a conventional food only if the agency determines,

> based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.

21 U.S.C. 343(r)(3)(B)(i)).

Any person may petition FDA to authorize a particular health claim by regulation; however, the health claim may not be made until authorized by regulation. Current regulations at 21 CFR 101.14 and 101.70 set forth general requirements for health claims on the labels or in the labeling of conventional foods and dietary supplements. These regulations apply the same standard (i.e., ''significant scientific agreement'') and set forth the same process (i.e., petition process) for health claims for dietary supplements as for health claims for conventional foods.

The Commission Report states that the significant scientific agreement standard is appropriate and serves the public interest. The Commission Report also states that the scientific standard and approval process for health claims for dietary supplements should be the same as for conventional foods, which is an endorsement of FDA's current regulations for health claims on dietary supplements. The Commission Report does not recommend any changes in FDA's health claim regulations for dietary supplements.

The Commission Report does suggest, however, that ''FDA should ensure that broad input is obtained to ascertain the degree of scientific agreement that exists for a particular health claim.'' FDA agrees. The agency has considered and will continue to consider the opinions of scientific experts outside the agency in its deliberations on whether there is significant scientific agreement supporting the validity of a particular disease-substance relationship. For example, FDA considered and relied on data and opinions from several other governmental agencies and professional organizations in deciding to authorize a health claim for folate and neural tube defects. See 58 FR 53254 at 53262–63. The agency is open to input from interested parties as to how to improve its process for considering proposed health claims.

On November 21, 1997, 3 days before the Commission Report was issued, the President signed into law the ''Food and Drug Administration Modernization Act of 1997'' (FDAMA) (Pub. L. 105–115). FDAMA, among other things, amended the health claims provisions of the act in several respects. The Commission Report does not discuss the provisions of the FDAMA as enacted, although it mentions the predecessor House and Senate bills. The effect of the FDAMA on health claim requirements for dietary supplements is beyond the scope of this document. FDA will address such issues during the rulemaking process to implement the FDAMA.

IV. Scope of Structure/Function Statements for Dietary Supplements

The DSHEA added section 403(r)(6) (21 U.S.C. 343(r)(6)) to the act. If certain conditions are met, section 403(r)(6) of the act permits several categories of statements to be made for dietary supplements, including statements that ''describe[] the role of a nutrient or dietary ingredient intended to affect the structure or function in humans [or] characterize[] the documented mechanism by which a nutrient or dietary ingredient acts to maintain structure or function,'' also known as ''structure/function'' claims. The Commission Report contains general guidance for what would constitute an acceptable structure/function claim. Elsewhere in this issue of the **Federal Register** the agency is proposing regulations, consistent with the Commission's guidance, that describe the types of statements that can be made by a manufacturer of a dietary supplement concerning the effect of the dietary supplement on the structure or function of the body in accordance with section 403(r)(6) of the act.

V. Notification Letters for Statements of Nutritional Support (Statements made under section 403(r)(6) of the act)[1]

The act, as amended by the DSHEA, requires the manufacturer of a dietary supplement bearing a statement made under section 403(r)(6) of the act to notify the Secretary no later than 30 days after the first marketing of the dietary supplement with the statement. In the **Federal Register** of September 27, 1996 (61 FR 50771), the agency proposed procedures for such notifications. A final rule was issued September 23, 1997 (62 FR 49883). The regulations set forth the requirements for when and where such a notification is to be made and what information the notification must contain (see 21 CFR 101.93(a)).

The Commission Report suggests that manufacturers include certain information in the notification letter, including some information not required by FDA's regulations. Specifically, the Commission Report suggests that the notification letter include the following: A statement of the purpose of the notification letter, including the exact wording of the statement that is the subject of the notification; the name, address, and telephone number of the manufacturer or distributor; the trade name of the product, the common or usual name of the product, and a description of the product; a copy of the product label or label mock-up, if labels have not yet been printed; the identity of individual ingredients or combinations of ingredients for which the statement is being made, including, for botanicals, the common or usual name, the Latin binomial and its scientific authority, and the part(s) of the plant(s) used; and a statement of intended use, including the recommended dosage and appropriate contraindications or warnings. The Commission Report also suggests that, either in the notification letter or in a separate public notice, the manufacturer affirm that it has substantiation that the statement made under 403(6)(r) is truthful, not misleading, and scientifically valid and that the product does not present a significant or unreasonable risk of illness or injury under the conditions of use recommended or suggested in the

[1] The Commission Report refers to statements under section 403(r)(6) of the act as ''statements of nutritional support.'' As noted in the September 23, 1997, final rule regarding labeling claims for dietary supplements, FDA no longer uses the term ''statements of nutritional support'' because ''many of the substances that can be the subject of this type of claim have no nutritional value. Thus, the term 'statement of nutritional support' is not accurate in all instances.'' 62 FR 49859 at 49863.

labeling. The Commission Report notes that these are suggestions and expresses the view that the rulemaking process need not be reopened at this time. The agency agrees with the guidance in the Commission Report. The agency also agrees that the rulemaking need not be reopened at this time, but will reconsider the need to do so in the future if experience warrants.

The Commission Report also suggests that the notification letters continue to be made available to the public. The agency will continue making these notification letters publicly available by placing them in Docket No. 97S–0162 at FDA's Docket Management Branch (address above). In addition, the agency will consider other mechanisms to make these submissions available.

VI. Substantiation Files for Statements of Nutritional Support (Statements made under section 403(r)(6) of the act)

Section 403(r)(6) of the act requires the manufacturer of a dietary supplement making a statement of nutritional support to have substantiation that such statement is truthful and not misleading. Section 403(r)(6) of the act, however, does not specify what constitutes adequate substantiation. The Commission Report includes guidance on what quantity and quality of evidence should be used to substantiate claims made under section 403(r)(6) of the act. The Commission Report also includes guidance on the content of substantiation files for statements made under section 403(r)(6) of the act, including the notification letter, identification of the product's ingredients, evidence to substantiate the statements, evidence to substantiate safety, assurances that good manufacturing practices were followed, and the qualifications of the person(s) who reviewed the data on safety and efficacy. The agency agrees with the guidance.

VII. Publications Exempt From Classification as Labeling When Used in Connection With Sales

The DSHEA added section 403B of the act (21 U.S.C. 343–2). This provision exempts certain publications used in connection with the sale of dietary supplements from the definition of ''labeling'' in section 201(m) of the act (21 U.S.C. 321(m)). Under section 403B of the act, a ''publication'' will be exempt when it:

(1) is not false or misleading; (2) does not promote a particular manufacturer or brand of a dietary supplement; (3) is displayed or presented, or is displayed or presented with other such items on the same subject matter, so as to present a balanced view of the available scientific information on a dietary supplement; (4) if displayed in an establishment, is physically separate from the dietary supplements; and (5) does not have appended to it any information by sticker or any other method.

21 U.S.C. 343–2.

The Commission Report supports the requirement that information about the uses of dietary supplements be balanced and truthful and advises the dietary supplement industry to strictly observe the five requirements necessary to qualify for the exemption from the labeling definition for publications used in connection with the sale of dietary supplements. The Commission Report states that:

[b]ecause more experience with the implementation of this provision may provide additional information about the use of publications in connection with a sale, the Commission suggests that proactive monitoring of practice in this area be undertaken by FDA as resources permit and that regulatory guidance be developed if necessary.

The agency agrees with the suggestion that it should proactively monitor the use of publications in connection with the sale of dietary supplements and provide guidance, as necessary, to the industry. The agency intends to monitor the use of publications under section 403B of the act. Consistent with FDA's practice with claims made under section 403(r)(6) of the act, the agency intends to continue assisting industry in complying with the requirements of this section. If experience demonstrates a need for regulatory guidance, the agency will develop such guidance in the future.

VIII. Botanical Products

As previously noted, the DSHEA's charge to the Commission encompassed the regulation of label claims. The Commission intrepreted this charge to include the marketing of botanical products as over-the-counter (OTC) drugs when a preventive or therapeutic claim is made.

The Commission Report recommends that botanical products should continue to be available to consumers as dietary supplements when properly labeled as such in compliance with the requirements of the DSHEA. The Commission did not recommend any changes to FDA's regulation of botanical products that are marketed as dietary supplements.

The Commission Report, however, did note that there may be instances in which consumers would be better served by having certain botanical products marketed as OTC drug products, so that statements regarding the prevention or treatment of disease may accompany the product. As the Commission Report also notes, some botanical ingredients are recognized for specific preventive and therapeutic uses, and botanical pharmacopeias have been established in a number of developed countries. Yet, as the Commission observed, in the United States, many botanicals are being labeled with statements of nutritional support that suggest only indirectly the type of therapeutic use that is traditionally associated with the product.

To address this concern, the Commission Report advises that a study is needed ''regarding the establishment of some alternative system for regulating botanical products that are used for purposes other than to supplement the diet but that cannot meet OTC drug requirements.'' In addition, the Commission Report states that a comprehensive evaluation is needed of the regulatory systems that other countries have adopted to regulate botanicals with preventive or therapeutic uses. While the U.S. drug regulatory system ''as it currently exists'' may allow some botanical remedies to be marketed OTC, the Commission Report suggests that existing FDA requirements might preclude others from entering the OTC drug market.

Finally, the Commission Report recommends ''that FDA promptly establish a review panel for OTC claims for botanical products that are proposed by manufacturers for drug uses,'' and suggests that FDA ''give special attention to the feasibility of approving botanical remedies for OTC uses in which sufficient evidence is available.''

For several years, FDA has been engaged in discussions with experts within the Government, academia, and industry, regarding the regulatory status of botanical products. FDA has actively participated in symposia and workshops sponsored by the National Institutes of Health (NIH) and the Drug Information Association (DIA), which focused on topics such as identification and characterization of botanical products, the safety and efficacy evaluation of botanical products, the various regulatory pathways to market that a botanical product could take, and the necessary information that would be required for a particular regulatory route.

Since 1994, FDA has reviewed the relevant laws and regulations, policies and, in some cases, draft policies, from regulatory and advisory authorities around the world. Although the agency agrees that a much more comprehensive evaluation would be helpful, the project

as outlined by the Commission would be costly and resource-intensive. Unfortunately, because resources have not been allocated for such a comprehensive study, FDA is unable to act on its own to implement the Commission's suggestion at this time. Agency personnel, however, are available to work with persons interested in conducting such a study on study design features to provide other technical assistance.

With respect to the Commission Report's points regarding evaluating botanicals under FDA's OTC drug review, under FDA's existing statutory framework, a drug product may avoid ''new drug'' premarket approval requirements and may be eligible for marketing under an OTC drug monograph if (1) the product is generally recognized as safe and effective under the conditions for use for which it is labeled; and (2) if the product has been used to a material extent and for a material time under those conditions. See section 201(p) of the act. (21 U.S.C. 321(p)). FDA recognizes, however, the need to clarify the criteria for eligibility under the OTC drug review for certain additional OTC drug active ingredients, indications, dosage forms, dosage strengths, routes of administration, and combinations. The agency has interpreted section 201(p)(2) of the act to mean use in the United States (see 61 FR 51625, 51626 (October 3, 1996)).

In the **Federal Register** of October 1996, FDA issued an advance notice of proposed rulemaking (ANPRM) seeking comment on eligibility requirements and, among other matters, whether OTC marketing experience abroad could be used to establish ''material time'' and ''material extent'' requirements (61 FR 51625, October 3, 1996). For many botanical products, the history of use is based on marketing experience outside the United States.

Based on the comments received in response to the October 1996 ANPRM, the agency expects to issue a proposed rule setting forth criteria for eligibility in the OTC drug monograph system, including definitions of the terms ''material extent'' and ''material time.'' Unless and until regulations are in place that would allow FDA to accept foreign marketing experience, it may be difficult for many botanical products to qualify for inclusion in the existing OTC monograph system. Consequently, establishing an OTC advisory panel to evaluate therapeutic and preventive drug claims for botanical products, as the Commission recommends, would be premature at this time. The agency, however, intends to work expeditiously on rulemaking for this issue.

In the interim, if there were a situation in which the scientific evidence and marketing experience submitted to the agency are sufficient to allow a botanical ingredient to be considered under the existing framework, then the agency would work expeditiously to assess whether the submitted data and experience supports marketing under an OTC drug monograph.

In addition, recognizing the need for guidance for manufacturers seeking to develop botanicals as either OTC or prescription drug products, and recognizing the unique nature of botanical products, the agency currently is developing a draft guidance for industry that discusses the kinds of data necessary to satisfy drug regulatory requirements based on existing statutes and regulations. The draft guidance will be made available for public comment before a final guidance is issued.

IX. Information for Consumers and Health Professionals

As required by the DSHEA, the Commission considered how best to ensure that consumers receive information that is truthful, scientifically valid, and not misleading so that they may make informed and appropriate health choices. The Commission Report calls for consumer research to determine whether consumers want and can use the information provided to them under the DSHEA, existing FDA regulations, and the recommendations of the Commission. Because advice from health professionals can be critical in helping consumers to make appropriate decisions about dietary supplement use, the Commission Report also states that health care and nutrition professionals should become more knowledgeable about these products. Additionally, the Commission Report urges manufacturers to develop balanced and nonmisleading summaries of the evidence substantiating any statements made under section 403(r)(6) of the act and of the evidence substantiating product safety for the intended use at the recommended dosage. The Commission Report further suggests that manufacturers make these summaries publicly available.

FDA agrees that a better understanding of consumer information needs is desirable. The agency has asked the FDA Foods Advisory Committee (FAC) to consider how best to gather data on how consumers use information on dietary supplement labels to make decisions on whether a dietary supplement is appropriate for them. FDA has also asked the FAC to consider the development of guidelines or criteria that could be used by the dietary supplement industry and others to conduct consumer research studies or to evaluate the results of consumer research studies. FAC considered these issues at its February 1998 meeting and referred them to a FAC internal working group to develop recommendations for consideration by the full FAC.

X. Research

The Commission Report addresses various issues related to research about dietary supplements. The Commission Report states that the public interest would be served by more research to assess the relationships between dietary supplements and the maintenance of health and/or prevention of disease. Additionally, the Commission Report states that incentive mechanisms should be developed to encourage the dietary supplement industry to invest in research on these products. To that end, the Commission Report suggests that FDA consider a ''mechanism for review of research conducted to validate a statement of nutritional support so that the label disclaimer mandated by DSHEA could be modified or removed.'' The Commission Report notes that consideration is needed of ways to provide FDA with sufficient resources to make it possible for the agency to take on such an additional responsibility.

FDA agrees that additional research should be undertaken in the public and private sector to assess the relationships between dietary supplements and the maintenance of health and/or prevention of disease. The agency has provided, and will continue to provide, assistance and guidance to industry and other Federal agencies in designing studies for these types of assessments. Additionally, the agency has worked closely, and will continue to work, with NIH's Office of Dietary Supplements.

With regard to the Commission Report suggestion that FDA consider reviewing research to validate structure/function claims and other statements made under section 403(r)(6) of the act so that the currently required disclaimer could be removed, the agency notes that current law prevents it from adopting this suggestion. Because the disclaimer requirement is statutory, FDA cannot permit the disclaimer to be removed unless Congress amends section 403(r)(6)(C) of the act accordingly.

Dated: April 22, 1998.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–11293 Filed 4–24–98; 4:27 pm]

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federal register

Wednesday
April 29, 1998

Part VII

Department of Education

National Assessment of Educational Progress (NAEP) Program; Applications Invitation for New Awards for Fiscal Year (FY) 1998; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.902E]

The National Assessment of Educational Progress (NAEP) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: To conduct the sampling and data collection component for the 1999, 2000, 2001, and 2002 National Assessment of Educational Progress (NAEP). NAEP supports the National Education Goals by providing measures of progress toward the Goals.

Eligible Applicants: Individuals, public, private, for-profit, and non-profit institutions, agencies, and other qualified organizations or consortia of such institutions, agencies, and organizations.

Deadline for Transmittal of Applications: July 1, 1998.

Applications Available: May 1, 1998.

Available Funds: In FY 1998, $700,000 will be available for the sampling and data collection component. It is anticipated that in FYs 1999 through 2002, an average amount of $7,500,000 will be available annually.

Estimated Number of Awards: 1.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; (b) the regulations in 34 CFR 700.30 and 34 CFR part 98; and (c) 48 CFR part 31 (Contracts with Commercial Organizations).

Supplementary Information: NAEP is authorized by section 411 of the National Education Statistics Act of 1994 (20 U.S.C. 9010). Section 412 of this law provides for the establishment of the National Assessment Governing Board (NAGB)(20 U.S.C. 9011). The law requires the NAGB, among other responsibilities, to formulate the policy guidelines for the National Assessment and select the subject areas to be assessed. A cooperative agreement is currently in operation to develop assessment instruments for the 2000 assessment.

Priority

Absolute Priority

Under 34 CFR 75.105(c)(3) and 20 U.S.C. 9010–9011, the Secretary gives an absolute preference to applications that meet the priority in the next paragraph. The Secretary funds under this competition only applications that meet this absolute priority.

Sampling and Data Collection for the National Assessment of Educational Progress

The grantee must use sampling techniques that produce data that are representative on a national, regional, and State basis. The grantee must collect data for mathematics, science, history, geography, reading and writing in grades 4, 8, and 12 from a nationally representative sample. The grantee must also monitor data collection in each participating State in mathematics, science, reading and writing in fourth and eighth grades.

In carrying out the National Assessment, the grantee shall not collect any data that are not directly related to the appraisal of educational performance, achievement, and traditional demographic reporting variables, and shall ensure that all personally identifying information about students, their educational performance, and their families remains confidential.

Evaluation Criteria

The Secretary selects from the criteria in 34 CFR 700.30(e) to evaluate applications for new grants under this competition. Under 34 CFR 700.30(a), the Secretary announces in the application package the evaluation criteria selected for this competition and the maximum weight assigned to each criterion.

For Applications or Information Contact: Laurence Ogle, U.S. Department of Education, National Center for Education Statistics, Office of Educational Research and Improvement, room 404A, 555 New Jersey Avenue, NW., Washington, DC 20208–5653. E-mail: laurence__ogle@ed.gov. Telephone: (202) 219–1761. 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.

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Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1221e–1.

Dated: April 24, 1998.

Ricky Takai,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 98–11374 Filed 4–28–98; 8:45 am]

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federal register

Wednesday
April 29, 1998

Part VIII

Department of Education

National Assessment of Educational Progress (NAEP) Program; Applications Invitation for New Awards for Fiscal Year (FY) 1998; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.902F]

The National Assessment of Educational Progress (NAEP) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: To conduct the development, scoring, analysis, and reporting component for the 2000, 2001, and 2002 National Assessment of Educational Progress (NAEP). NAEP supports the National Education Goals by providing measures of progress toward the Goals.

Eligible Applicants: Public, private, for-profit, and non-profit individuals, institutions, agencies, and other qualified organizations or consortia of these institutions, agencies, and organizations.

Deadline for Transmittal of Applications: July 1, 1998.

Applications Available: May 1, 1998.

Available Funds: In FY 1998, $640,000 will be available for the development, scoring, analysis, and reporting component. It is anticipated that in FYs 1999 to 2002 an average of $16,000,000 will be available annually in FYs 1999 through 2002, and $6,000,000 available in FY 2003.

Estimated Number of Awards: 1.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; (b) The regulations in 34 CFR 700.30 and 34 CFR part 98; and (c) 48 CFR Part 31 (Contracts with Commercial Organizations).

Supplementary Information: The NAEP is authorized by section 411 of the National Education Statistics Act of 1994 (20 U.S.C. 9010). Section 412 of this law provides for the establishment of the National Assessment Governing Board (NAGB) (20 U.S.C. 9011). The law requires the NAGB, among other responsibilities, to formulate the policy guidelines for the National Assessment and select the subject areas to be assessed. A cooperative agreement is currently in operation to develop assessment instruments for the 2000 assessment.

Priority

Absolute Priority

Under 34 CFR 75.105(c)(3) and 20 U.S.C. 9010–9011, the Secretary gives an absolute preference to applications that meet the priority in the next paragraph. The Secretary funds under this competition only applications that meet this absolute priority.

Development, Scoring, Analysis and Reporting of Data From the National Assessment of Educational Progress

The grantee must develop assessment booklets for history, geography, reading and writing. The grantee must score, analyze, and report data collected for mathematics, science, history, geography, reading and writing in grades 4, 8, and 12 from a nationally representative sample. The grantee must also score, analyze, and report data collected from samples representative of each participating State in mathematics, science, reading and writing in fourth and eighth grades. The NAEP must be reported in ways that increase the information available to educational policymakers and the general public regarding the educational achievement of American students. Section 412 requires the NAGB to develop the guidelines for the analysis and reporting of the NAEP results. The grantee must score, analyze, and report in accordance with guidelines specified by the National Assessment Governing Board. Each report must be published and disseminated after completing the National Center for Educational Statistics (NCES) peer review procedure.

Evaluation Criteria

The Secretary selects from the criteria in 34 CFR 700.30(e) to evaluate applications for new grants under this competition. Under 34 CFR 700.30(a), the Secretary announces in the application package the evaluation criteria selected for this competition and the maximum weight assigned to each criterion.

For Applications or Information Contact: Steve Gorman, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404g, Washington, DC 20208–5653. E-mail: sgorman@inet.ed.gov; or FAX your request to: (202) 219–1801 with the surface mail address to which the application should be sent. For information call (202) 219–1761. 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.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 9010–9011.

Dated: April 24, 1998.

Ricky Takai,

Acting Assistant Secretary for Educational Research and Improvement.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Esfenvalerate; published 4-29-98
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- City of Fort Lauderdale Annual Air & Sea Show; published 3-30-98

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- Electric borrowers; hardship rate and municipal rate loans; queue prioritization; comments due by 5-8-98; published 4-8-98

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 1116/P.L. 105–169
To provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District and the Fabens Independent School District. (Apr. 24, 1998; 112 Stat. 46)

H.R. 2843/P.L. 105–170
Aviation Medical Assistance Act of 1998 (Apr. 24, 1998; 112 Stat. 47)

H.R. 3226/P.L. 105–171
To authorize the Secretary of Agriculture to convey certain lands and improvements in the State of Virginia, and for other purposes. (Apr. 24, 1998; 112 Stat. 50)

S. 493/P.L. 105–172

Wireless Telephone Protection Act (Apr. 24, 1998; 112 Stat. 53)

S. 1178/P.L. 105–173

To amend the Immigration and Nationality Act to modify and extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General. (Apr. 27, 1998; 112 Stat. 56)

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